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DIRECTORY

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345-12-A
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347-12-BZ
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348-12-A
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DOCKETS

349-12-A
19 Starr Avenue, north side of Starr Avenue, 248.73 east of intersection of Bement Avenue and Starr Avenue., Block 298, Lot(s) 68, Borough of **Staten Island, Community Board: 1**. Appeal from decision of Borough Commissioner denying permission for proposed construction of two one-family dwellings within the bed of a legally mapped street.

350-12-BZ
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2-13-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

JANUARY 29, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 29, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

130-88-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application August 13, 2012 – Extension of Term of the previously granted Special Permit (§73-211) for the continued operation of (UG 16B) gasoline service station (*Gulf*) which expired on January 24, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on October 12, 2003; Waiver of the Rules. C2-2/R4 zoning district.
PREMISES AFFECTED – 1007 Brooklyn Avenue, aka 3602 Snyder Avenue, southeast corner of the intersection formed by Snyder and Brooklyn Avenues, Block 4907, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #17BK

103-91-BZ
APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.
SUBJECT – Application October 18, 2012 – Extension of term and amendment to previously granted variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend the hours of operation contrary to previous BSA approval. C2-1/R3-2 zoning district.
PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.
COMMUNITY BOARD #13Q

20-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich LLC, owners.
SUBJECT – Application January 3, 2013 –Extension of Time to Complete Construction of a previously granted Special Permit (75-53) for the vertical enlargement to an existing warehouse (UG17) which expired on January 13, 2013. C6-2A zoning district.
PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street between Greenwich Street and Collister Street, Block 214, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #1M

APPEALS CALENDAR

265-12-A & 266-12-A
APPLICANT – Jesse Masyr, Watchel Masyr & Missry, LLP, for Related Retail Bruckner LLC.
OWNER OF PREMISES – Ciminello Property Associates.
SUBJECT – Application September 5, 2012 – Appeal from Department of Building's determination that the subject signs are not entitled to continued non-conforming use status as advertising signs. M1-2 & R4/C2-1 zoning district.
PREMISES AFFECTED – 980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway, Block 5542, Lot 41, Borough of Bronx.
COMMUNITY BOARD #10BX

287-12-A
APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Brian Rudolph, lessee.
SUBJECT – Application October 5, 2012 –The proposed enlargement of the existing building located partially with in the bed of a mapped street contrary to General City Law Section 35 and the upgrade of an existing private disposal system is to the Department of Building policy. R4 zoning district.
PREMISES AFFECTED – 165 Reid Avenue, east side of Beach 201 Street, 335' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

JANUARY 29, 2013, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 29, 2013, at 1:30 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

148-12-BZ
APPLICANT – Eric Palatnik, P.C., for Esther Kuessous, owner.
SUBJECT – Application May 8, 2012 – Special Permit (§73-621) for the enlargement of an existing single family semi-detached residence contrary to floor area, lot coverage and open space (ZR23-141(b)). R4 zoning district.
PREMISES AFFECTED – 981 East 29th Street, between Avenue I and Avenue J, Block 7593, Lot 12, Borough of Brooklyn.
COMMUNITY BOARD #14BK

234-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner; LA Fitness, lessee.
SUBJECT – Application July 20, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*LA Fitness*). 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 Street, Block 4226, Lot 16, Borough of Bronx.
COMMUNITY BOARD #11BX

294-12-BZ
APPLICANT – Eric Palatnik, P.C., for David Katzive, owner; Thomas Anthony, lessee.
SUBJECT – Application October 11, 2012 – Special Permit (§73-36) to permit a physical culture establishment. C5-2A/DB special zoning district.
PREMISES AFFECTED – 130 Clinton Street, aka 124 Clinton Street, between Joralemon Street and Aitken Place, Block 264, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #2BK

295-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Laura Danoff and Scott Danoff, owners.
SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district.
PREMISES AFFECTED – 49-33 Little Neck Parkway, Block 8263, Lot 110, Borough of Queens.
COMMUNITY BOARD #11Q

302-12-BZ
APPLICANT – Davidoff Hutcher & Citgron LLP, for YHD 18 LLC, owner; Lithe Method LLC, lessee.
SUBJECT – Application October 18, 2012 – Special permit (73-36) to permit a proposed physical culture establishment (*Lithe Method*) to be located at the ground floor of the building at the premises.
PREMISES AFFECTED – 32 West 18th Street, between Fifth and Sixth Avenues, Block 819, Lot 1401, Borough of Manhattan.
COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, JANUARY 8, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

743-59-BZ
APPLICANT – Peter Hirshman for VM 30 Park, LLC, owner.
SUBJECT – Application June 14, 2012 – Extension of Term of a previously approved variance (Section 7e 1916 zoning resolution and MDL Section 60 (1d)), which permitted 20 attended transient parking spaces, which expired on June 14, 2011; Waiver of the Rules. R10/R9X zoning district.
PREMISES AFFECTED – 30 Park Avenue, southwest corner of East 36th Street and Park Avenue. Block 865, Lot 40. 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 Montanez 5
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 previously granted variance to allow transient parking in an accessory garage, which expired on June 14, 2011; and

WHEREAS, a public hearing was held on this application on November 27, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application, but requests that the term be limited to five years; 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 southwest corner of Park Avenue and East 36th Street, partially within an R10 zoning district and partially within an R9X zoning district; and

WHEREAS, the site is occupied by a 20-story residential building; and

WHEREAS, the first floor, cellar, and sub-cellar are occupied by an accessory garage, with 45 spaces at the first floor, 48 spaces at the cellar level, and 49 spaces at the sub-cellar level; and

WHEREAS, on July 12, 1960, under the subject calendar number, the Board granted an application pursuant to Section 60(1)(d) of the Multiple Dwelling Law ("MDL"), to permit a maximum of 20 surplus parking spaces to be used for transient parking, for a term of 21 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on October 30, 2001, the Board granted a ten-year extension of term, which expired on June 14, 2011; and

WHEREAS, in response to concerns raised by the Community Board, the applicant submitted revised plans reflecting that the signage on the site will be modified to comply with C1 district regulations, and the applicant states that the hours of illumination of the signage will be limited to 7:00 a.m. to 10:00 p.m.; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution pursuant to Section 60(1)(d) of the MDL, said resolution having been adopted on July 12, 1960, as subsequently extended, so that as amended this portion of the resolution shall read: "granted for a term of ten (10) years from June 14, 2011, to expire on June 14, 2021; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received June 14, 2012' – (2) sheets and 'October 15, 2012'-(1) sheet; and *on further condition*;

THAT this term will expire on June 14, 2021;

THAT the number of daily transient parking spaces will be no greater than 20;

THAT all residential leases will indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

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 the layout of the parking garage shall be as approved by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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. 102136886)

Adopted by the Board of Standards and Appeals, January 8, 2013.

165-91-BZ
APPLICANT – Law Offices of Stuart A. Klein, for United Talmudical Academy, owner.
SUBJECT – Application August 17, 2012 – Extension of Term of approved Special Permit (§73-19) which permitted the construction and operation of a school (UG 3) which expires on September 15, 2012. M1-2 zoning district.
PREMISES AFFECTED – 45 Williamsburg Street West, aka 32-46 Hooper Street, Block 2203, Lot 20, 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 Montanez 5
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 the operation of a school within an M1-2 zoning district, which expired on September 15, 2012; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; 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 site is located on an irregularly-shaped corner lot bounded by Hooper Street to the west, Wythe Avenue to the north, and Williamsburg Street West to the east, within an M1-2 zoning district; and

WHEREAS, the site is occupied by a one-story and mezzanine school building; and

WHEREAS, on September 15, 1992, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-19 to permit the construction of a school within the subject M1-2 zoning district for a term of 20 years, which expired on September 15, 2012; and

WHEREAS, the applicant now seeks to extend or eliminate the term of the variance; and

WHEREAS, the Board notes that no term is required under ZR § 73-19, and considers the elimination of the term appropriate for the site; and

WHEREAS, in response to the concerns raised by the Board, the applicant submitted revised plans reflecting the existing rooftop play area on the building; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 15, 1992, so that as amended this portion of the resolution shall read: "to grant approval of the elimination of the term of the variance; *on condition* that any and all work shall substantially conform to drawings filed with this application marked 'Received August 17, 2012'-(7) sheets and 'December 24, 2012'-(1) sheet; and *on further condition*:

THAT a new certificate of occupancy will be obtained by January 8, 2014;

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 8, 2013.

107-06-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; Equinox 63rd Street, Inc. lessee.
SUBJECT – Application September 14, 2012 – Amendment to previously granted Special Permit (§73-36) for the increase (693 square feet) of floor area of an existing Physical Culture Establishment (*Equinox)*. C10-8X/R8B zoning district.
PREMISES AFFECTED – 140 East 63rd Street, southeast corner of intersection of East 63rd Street and Lexington Avenue, Block 1397, Lot 7505, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit for a physical culture establishment ("PCE"), to permit a 693 sq. ft. expansion of the PCE; and

WHEREAS, a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

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

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

WHEREAS, the subject site is located on the southeast corner of Lexington Avenue and East 63rd Street, partially within a C1-8X zoning district and partially within an R8B

zoning district; and

WHEREAS, the applicant notes that, because more than 50 percent of the lot area is located in the C1-8X zoning district and the greatest distance from the district boundary to any lot line does not exceed 25 feet, the C1-8X zoning district regulations may apply to the entire site, pursuant to ZR § 77-11; and

WHEREAS, the site is occupied by a 22-story mixed-use commercial/residential building; and

WHEREAS, the PCE occupies 18,471 sq. ft. of floor area on the first and second floors, with an additional 19,738 sq. ft. of floor space located on the sub-cellar and cellar levels; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 2007 when, under the subject calendar number, the Board granted a special permit for the operation of a PCE at the subject site; and

WHEREAS, the applicant now requests an amendment to permit an expansion of the PCE use to an additional 693 sq. ft. of floor area, for a total PCE floor area of 19,164 sq. ft.; and

WHEREAS, the applicant states that the PCE will be expanded into an existing vacant space on the first floor which will be used as a pilates studio and will be accessed from a new opening created within the existing facility; and

WHEREAS, the applicant further states that the proposed expansion will not result in any new storefront space or signage; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the grant 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 27, 2007, so that as amended this portion of the resolution shall read: "to permit a 693 sq. ft. expansion of the PCE on the first floor; *on condition* that any and all work shall substantially conform to drawings filed with this application marked 'Received December 24, 2012'- (1) sheet; and *on further condition*:

THAT the term of this grant will expire on February 27, 2017;

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

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 the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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. 104405038)

Adopted by the Board of Standards and Appeals, January 8, 2013.

39-65-BZ
APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.
SUBJECT – Application March 13, 2012 – Amendment of a previously-approved variance (§72-01) to convert repair bays to an accessory convenience store at a gasoline service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy, which expired on January 11, 2000; and Waiver of the Rules. C3 zoning district.
PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, 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 5, 2013, at 10 A.M., for decision, hearing closed.

410-68-BZ
APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.
SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of approved variance which permitted the operation of (UG16B) automotive service station (*Citgo*) with accessory uses, which expired on November 26, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.
AFFECTED PREMISES – 85-05 Astoria Boulevard, east corner of 85th Street. Block 1097, Lot 1. Borough of Queens.
COMMUNITY BOARD #3Q
ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for continued hearing.

548-69-BZ
APPLICANT – Eric Palatnik, P.C., for BP North America, owner.
SUBJECT – Application March 27, 2012 – Extension of Term for a previously granted variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district.
PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107th Street, Block 1694, Lot 1, Borough of Queens.
COMMUNITY BOARD #3Q
ACTION OF THE BOARD – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

982-83-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.
SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.
PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192nd Street, Block 5513, Lot 27, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to February 5, 2013, at 10 A.M., for adjourned hearing.

68-91-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application August 24, 2012 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on May 19, 2012; Amendment §11-412) to permit the legalization of certain minor interior partition changes and a request to permit automotive repair services on Sundays; Waiver of the Rules. R5D/C1-2 & 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 – Laid over to January 8, 2013, at 10 A.M. for continued hearing.

85-91-BZ
APPLICANT – Carl A. Sulfaro, Esq. for Lada Limited Liability Company, owner; Bayside Veterinary Center, lessee.
SUBJECT – Application August 20, 2012 – Extension of Term (§11-411) of a previously granted variance for a veterinarian's office, accessory dog kennels and a caretaker's apartment which expired on July 21, 2012; amendment to permit a change to the hours of operation and accessory signage. R3-1 zoning district.
PREMISES AFFECTED – 204-18 46th Avenue, south side of 46th Avenue 142.91' east of 204th Street. Block 7304, Lot 17, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to February 5, 2013, at 10 A.M., for decision hearing closed.

189-03-BZ
APPLICANT – Eric Palatnik, P.C., for 830 East 233rd Street Corp., owner.
SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expires on October 21, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.
PREMISES AFFECTED – 836 East 233rd Street, southeast corner of East 233rd Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.
COMMUNITY BOARD #12BX
ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for decision, hearing closed.

136-06-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Fulton View Realty, LLC, lessee.
SUBJECT – Application August 24, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the residential conversion and one-story enlargement of three, four-story buildings. M2-1 zoning district.
PREMISES AFFECTED – 11-15 Old Fulton Street, between Water Street and Front Street, Block 35, Lot 7, 8 & 9, Borough of Brooklyn.
COMMUNITY BOARD #2BK
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 January 29, 2013, at 10 A.M., for decision, hearing closed.

197-08-BZ
APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.
SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.
PREMISES AFFECTED – 341-349 Troy Avenue aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #9BK
ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for adjourned hearing.

208-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt, owner.
SUBJECT – Application October 25, 2012 – Extension of Time to Complete Construction of an approved special permit (§73-622) to permit the enlargement of an existing single family residence which expired on October 28, 2012. R2 zoning district.
PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22nd Street, Block 7639, Lot 1 &3(tent.1), 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 January 29, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

255-84-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner.
SUBJECT – Application May 23, 2012 – Proposed enlargement of a community center (*Administration Security Building*) located partially in the bed of the mapped Rockaway Point Blvd, contrary to Article 35 of the General City Law. R4 zoning district.
AFFECTED PREMISES – 95 Reid Avenue, East side Reid Avenue at Rockaway Point Boulevard. Block 16350, Lot p/o300. 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 Montanez 5
Negative:.....0
THE RESOLUTION –
WHEREAS, the decision of the Queens Borough Commissioner, dated May 4, 2012, acting on Department of Buildings Application No. 420372698, reads in pertinent part:
A1- The existing building to be altered lies within the bed of a mapped street contrary to Article 3, Section 35 of the General City Law; and
WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in the *City Record*, and then to decision on the same date; and
WHEREAS, this is an application to reopen and amend a previously approved GCL 35 to allow for the enlargement of an existing community facility; and
WHEREAS, by letter dated October 25, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections; and
WHEREAS, by letter dated July 27, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and
WHEREAS, by letter dated September 12, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and
WHEREAS, DOT states that the subject lot is not currently included in the agency'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 May 4, 2012 , acting on Department of Buildings Application No. 420372698 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 shall substantially conform to the drawing filed with the application marked "Received May 23, 2012"-one (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) only;
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;
THAT the community facility shall be provided with interconnected smoke alarms in accordance with the BSA-approved plans;
THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.
Adopted by the Board of Standards and Appeals, January 8, 2013.

95-12-A & 96-12-A
APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communications, LLC.
OWNER OF PREMISES – Calandra LLC.
SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising sign. M1-2 zoning district.
PREMISES AFFECTED – 2284 12th Avenue, west side of 12th Avenue between 125th and 131st Streets, Block 2004, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #9M

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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to two Notice of Sign Registration Rejection letters from the Manhattan Borough Commissioner of the Department of Buildings ("DOB"), dated March 12, 2012, denying registration for two signs at the subject site (the "Final Determinations"), which read, in pertinent part:

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in support of the legal establishment of this sign. Unfortunately, a tax photo of this location during the relevant period shows no sign structure. 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 October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on January 8, 2012; 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 at the west side of 12th Avenue between 125th Street and 131st Street, in an M1-2 zoning district within the Special Manhattanville Mixed Use District; and

WHEREAS, the site is occupied by a two-story building which has two advertising signs located on the roof of the building, one facing north (the "North-Facing Sign") and one facing south (the "South-Facing Sign") (collectively, the "Signs"); and

WHEREAS, on December 31, 2003, DOB issued Permit Nos. 103635210-01-SG and 103635229-01-SG to "replace existing non-conforming illuminated advertising sign" for both the North-Facing Sign and South-Facing Sign (the "2003 Permits"), and on January 2, 2004, DOB issued Permit No. 103634989-01-ET to "repair or rebuilt existing steel structure of existing non-conforming illuminating advertising sign" (collectively, the "Permits"); and

WHEREAS, this appeal is brought on behalf of the lessee of the sign structure (the "Appellant"); and

WHEREAS, the Appellant states that the Signs are rectangular advertising signs each measuring 20 feet in height by 60 feet in length for a surface area of 1,200 sq. ft., with the North-Facing Sign located 40'-5" from the Henry Hudson Parkway and the South-Facing Sign located 41'-10" from the Henry Hudson Parkway; and

WHEREAS, the Appellant states that when the Signs were installed, the site was within an M2-3 zoning district, but that pursuant to a 2007 rezoning, the site is now zoned M1-2 within the Special Manhattanville Mixed use District; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration of the Signs based on DOB's determination that the Appellant (1) failed to provide evidence of the establishment of the advertising signs and (2) failed to establish that such use has, if established prior to the relevant date, continued without an interruption of two years or more; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

WHEREAS, the Appellant identifies the relevant statutory requirements related to sign registration in effect since 2005; and

WHEREAS, the Appellant states that 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

WHEREAS, the Appellant asserts that 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, the Appellant notes that 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, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Signs and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Signs; (2) photographs of the Signs; and (3) the Permits, along with Letters of Completion for each application; and

WHEREAS, on October 3, 2011, DOB issued two Notices of Sign Registration Deficiency, stating that it is unable to accept the Signs for registration due to "Failure to provide proof of legal establishment – No proof prior to 2003 rebuild Permit…;" and

WHEREAS, by letter dated January 6, 2012, the Appellant submitted a response to DOB, arguing that the issuance of the 2003 Permits alone, without any further information, is sufficient "proof of legal establishment," and that the Appellant had operated the Signs for more than a decade in reliance on the DOB permits; and

WHEREAS, by letter dated January 30, 2012, the Appellant supplemented its Sign Registration Applications with an affidavit attesting to the uninterrupted and continuing presence and use of the Signs from 1963 until 1989; and

WHEREAS, DOB determined that the additional material submitted was inadequate, and issued the Final Determinations on March 12, 2012; 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. . .
>
> * * *
>
> 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 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 § 52-83

Non-Conforming Advertising Signs

In all Manufacturing Districts, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Section…42-55, any non-conforming advertising sign except a flashing sign may be structurally altered, reconstructed, or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

(a) The creation of a new non-conformity or an increase in the degree of non-conformity of such sign;
(b) An increase in the surface area of the sign; or
(c) An increase in the degree of illumination of such sign; 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

A. Establishment Prior to November 1, 19791 and Continuous Use

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) the Signs were established as advertising signs prior to November 1, 1979 and may therefore be maintained as legal non-conforming advertising signs pursuant to ZR § 52-11, and (2) the Signs have operated as advertising signs with no discontinuance of two years or more since their establishment; and

WHEREAS, in support of its assertion that the Signs were established prior to November 1, 1979 and have been in continuous use to the present, the Appellant relies on: (1) a May 24, 1978 lease between the owner of the building and Miller Outdoor Advertising, an outdoor advertising company, which states that Miller had the right to maintain a sign structure on the roof of the building beginning in 1978 (the "1978 Lease"); (2) an Application for Reconsideration dated November 10, 1999 requesting that the Signs be permitted as an existing non-conforming structure and have legal non-conforming use as an advertising sign, and signed off on by the then-Manhattan Borough Commissioner, noting "OK to accept existing roof sign 20 ft. x 60 ft., per ES 234/88 and in continuous use per lease dated May 24, 1978" (the "1999 Reconsideration"); and (3) an affidavit dated January 21, 2012 from Donald Robinson, an employee of various outdoor advertising companies from 1963 through 1989, which states that the Signs were existing in 1963 and that they were being used from 1963 to 1989 as advertising signs (the "Robinson Affidavit"); and

WHEREAS, as to the continuous use of the Signs since November 1, 1979, at the outset DOB states that the Appellant

1 DOB acknowledges that the surface area of the Signs do not exceed 1,200 sq. ft. on their face, 30 feet in height, or 60 feet in length, and therefore the Signs may have legal non-conforming status if erected prior to November 1, 1979 pursuant to ZR § 42-55(c).

has submitted sufficient evidence to demonstrate continuity of the Signs from 1992 through the filing of the subject appeal; and

WHEREAS, accordingly, the Board finds it appropriate to limit its review of the continuity of the Signs to the period from 1979 through 1992, which is the only time period for which DOB has alleged a discontinuance of the Sign for a period in excess of two years, contrary to ZR § 52-61; and

WHEREAS, in support of the existence of the Signs as advertising signs from 1979 through 1992, the Appellant relies on: (1) the 1978 Lease; (2) the 1999 Reconsideration; (3) a 2003 photograph showing advertising copy on the sign structure and a "Miller Outdoor" placard at the bottom of one of the signs (the "2003 Photograph"); (4) an affidavit dated August 10, 2012 from the owner of the site, stating that the Signs continued to be leased to Miller Outdoor Advertising through 2003 under the 1978 Lease (the "Owner's Affidavit"); and (5) the Robinson Affidavit; and

WHEREAS, the Appellant asserts that the 1999 Reconsideration reflects DOB's acknowledgement that the use of the Signs as advertising signs had been legally established prior to November 1, 1979 and continued to be leased under the 1978 Lease until at least 1999; and

WHEREAS, the Appellant contends that the 2003 Photograph, which shows a "Miller Outdoor" placard at the bottom of one of the signs, in combination with the Owner's Affidavit, which states that it assumed the 1978 Lease upon acquisition of the site in 1999 and that the Signs were leased to Miller Outdoor Advertising at the time it took over the site until November 30, 2003 with a continuous advertising display during that time, reflect that the Miller Advertising Company continued to lease the Signs from May 24, 1978 until at least November 30, 2003; and

WHEREAS, the Appellant asserts that DOB's issuance of the 2003 Permits is further evidence that DOB accepted the establishment and continuous use of the Signs since November 1, 1979; and

WHEREAS, a representative of the Appellant provided testimony at the hearing stating that she conducted an extensive search for additional type (a) and (b) evidence pursuant to TPPN 14/1988 (the "TPPN") to prove the continuity of the non-conforming sign, but that no additional evidence was available; and

WHEREAS, as to the Department of Finance ("DOF") tax photograph taken between 1982 and 1987 submitted by DOB (the "1980's DOF Photograph"), which shows no sign structure on the roof of the building and which DOB claims is evidence of discontinuance of the Signs at the site, the Appellant argues that DOB has not provided any proof that the advertising use of the Signs was discontinued for two years or more, and one single photograph from a single moment in time is not in and of itself sufficient to establish discontinuance for a period of two years or more; and

WHEREAS, the Appellant states that pursuant to ZR §§ 42-55 and 52-83, the Signs and supporting sign structure could have been temporarily removed for a period of less than two years in accordance with ZR § 52-61 or replaced without affecting the non-conforming use status of the Signs; and

WHEREAS, the Appellant argues that the temporary removal of the Signs to restore and refurbish the sign structure did not divest them of their legal non-conforming status, and the evidence provided by the Appellant indicates that Miller Outdoor Advertising maintained a lease for the Signs through the 1980's and continued to display advertising copy throughout this time period; and

WHEREAS, the Appellant argues that the subject case is distinguishable from similar cases cited by DOB due to the 1999 Reconsideration, which should be afforded more weight than a DOB-issued permit based on self-certified plans because it reflects that the then-Borough Commissioner reviewed and approved the specific issue of establishment and continuous use of the Signs, and DOB has not provided sufficient evidence to support its conclusion that the 1999 Reconsideration was issued in error, as the only evidence they rely on is the 1980's DOF Photograph which, as noted above, merely reflects the absence of the Signs for one point in time, not for two years continuously; and

B. Ability to Rely on 2003 Permits Alone

WHEREAS, the Appellant asserts that the Signs qualify as non-conforming advertising signs under ZR § 42-55 because the 2003 Permits issued by DOB establish that DOB has already accepted the legal non-conforming status of the Signs; and

WHEREAS, the Appellant further contends that the 2003 Permits specifically provide for the replacement of "existing non-conforming illuminated advertising sign[s]" and DOB has never alleged that the 2003 Permits were issued for anything other than advertising signs; therefore, the fact that DOB issued the 2003 Permits (and the 1999 Reconsideration) establishes that DOB has sufficient evidence that advertising signs have continuously been maintained on the site prior to November 1, 1979; and

WHEREAS, the Appellant asserts that DOB had the opportunity to evaluate the legality of the Signs at the time it issued the 2003 Permits to allow for the repair of the existing advertising signs on the site, and the applicable provisions of the Zoning Resolution have not changed since that time; and

WHEREAS, the Appellant represents that it has relied in good faith on DOB's approval of the Signs, has made investments in maintaining and marketing in reliance on the approvals, and equity does not allow DOB to revise its prior approvals and require the removal of the Signs; and

DOB'S POSITION

A. Establishment of the Signs Prior to November 1, 1979

WHEREAS, DOB contends that the Appellant has failed to provide adequate evidence that the Signs were established as advertising signs prior to November 1, 1979; and

WHEREAS, DOB states that in order to show proof of establishment of the advertising signs under the non-conforming use provisions of ZR § 42-55(c), the Appellant would need to demonstrate that the Signs were installed

prior to November 1, 1979; and

WHEREAS, DOB further states that if the Appellant produced a permit for the Signs prior to November 1, 1979, DOB would accept the Signs as being established prior to the relevant date; further, if the Appellant is unable to produce a permit for the Signs, DOB states that it would also look at additional evidence indicated in RCNY 49(d)(15)(b), including, but not limited to, photographs, affidavits, leases, and receipts which indicate that Signs were installed prior to November 1, 1979; and

WHEREAS, DOB argues that the only evidence the Appellant has produced to show establishment of the Signs prior to November 1, 1979 is the 1978 Lease for "maintenance of a roof sign" and the Robinson Affidavit, which is uncorroborated and questionable at best; and

WHEREAS, DOB contends that the 1999 Reconsideration cannot be relied on for the establishment of the Signs prior to November 1, 1979 because, as discussed in greater detail below, it was issued in error; and

WHEREAS, DOB asserts that the Appellant's evidence of photographs from the 1990's, 2000's, and 2010's, and the 2003 Permits also do not establish that the Signs were erected prior to November 1, 1979; and

WHEREAS, DOB states that, based on the lack of evidence indicating the Signs were installed prior to November 1, 1979, it is unable to conclude that the Signs were established and therefore it cannot consider the Signs to be non-conforming advertising signs, consistent with ZR § 42-55(c); and

B. The Evidence of Continuity Fails to Satisfy the Standard Set Forth in the TPPN

WHEREAS, DOB asserts that even if the Appellant has established the Signs as non-conforming advertising signs, the Appellant must also submit sufficient evidence to establish that the Signs have been continuously used as advertising signs since November 1, 1979, without any two-year period of discontinuance, as required by ZR § 52-61; and

WHEREAS, DOB contends that the Appellant's evidence of continuity of the Signs fails to satisfy the TPPN, which sets forth guidelines for DOB's review of whether a non-conforming use has been continuous; the TPPN includes the following types of evidence, which have been accepted by the Borough Commissioner: (1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits; and

WHEREAS, DOB notes that additional forms of evidence not described in the TPPN are accepted and are given due consideration and weight depending on the nature of the evidence, including the following: (1) a lawfully issued permit from DOB is given substantial weight; (2) other government records, recorded documents and utility bills are generally considered high value evidence; and (3) photographic evidence is also given substantial weight; and

WHEREAS, in contrast, DOB states that uncorroborated testimonial evidence that a sign was established or has existed continuously is not considered sufficient because testimony may be tainted by memory lapses, bias and misperception, and leases and other contracts that are not corroborated by independently verifiable evidence may not be sufficient because they can be fabricated or materially altered and because they do not demonstrate the actual existence of a sign; and

WHEREAS, DOB states that the Appellant has not provided any relevant records from any City agency (Item (a) evidence), except for the 2003 Permits and the 1999 Reconsideration; and

WHEREAS, DOB notes that no public utility bills or records (Item (b) evidence) and no other bills indicating the use of the building (Item (c) evidence) were submitted by the Appellant; and

WHEREAS, DOB states that the only other evidence provided by the Appellant can be categorized as TPPN (d) evidence, including the 1978 Lease (for a term of five years), photographs from 1992, 1996, the multiple photographs from the 2000's, and the multiple photographs from the 2010's, the Owner's Affidavit, and the Robinson Affidavit; and

WHEREAS, DOB acknowledges that the evidence of continuity submitted by the Appellant, specifically the numerous photographs, sufficiently establishes that the Signs were continuously used for advertising from 1992 until the filing of the application; however, DOB asserts that the Appellant has not provided sufficient evidence to show that the Signs were continuously used for advertising without an interruption of two years or more from November 1, 1979 until 1992; and

WHEREAS, as to the 1999 Reconsideration, DOB states that although it gives substantial weight to reconsiderations, if there is evidence that the reconsideration was issued in error, DOB will not rely on it; and

WHEREAS, DOB asserts that the 1999 Reconsideration indicates that the then-Borough Commissioner based the decision solely on the 1978 Lease, and that DOB has now reviewed the lease and deemed it insufficient evidence that the Signs were established prior to November 1, 1979 and continued until at least 1992, particularly in light of the 1980's DOF Photograph which clearly shows that there were no Signs or sign structure on the building at that time; and

WHEREAS, DOB argues that the Appellant has not provided any evidence to explain or rebut the absence of the Signs and sign structure in the 1980's DOF Photograph, and therefore DOB considers the 1999 Reconsideration to have been issued in error; and

WHEREAS, DOB asserts that the only other evidence submitted by the Appellant for this time period is the 1978 Lease, which was only for a term of five years and does not by itself prove that the Sign was in existence during the term of the lease, and the Robinson Affidavit, which is uncorroborated and questionable at best given the fact that the 1980's DOF Photograph clearly shows the lack of Signs or a sign structure; and

WHEREAS, DOB contends that the veracity of the Robinson Affidavit is also questionable because of a similarly questionable affidavit submitted by the same affiant to DOB in

a prior Sign Registration Application denial case, in which the Board upheld DOB's denial for signs at 653 Bruckner Boulevard, Bronx (BSA Cal. Nos. 83-12-A and 84-12-A); and

WHEREAS, DOB states that in the 653 Bruckner Boulevard case the Appellant submitted an affidavit from Mr. Robinson attesting to the display of off-premise advertising signs from 1963 through 1989, just as his affidavit does in this case; however, DOB produced evidence, including a photograph, which clearly indicated that one of the signs was used as an accessory sign during the time period Mr. Robinson claimed that off-premises advertising signs existed at the location; and

WHEREAS, DOB further states that, based on Mr. Robinson's inaccurate affidavit in the 653 Bruckner Boulevard case, and the fact that the 1980's DOF Photograph shows the absence of the Signs or a sign structure on the site, DOB is not able to rely on the Robinson Affidavit; and

WHEREAS, DOB asserts that even if it did find the Robinson Affidavit credible, the submission of affidavits without further corroborating evidence does not establish that the use of the Signs was continuous from November 1, 1979 until 1992 without an interruption of two years; and

WHEREAS, accordingly, DOB concludes that the Appellant has not established that the Signs were continuously used as advertising signs from November 1, 1979 until 1992 without any interruption of two years or more; and

CONCLUSION

WHEREAS, the Board finds that the Appellant has met its burden of establishing that the Signs were established prior to November 1, 1979 and have been in continuous use as advertising signs without any two-year interruption since 1979; and

WHEREAS, as noted above, DOB acknowledges that the Appellant has submitted sufficient evidence to demonstrate continuity of the Signs from 1992 through the filing of the subject appeal; thus, only the establishment of the Signs prior to November 1, 1979 and their continuous use until 1992 are contested; and

WHEREAS, the Board agrees with the Appellant that the 1999 Reconsideration reflects DOB's acknowledgement that the use of the Signs as advertising signs had been legally established prior to November 1, 1979 and that the Signs continued to be leased under the 1978 Lease until at least 1999; and

WHEREAS, the Board finds that the 1999 Reconsideration is compelling and that it should not be disturbed or disregarded as DOB suggests; and

WHEREAS, the Board agrees with the Appellant that the subject case is distinguishable from similar cases cited by DOB because of the 1999 Reconsideration, which should be afforded more weight than a DOB-issued permit based on self-certified plans because it reflects that the then-Borough Commissioner reviewed and approved the specific issue of establishment and continuous use of the Signs; and

WHEREAS, the Board acknowledges the principle that government agencies, like DOB, maintain the ability to correct mistakes and that DOB is not estopped from correcting an erroneous approval of a building permit (see Charles Field Delivery v. Roberts, 66 N.Y. 2d 516 (1985) and Parkview Associates v. City of New York, 71 N.Y.2d 274, cert. denied, 488 U.S. 801 (1988)); however, the Board finds that in this case DOB has not established that the 1999 Reconsideration was issued in error; and

WHEREAS, specifically, DOB states that leases are listed among the type of evidence it considers for establishment of signs under RCNY 49(d)(15)(b), and further states that it categorizes leases as type (d) evidence under the TPPN which was in effect at the time of the 1999 Reconsideration and which sets forth guidelines for DOB's review of whether a non-conforming use has been continuous; and

WHEREAS, the Board notes that the TPPN states that type (d) evidence is acceptable "only after satisfactory explanation or proof that the documentation pursuant to a, b, or c does not exist"; here, the Appellant has submitted type (a) evidence in the form of the 1999 Reconsideration, and a representative of the Appellant provided testimony detailing the extensive search that was conducted for additional type (a) and (b) evidence pursuant to the TPPN and determined that it does not exist; and

WHEREAS, accordingly, the Board finds that even if the then-Borough Commissioner relied solely on the 1978 Lease in approving the 1999 Reconsideration, as DOB claims, DOB has not provided sufficient evidence that the determination was made in error as it acknowledges that leases are among the types of evidence that can be considered for both the establishment and continuous use of the Signs; and

WHEREAS, while DOB may not currently consider a lease, standing alone, to be sufficient evidence of establishment and continuous use of a sign, the Board does not find that to be a sufficient basis to invalidate the 1999 Reconsideration, given that the analysis of what constitutes sufficient evidence of establishment and continuous use is, to a large degree, subjective and based on the totality of the Borough Commissioner's review, and DOB has acknowledged that leases are among the type of evidence that can be considered under RCNY 49(d)(15)(b) as well as the TPPN; therefore it is not clear that the then-Borough Commissioner erred in approving the 1999 Reconsideration; and

WHEREAS, the Board distinguishes the subject facts from cases where the reconsideration at issue was based on an objective interpretation question and where DOB clearly established that the reconsideration was approved in error and should be disregarded; and

WHEREAS, further, the Board disagrees with DOB that merely because the 1999 Reconsideration states "OK to accept existing roof sign 20 ft. x 60 ft., per ES 234/88 and in continuous use per lease dated May 24, 1978," it establishes that the then-Borough Commissioner relied solely on the 1978 Lease in making his determination; 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 the Board considers the fact that it is unclear whether additional evidence was relied on by the then-Borough Commissioner to weigh in favor of upholding his determination unless it was clearly issued in error; and

WHEREAS, as to DOB's submission of the 1980's DOF Photograph as proof that the 1999 Reconsideration was issued in error, the Board notes that the 1980's DOF Photograph only establishes that the Signs did not exist at that moment in time, and the Board does not find it sufficient, without more, to invalidate the 1999 Reconsideration as it does not prove that the use of the Signs was discontinued for two years or more, and, as noted above, there may have been additional evidence that the then-Borough Commissioner relied upon in approving the 1999 Reconsideration; and

WHEREAS, the Board disagrees with DOB's contention that there is no evidence of the dimensions of the Signs as they existed prior to November 1, 1979, since the 1999 Reconsideration refers to 20'-0" by 60'-0" roof signs; and

WHEREAS, accordingly, the Board finds that the 1999 Reconsideration establishes the existence of the Signs with dimensions of 20'-0" by 60'-0" prior to November 1, 1979 and their continuous use from 1979 through 1992, after which date DOB has accepted that the use of the Signs was continuous.

Therefore it is Resolved that this appeal, challenging a Final Determination issued on March 12, 2012, is granted.

Adopted by the Board of Standards and Appeals, January 8, 2013.

99-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – 393 Canal Street LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-5B zoning district.

PREMISES AFFECTED – 393 Canal Street, Laight Street and Avenue of the Americas, Block 227, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, January 9, 2013.

100-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – 393 Canal Street LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-5B zoning district.

PREMISES AFFECTED – 393 Canal Street, Laight Street and Avenue of the Americas, Block 227, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #2M

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 Montanez 5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Borough Commissioner of the Department of Buildings ("DOB"), dated March 12, 2012, denying registration for a sign at the subject site (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 Signs Enforcement Unit, and asserting that this sign is not intended to be seen from the arterial and as such has the appropriate non-arterial permit for construction. Unfortunately, the intent of viewing is not relevant in this assessment and as such, the sign is rejected from registration. While we recognize your assertion that the sign was not intended to be visible from arterial, we affirm our rejection. 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 October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on January 8, 2013; 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 north side of Canal Street between West Broadway and Thompson Street, within an M1-5B zoning district; and

WHEREAS, the site is occupied by a two-story building with a south-facing sign located on the southern exterior wall of the building on the second floor (the "Sign"); and

WHEREAS, the Appellant originally filed a companion application under BSA Cal. No. 99-12-A for a

separate sign located on the roof of the subject building, which was subsequently withdrawn; and

WHEREAS, on January 12, 2001, DOB issued Permit No. 102929431-01-SG for installation of an "illuminated advertising sign on wall structure" at the site (the "2001 Permit"); and

WHEREAS, the Appellant states that the Sign is a rectangular advertising sign measuring 14 feet in height by 48 feet in length for a surface area of 672 sq. ft.; and

WHEREAS, the Appellant states that the Sign faces Sixth Avenue and is located approximately 431'-4" east of the nearest boundary of the exit roadway from the Holland Tunnel, which emerges above ground south of Canal Street near Hudson Street; and

WHEREAS, this appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on the fact that (1) the exit roadway of the Holland Tunnel is not a "designated arterial highway" and therefore ZR § 42-55 does not apply to the Sign; (2) even if the Holland Tunnel exit is considered a "designated arterial highway," the Sign is not "within view" of such arterial highway and therefore is not subject to the limitations associated with signs within view of arterial highways; (3) the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Sign is not "within view" of a designated arterial highway; and (4) the Sign is a conforming use pursuant to current-ZR § 42-53; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

WHEREAS, the Appellant identifies the relevant statutory requirements related to sign registration in effect since 2005; and

WHEREAS, the Appellant states that 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

REGISTRATION PROCESS

WHEREAS, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) photographs of the Sign; (3) the 2001 Permit; and (4) Letters of Completion from DOB recognizing that work was completed according to DOB's Rules and Regulations; and

WHEREAS, on October 3, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that it is unable to accept the Sign for registration due to "Failure to provide proof of legal establishment – 2001 Permit No. 102929431 states not adjacent to arterial;" and

WHEREAS, by letter, dated November 17, 2011, the Appellant submitted a response to DOB, noting that DOB had issued permits for the Sign in 2001 and that the Appellant had operated the Sign for more than a decade in reliance on DOB's permits; and

WHEREAS, the Appellant also included evidence demonstrating that the Sign was installed to be visible to traffic heading northbound on Sixth Avenue and that there are at least two surface streets and a public park (less than one-half acre in size) that separate the Sign from the Holland Tunnel exit, and therefore the Sign is not "adjacent" to the Holland Tunnel exit ramp; and

WHEREAS, by letter, dated March 12, 2012, DOB issued the Final Determination which forms the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

> ZR § 42-53
> Surface Area and Illumination Provisions
> M1 M2 M3
> In all districts, as indicated, all permitted #signs# shall be subject to the restrictions on surface area and illumination as set forth in this Section…
>
> * * *
>
> 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.

* * *

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; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) ZR § 42-55 does not apply to the Sign because pursuant to the plain language of the statute the Sign is neither near an "arterial highway," nor "within view" of such arterial highway; (2) the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Sign is not "within view" of an arterial highway; and (3) the Sign is a conforming use under current-ZR § 42-53; and

1. ZR § 42-55 Does Not Apply to the Sign

WHEREAS, the Appellant asserts that DOB committed an error of law and abused its discretion because it misconstrued and misapplied the plain language of ZR § 42-55, which only regulates advertising signs that are (a) "near" an "arterial highway" and (b) "within view" of such arterial highway; and

WHEREAS, the Appellant argues that in interpreting ZR § 42-55 the Board must give effect to the intention of the Department of City Planning in drafting ZR § 42-55, including the specific language contained therein and its plain meaning if no definition is provided; and

WHEREAS, in support of this position, the Appellant cites to Kramer v. Phoenix Life Insurance Co., 15 N.Y.3d 539, 550-51 (N.Y. 2010) (noting that "courts must give effect to [a statute's] plain meaning," and applying a Merriam Webster's Collegiate Dictionary definition to interpret and undefined term), and Samiento v. World Yacht Inc., 10 N.Y.3d 70, 77-80, 80 n.2-3 (N.Y.2008) (noting that the "primary consideration [in statutory interpretation] is to ascertain and give effect to the intention of the Legislature" so as to give statutory language "its natural and most obvious sense…in accordance with its ordinary and accepted meaning, unless the Legislature by definition or from the rest of the context of the statute provides a special meaning") and notes that in both of those cases the court applied a Merriam Webster's Collegiate Dictionary definition to interpret undefined terms; and

WHEREAS, accordingly, the Appellant contends that because there are no definitions for the terms "arterial

highway" and "within view" in the Zoning Resolution, effect must be given to the plain meaning of those terms, which leads to a conclusion that ZR § 42-55 does not apply to the Sign because the exit roadway to the Holland Tunnel is not an "arterial highway," and even if the Holland Tunnel exit were considered an "arterial highway," the Sign is not "within view" of such arterial highway; and

a. The Holland Tunnel Exit is not an "Arterial Highway"

WHEREAS, the Appellant asserts that DOB committed an error of law and abused its discretion because the exit roadway of the Holland Tunnel is not an arterial highway for the purposes of ZR § 42-55; and

WHEREAS, the Appellant notes that ZR § 42-55 provides guidance regarding the classification of arterial highways:

> 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; and

WHEREAS, the Appellant states that arterial highways designated by the City Planning Commission are listed in Appendix H of the Zoning Resolution, and includes "Holland Tunnel and Approaches" on a list of 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"; and

WHEREAS, the Appellant contends that while the Zoning Resolution does not define what constitutes the "approaches" to the Holland Tunnel, additional points of reference for which roadways are covered are: (1) arterial highways identified as "principal routes," "parkways," or "toll crossings" on the City's Master Plan of Arterial Highways and Major Streets; and (2) arterial highways which appear on the City Map; and

WHEREAS, the Appellant represents that the Master Plan does not identify the exit roadway from the Holland Tunnel as part of the "toll crossings" that are covered by ZR § 42-55, and the City Map similarly does not identify the exit roadway of the Holland Tunnel as an arterial highway; and

WHEREAS, the Appellant argues that a plain language interpretation of "approach" would also not include the exit roadway of the Holland Tunnel as an "approach," and cites to Webster's Dictionary which defines the noun "approach," in relevant part, as "a drawing near in space or time" or "the ability to approach," and the definition of "approaches," in relevant part, as "the means of approaching an area" or "an embankment, trestle, or other construction that provides access at either end of a bridge or tunnel"; and

WHEREAS, the Appellant asserts that the exit roadway of the Holland Tunnel, therefore, may not be identified as an "approach" because, by its very nature, the exit roadway takes traffic away from the Holland Tunnel; and

WHEREAS, the Appellant notes that in Rule 49, DOB provides its own definition of "approach" for guidance in interpreting the relevant provisions of the Zoning Resolution, and asserts that DOB's definition in Rule 49 comports with the plain language meaning that an "approach" would not include an exit:

> The term "approach" as found within the description of arterial highways indicated within appendix C 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. (Emphasis added).

WHEREAS, the Appellant contends that a plain language interpretation of Rule 49's definition of "approach" would also not include the exit roadway of the Holland Tunnel because an exit does not connect the local street network to the tunnel; rather, an exit connects *from* the tunnel to the local street network; and

WHEREAS, the Appellant asserts that if DOB had intended for an exit to be included in this definition, it would have used express language, such as "connecting the local street network to *or from* a bridge or tunnel"; and

WHEREAS, accordingly, the Appellant argues that because neither the plain language of ZR § 42-55, the Master Plan of Arterial Highways and Major Streets, nor the City Map in any way includes exit roadways (such as the one from the Holland Tunnel) as arterial highways, ZR § 42-55 does not apply to the Sign; and

b. The Sign is Not "Within View" of an Arterial Highway

WHEREAS, the Appellant asserts that even if the exit roadway of the Holland Tunnel is considered a designated arterial highway, DOB misinterprets the meaning of "within view" under ZR § 42-55; and

WHEREAS, the Appellant notes that the Zoning Resolution does not define "within view," however they look to ZR § 42-55 subsections (c)(1) and (c)(2), which include in their criteria for coverage by the regulations that the sign's "message is visible" from an arterial highway; and

WHEREAS, additionally, the Appellant notes that the Zoning Resolution does not define what constitutes a "message" being "visible," so they find that a plain language interpretation is required; and

WHEREAS, the Appellant cites to Webster's Dictionary which defines "message," as "a written or oral communication or other transmitted information sent by messenger or by some other means (as by signals)" or "a group of words used to advertise or notify;" and

WHEREAS, the Appellant also cites to the dictionary for the definition of "visible," which states "capable of being seen," "easily seen," or "capable of being perceived mentally;" and

WHEREAS, the Appellant concludes that according to the definitions, the intent of the zoning is to limit the

applicability of ZR § 42-55 to signs that actually communicate their message to persons that are on an arterial highway and would not be applicable to a sign that is substantially obstructed such that the message of the obstructed sign cannot be communicated to a person on the arterial highway; and

WHEREAS, in contrast, the Appellant asserts that ZR § 42-55 does not apply to a sign that does not face an arterial highway or a sign that is obstructed by objects between the sign and the arterial highway because those signs are incapable of communicating or advertising; and

WHEREAS, the Appellant submitted photographs and maps in support of its position that the orientation and position of the Sign make it is impossible to see the Sign from the exit roadway of the Holland Tunnel because the permanent installations between the two (including, but not limited to, the roadway's concrete barrier wall and fence) completely obstruct the view of the Sign from the roadway; and

WHEREAS, the Appellant notes that DOB provides its own definition of "within view" in Rule 49 as follows: "the term 'within view' shall mean that part or all of the sign copy, sign structure, or sign location that is discernible;" and

WHEREAS, the Appellant asserts that through Rule 49, DOB exceeded its authority by creating a new definition of "within view" which DOB has construed otherwise since December 15, 1961; and

WHEREAS, the Appellant contends that the intent of ZR § 42-55 was clearly to regulate only signs whose message is visible from an arterial highway, and if the Rule 49 definition of "within view" is upheld, then a sign that faces directly away from an arterial highway, with no part of its message visible to the arterial highway, would be prohibited; and

WHEREAS, accordingly, the Appellant asserts that DOB's definition of "within view" under Rule 49 far exceeds its authority to interpret the Zoning Resolution and must be disregarded; and

WHEREAS, the Appellant further asserts that if the Rule 49 definition is disregarded, and only the plain language interpretation of the "within view" standards of ZR § 42-55 is applied, the message of the Sign is not visible from the exit roadway of the Holland Tunnel and ZR § 42-55 does not apply to the Sign; and

2. The Sign was Constructed Pursuant to DOB-Issued Permits

WHEREAS, the Appellant asserts that the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's agreement at the time of permit issuance that the Sign was not "within view" of an "arterial highway" and that DOB's reversal of position with respect to its prior confirmation of the legality of the Sign is improper; and

WHEREAS, the Appellant asserts that it provided DOB with evidence of permits, which demonstrate that the Sign was installed pursuant to lawfully-issued permits and DOB was aware of its location vis a vis the Holland Tunnel, but permitted the Sign pursuant to its interpretation of then-ZR § 42-53 (which has been recodified as ZR § 42-55); and

WHEREAS, the Appellant asserts that DOB has changed its position with regard to the application of ZR § 42-55 and that Local Law 31 did not give DOB the authority to create a new interpretation of long-standing language requiring that a sign be "within view" of an "arterial highway" and at the time of the permit issuance, DOB did not consider the Sign to be "within view" of any "arterial highway"; and

WHEREAS, the Appellant represents that it has relied in good faith on DOB's approval of the Sign, has made investments in maintaining and marketing in reliance on the approvals, and equity does not allow DOB to revise its prior approvals and require the removal of the Sign; and

3. The Sign is a Conforming Use Pursuant to ZR § 42-53

WHEREAS, the Appellant asserts that the Sign is clearly a conforming use pursuant to ZR § 42-53, such that further documentation is not required under Rule 49; and

WHEREAS, specifically, the Appellant contends that pursuant to ZR § 42-53, advertising signs are permitted uses in an M1 zoning district, and therefore the Sign is a conforming use; and

DOB'S POSITION

WHEREAS, DOB asserts that it rejected the Sign Registration Applications because the 2001 Permit was unlawful and improperly issued since the surface area of the Sign did not comply with the requirements of former-ZR § 42-53, which regulated advertising signs that were within view of arterial highways in Manufacturing Districts and stated, in pertinent part:

> No advertising sign shall be located, nor shall an advertising sign be structurally altered, relocated or reconstructed, within 200 feet of an arterial highway or of a public park with an area of one-half acre or more, if such advertising sign is within view of such arterial highway . . . Beyond 200 feet from such arterial highway or public park, an advertising sign shall be located at a distance of at least as many linear feet therefrom as there are square feet of surface are on the face of such sign; and

WHEREAS, therefore, DOB states that signs in manufacturing districts, like the subject M1-5B district, advertising signs were and still are permitted as-of-right under the current ZR § 42-55 (under which the former ZR § 42-53 was recodified) with certain restrictions, when located more than 200 feet from an arterial highway; and

WHEREAS, however, DOB states that such signs were and still are limited in surface area based on their distance from the arterial highway; and

WHEREAS, DOB asserts that it is undisputed that the "Holland Tunnel and Approaches" is considered an arterial highway within the meaning of then-ZR § 42-53, as indicated in Appendix H of the Zoning Resolution; and

WHEREAS, DOB disagrees with the Appellant's position that the definition of an approach under Rule 49 as

"a roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network" was meant to exclude exit roadways merely because the definition does not state "to or from" a bridge or tunnel; and

WHEREAS, DOB asserts that the text of the Rule 49 definition does not support the Appellant's position, as the text simply defines an approach as "a portion of a roadway connecting an arterial highway to the local street network" and the reason the definition does not state "to or from" a bridge or tunnel is because the use of "to or from" in the sentence would be improper grammar, not because it was meant to exclude exit roadways from the definition; and

WHEREAS, DOB further asserts that the definition does not state which direction the traffic needs to flow from the "roadway" in order to be an "approach"; rather, it clearly states that if a roadway connects a local street to a tunnel without any exit to the street, it shall be considered an "approach"; and

WHEREAS, DOB argues that the exit roadway of the Holland Tunnel at issue is a "roadway connecting the local street network" to the Holland Tunnel and "from which there is no entry or exit to such network," and therefore it fits within the definition of an "approach"; and

WHEREAS, DOB also disagrees with the Appellant's position that, assuming the exit roadway of the Holland Tunnel is an "approach," the Sign is not subject to the restrictions on surface area set forth in the former ZR § 42-53 because it is not "within view" of the arterial highway – the Holland Tunnel and approaches; and

WHEREAS, DOB states that it has examined photographs of the Sign taken from the approaches and finds that the Sign is clearly visible and thus "within view" of the approach to the tunnel; and

WHERWEAS, DOB notes that the Appellant's effort to register the Sign reflects a concession on the Appellant's part that the Sign is within view of the arterial highway since Rule 49-15 specifically requires "a sign inventory that shall include all signs, sign structures and sign locations located (1) within a distance of 900 linear feet from and within view of an arterial highway; or (2) within 200 linear feet from and within view of a public park of one half acre or more;" and

WHEREAS, DOB asserts that since the Sign is within view of the arterial highway and located 431 feet from it, the maximum permitted surface area of the Sign was 431 sq. ft. when the 2001 Permit was erroneously issued; DOB notes that the 2001 Permit indicates a surface area of 518 sq. ft. and the Sign Registration Application indicates a surface area of 672 sq. ft., both of which exceeded the limits set forth at the then-ZR § 42-53 and still exceed the permitted surface area per the current ZR § 42-55; and

WHEREAS, accordingly, DOB states that the 2001 Permit was unlawful and improperly issued and the Sign must comply with the surface area requirement of 431 sq. ft. pursuant to ZR § 42-55 in order to be registered with DOB; and

CONCLUSION

WHEREAS, the Board agrees with DOB that (1) the exit roadway to the Holland Tunnel qualifies as an "approach," and as such is a designated arterial highway under ZR § 42-55, and (2) that the Sign is "within view" of the Holland Tunnel approach and thus subject to the restrictions of ZR § 42-55; and

WHEREAS, on the analysis of the meaning of an "approach," the Board finds that the exit roadway to the Holland Tunnel fits within the Rule 49 definition of an "approach" and therefore is considered an arterial highway within the meaning of former ZR § 42-53 (and current ZR § 42-55), as indicated in Appendix H of the Zoning Resolution which includes "Holland Tunnel and Approaches" among the designated arterial highways; and

WHEREAS, the Board finds the Appellant's position that the definition of an "approach" under Rule 49 was meant to exclude exit roadways because the definition does not state "to or from" a bridge or tunnel to be misguided, and agrees with DOB that the definition does not state which direction the traffic needs to flow from the "roadway" in order to be an "approach"; and

WHEREAS, the Board finds that the Rule 49 definition of "approach" is clear and that the exit roadway to the Holland Tunnel meets the relevant criteria of the definition, in that it is 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

WHEREAS, the Board notes that the Rule 49 definition of "approach" makes no distinction as to whether traffic is entering or exiting the tunnel via the roadway, and the Board does not find the Appellant's attempt to insert the direction of the traffic as an additional criteria in the definition to be compelling; and

WHEREAS, as noted above, the Board considers the Rule 49 definition of "approach" to be clear and unambiguous, and therefore does not find it necessary to resort to dictionary definitions in order to ascertain the intent of the Zoning Resolution; and

WHEREAS, on the analysis of the meaning of "within view," the Board finds that the Appellant's assertions about intent are misplaced and the Appellant's interpretation of the meaning of the term is strained; and

WHEREAS, the Board notes that (1) there is not any indication in the text that the intended audience for signs is relevant, and (2) the plain meaning of "within view" is a more objective and less-nuanced concept than the Appellant proposes; and

WHEREAS, the Board finds that regardless of whether travelers on the approach to the Holland Tunnel were the intended audience for the Sign, if they are within the travelers' view, ZR § 42-55 must apply; and

WHEREAS, the Board finds that the goal of the statute was to regulate signs within view of arterial highways and that enforcement is best-served by applying an objective standard, rather than a subjective standard involving a scale of the levels of visibility; and

WHEREAS, the Board finds that the Appellant's

approach and emphasis on discernibility of a message is untenable due to the individuality associated both with the sense of sight and the amount of time it takes to communicate a message as well as the broad range of advertising messages, which can include large logos and illustrations or smaller text; and

WHEREAS, similarly, the Board is not persuaded that obstructions (like a barrier wall and fence) along the arterial highway at certain points along the traveler's path renders the Sign outside of view; and

WHEREAS, contrary to the Appellant's assertion that the obstructions render the Sign impossible to see from the exit roadway of the Holland Tunnel, the Board notes that DOB submitted four photographs which clearly reflect that the Sign can be viewed from different points along the exit roadway of the Holland Tunnel; and

WHEREAS, as to the Appellant's contention that DOB has inequitably changed its position on the meaning of "within view," the Board notes that there is no indication that DOB formerly had a different interpretation of "within view," or that it relies on the definition set forth in Rule 49; but, even if DOB did change its position, it has the ability to correct erroneous determinations; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing the 2001 Permit, but it does note that the Appellant has enjoyed the benefit of the Sign since that time; and

WHEREAS, the Board disagrees with the Appellant that the Sign is a conforming use under current ZR § 42-53, which is titled "Surface Area and Illumination Provisions" and states that within manufacturing districts, such as the subject M1-5B district, "all permitted signs shall be subject to the restrictions on surface area and illumination as set forth in this Section…"; and

WHEREAS, the Board finds the Appellant's analysis of current ZR § 42-53 misguided, as it disregards more specific provisions of the Zoning Resolution which clearly indicate that the Sign, at its current size, is not permitted; and

WHEREAS, specifically, ZR § 42-55 ("Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways") clarifies that there are additional regulations for signs located near arterial highways, including that no advertising signs are permitted within 200 feet and within view of an arterial highway, and beyond 200 feet of an arterial highway "[b]eyond 200 feet from such arterial highway…the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway…; and

WHEREAS, because the Sign is located approximately 431 feet from an approach to the Holland Tunnel, it is limited to a maximum of 431 sq. ft. in surface area, and therefore the current size of 672 sq. ft. is not permitted; and

WHEREAS, accordingly, the Board finds that DOB appropriately applied ZR § 42-55 to the Sign and properly rejected the Appellant's registration of the Sign.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 12, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, January 8, 2013.

101-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq. for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – Mazda Realty Associates.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising sign. M1-5 zoning district.

PREMISES AFFECTED – 13-17 Laight Street, south side of Laight Street between Varick Street and St. John's Lane, Block 212, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #1M

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 Montanez 5

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 March 12, 2012, denying registration for a sign at the subject site (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 Signs Enforcement Unit, and asserting that this sign is not intended to be seen from the arterial and as such has the appropriate non-arterial permit for construction. Unfortunately, the intent of viewing is not relevant in this assessment and as such, the sign is rejected from registration. While we recognize your assertion that the sign was not intended to be visible from arterial, we affirm our rejection. 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 October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on January 8, 2013; 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 located on the south side of Laight Street between Varick Street and St. John's

Lane, in a C6-2A zoning district within the Special Tribeca Mixed Use ("TMU") District; and

WHEREAS, the site is occupied by a six-story building with a north-facing sign located on the roof of the building (the "Sign"); and

WHEREAS, on October 4, 1998, DOB issued Permit Nos. 101827114-01-SG and 101985827-01-AL for installation of an "illuminated advertising billboard roof sign" at the site (the "1998 Permits"), and on October 20, 2000, DOB issued Permit No. 102743435-01-SG for the installation of an "illuminated sign on roof structure at the site (the "2000 Permit"); and

WHEREAS, this appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, the Appellant states that the Sign is a rectangular advertising sign measuring 19.5 feet in height by 48 feet in length for a surface area of 936 sq. ft.; and

WHEREAS, the Appellant states that the Sign faces Varick Street and is located one block south of Canal Street and approximately 317'-6" east of the nearest boundary of the exit roadway from the Holland Tunnel, which emerges above ground south of Canal Street near Hudson Street; and

WHEREAS, the Appellant states that when the Sign was installed the site was in an M1-5 zoning district within the TMU District, but that pursuant to a 2010 rezoning, the site is now zoned C6-2A within the TMU District; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on the fact that (1) the exit roadway of the Holland Tunnel is not a "designated arterial highway" and therefore ZR § 42-55 does not apply to the Sign; (2) even if the Holland Tunnel exit is considered a "designated arterial highway," the Sign is not "within view" of such arterial highway and therefore is not subject to the limitations associated with signs within view of arterial highways; and (3) the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Sign is not "within view" of a designated arterial highway; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

WHEREAS, the Appellant identifies the relevant statutory requirements related to sign registration in effect since 2005; and

WHEREAS, the Appellant states that 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

WHEREAS, the Appellant asserts that 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, the Appellant notes that affidavits are also listed as an acceptable form of evidence; and

REGISTRATION PROCESS

WHEREAS, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) photographs of the Sign; and (3) Permit Nos. 1018227114-01-SG and 101985827-01-AL; and

WHEREAS, on October 3, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that it is unable to accept the Sign for registration due to "Failure to provide proof of legal establishment;" and

WHEREAS, by letter, dated November 4, 2011, the Appellant submitted a response to DOB, providing evidence that the Sign was installed within the requisite time period; and

WHEREAS, the Appellant also included evidence demonstrating that the Sign was installed to be visible to traffic heading southbound on Varick Street and is not

within view of vehicles exiting the Holland Tunnel; and

WHEREAS, by letter, dated February 9, 2012, the Appellant made a submission to DOB of photographs to support its position that the Sign is directed toward Varick Street and is not within view of vehicles exiting the Holland Tunnel; and

WHEREAS, by letter, dated March 12, 2012, DOB issued the Final Determination which forms the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

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 § 42-58

Signs Erected Prior to December 13, 2000

M1 M2 M3

In all districts, as indicated, a #sign# erected prior to December 13, 2000, shall have #non-conforming use# status pursuant to Sections 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of #non-conformity# of such #sign# as of such date with the provisions of Sections 42-52, 42-53 and 42-54, where such #sign# shall have been issued apermit by the Department of Buildings on or before such date.

* * *

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 because (1) ZR § 42-55 does not apply to the Sign because, pursuant to the plain language of the statute, the Sign is neither near an "arterial highway," nor "within view" of such arterial highway; (2) the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Sign is not "within view" of an arterial highway; and

4. ZR § 42-55 Does Not Apply to the Sign

WHEREAS, the Appellant asserts that DOB committed an error of law and abused its discretion because it misconstrued and misapplied the plain language of ZR § 42-55, which only regulates advertising signs that are (a) "near" an "arterial highway" and (b) "within view" of such "arterial highway"; and

WHEREAS, the Appellant argues that in interpreting ZR § 42-55 the Board must give effect to the intention of the Department of City Planning in drafting ZR § 42-55, including the specific language contained therein and its plain meaning if no definition is provided; and

WHEREAS, in support of this position, the Appellant cites to Kramer v. Phoenix Life Insurance Co., 15 N.Y.3d 539, 550-51 (N.Y. 2010) (noting that "courts must give effect to [a statute's] plain meaning," and applying a Merriam Webster's Collegiate Dictionary definition to interpret an undefined term), and Samiento v. World Yacht Inc., 10 N.Y.3d 70, 77-80, 80 n.2-3 (N.Y.2008) (noting that the "primary consideration [in statutory interpretation] is to ascertain and give effect to the intention of the Legislature" so as to give statutory language "its natural and most obvious sense…in accordance with its ordinary and accepted meaning, unless the Legislature by definition or from the rest of the context of the statute provides a special meaning") and notes that in both of those cases the court applied a Merriam Webster's Collegiate Dictionary definition to interpret undefined terms; and

WHEREAS, accordingly, the Appellant contends that because there are no definitions for the terms "arterial highway" and "within view" in the Zoning Resolution, effect must be given to the plain meaning of those terms, which leads to a conclusion that ZR § 42-55 does not apply to the Sign because the exit roadway to the Holland Tunnel is not an "arterial highway," and even if the Holland Tunnel exit were considered to be an arterial highway, the Sign is not "within view" of such arterial highway; and

a. The Holland Tunnel Exit is not an "Arterial Highway"

WHEREAS, the Appellant asserts that DOB committed an error of law and abused its discretion because the exit roadway of the Holland Tunnel is not an "arterial highway" for the purposes of ZR § 42-55; and

WHEREAS, the Appellant notes that ZR § 42-55 provides guidance regarding the classification of arterial highways:

> 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; and

WHEREAS, the Appellant states that arterial highways designated by the City Planning Commission are listed in Appendix H of the Zoning Resolution, and includes "Holland Tunnel and Approaches" on a list of 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"; and

WHEREAS, the Appellant contends that while the Zoning Resolution does not define what constitutes the "approaches" to the Holland Tunnel, additional points of reference for which roadways are covered are: (1) arterial highways identified as "principal routes," "parkways," or "toll crossings" on the City's Master Plan of Arterial Highways and Major Streets; and (2) arterial highways which appear on the City Map; and

WHEREAS, the Appellant represents that the Master Plan does not identify the exit roadway from the Holland Tunnel as part of the "toll crossings" that are covered by ZR § 42-55, and the City Map similarly does not identify the exit roadway of the Holland Tunnel as an arterial highway; and

WHEREAS, the Appellant argues that a plain language interpretation of "approach" would also not include the exit roadway of the Holland Tunnel as an "approach," and cites to Webster's Dictionary which defines the noun "approach," in relevant part, as "a drawing near in space or time" or "the ability to approach," and the definition of "approaches," in relevant part, as "the means of approaching an area" or "an embankment, trestle, or other construction that provides access at either end of a bridge or tunnel"; and

WHEREAS, the Appellant asserts that the exit roadway of the Holland Tunnel, therefore, may not be identified as an "approach" because, by its very nature, the exit roadway takes traffic away from the Holland Tunnel; and

WHEREAS, the Appellant notes that in Rule 49, DOB provides its own definition of "approach" for guidance in interpreting the relevant provisions of the Zoning Resolution, and asserts that DOB's definition in Rule 49 comports with the plain language meaning that an "approach" would not include an exit:

> The term "approach" as found within the description of arterial highways indicated within

appendix C 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. (Emphasis added); and

WHEREAS, the Appellant contends that a plain language interpretation of Rule 49's definition of "approach" would also not include the exit roadway of the Holland Tunnel because an exit does not connect the local street network to the tunnel; rather, an exit connects *from* the tunnel to the local street network; and

WHEREAS, the Appellant asserts that if DOB had intended for an exit to be included in this definition, it would have used express language, such as "connecting the local street network to *or from* a bridge or tunnel"; and

WHEREAS, accordingly, the Appellant argues that because neither the plain language of ZR § 42-55, the Master Plan of Arterial Highways and Major Streets, nor the City Map in any way includes exit roadways (such as the one from the Holland Tunnel) as arterial highways, ZR § 42-55 does not apply to the Sign; and

b. The Sign is Not "Within View" of an Arterial Highway

WHEREAS, the Appellant asserts that even if the exit roadway of the Holland Tunnel is considered a designated arterial highway, DOB misinterprets the meaning of "within view" under ZR § 42-55; and

WHEREAS, the Appellant notes that the Zoning Resolution does not define "within view," however they look to ZR § 42-55 subsections (c)(1) and (c)(2), which include in their criteria for coverage by the regulations that the sign's "message is visible" from an arterial highway; and

WHEREAS, additionally, the Appellant notes that the Zoning Resolution does not define what constitutes a "message" being "visible," so they find that a plain language interpretation is required; and

WHEREAS, the Appellant cites to Webster's Dictionary which defines "message," as "a written or oral communication or other transmitted information sent by messenger or by some other means (as by signals)" or "a group of words used to advertise or notify;" and

WHEREAS, the Appellant also cites to the dictionary for the definition of "visible," which states "capable of being seen," "easily seen," or "capable of being perceived mentally;" and

WHEREAS, the Appellant concludes that according to the definitions, the intent of the zoning is to limit the applicability of ZR § 42-55 to signs that actually communicate their message to persons that are on an arterial highway and would not be applicable to a sign that is substantially obstructed such that the message of the obstructed sign cannot be communicated to a person on the arterial highway; and

WHEREAS, in contrast, the Appellant asserts that ZR § 42-55 does not apply to a sign that does not face an arterial highway or a sign that is obstructed by objects between the sign and the arterial highway because those signs are incapable of communicating or advertising; and

WHEREAS, the Appellant submitted photographs and maps in support of its position that the orientation and position of the Sign make it extremely difficult to view it from the exit roadway, let alone understand what it is communicating as the roadway abruptly veers away from the Sign, which is approximately 70 feet in the air; and

WHEREAS, the Appellant asserts that the view of the Sign is further obstructed by numerous permanent installations located between the Sign and the roadway, including buildings, light poles, and a traffic sign; and

WHEREAS, the Appellant notes that DOB provides its own definition of "within view" in Rule 49 as follows: "the term 'within view' shall mean that part or all of the sign copy, sign structure, or sign location that is discernible;" and

WHEREAS, the Appellant asserts that through Rule 49, DOB exceeded its authority by creating a new definition of "within view" which DOB has construed otherwise since December 15, 1961; and

WHEREAS, the Appellant contends that the intent of ZR § 42-55 was clearly to regulate only signs whose message is visible from an arterial highway, and if the Rule 49 definition of "within view" is upheld, then a sign that faces directly away from an arterial highway, with no part of its message visible to the arterial highway, would be prohibited; and

WHEREAS, accordingly, the Appellant asserts that DOB's definition of "within view" under Rule 49 far exceeds its authority to interpret the Zoning Resolution and must be disregarded; and

WHEREAS, the Appellant further asserts that if the Rule 49 definition is disregarded, and only the plain language interpretation of the "within view" standards of ZR § 42-55 is applied, the message of the Sign is not visible from the exit roadway of the Holland Tunnel and ZR § 42-55 does not apply to the Sign; and

5. The Sign was Constructed Pursuant to DOB-Issued Permits

WHEREAS, the Appellant asserts that the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's agreement at the time of permit issuance that the Sign was not "within view" of an "arterial highway" and that DOB's reversal of position with respect to its prior confirmation of the legality of the Sign is improper; and

WHEREAS, the Appellant asserts that it provided DOB with evidence of permits, which demonstrate that the Sign was installed pursuant to lawfully-issued permits, which were issued when the Sign was permitted in the underlying M1-5 zoning district and DOB was aware of its location vis a vis the Holland Tunnel, but permitted the Sign pursuant to its interpretation of then-ZR § 42-53 (which has been recodified as ZR § 42-55); and

WHEREAS, the Appellant asserts that DOB has changed its position with regard to the application of ZR § 42-55 and that Local Law 31 did not give DOB the authority to create a new interpretation of long-standing language requiring that a sign be "within view" of an "arterial

highway" and at the time of the permit issuance, DOB did not consider the Sign to be "within view" of any "arterial highway"; and

WHEREAS, the Appellant represents that it has relied in good faith on DOB's approval of the Sign, has made investments in maintaining and marketing in reliance on the approvals, and equity does not allow DOB to revise its prior approvals and require the removal of the Sign; and

DOB'S POSITION

WHEREAS, DOB asserts that it rejected the Sign Registration Applications because the 1998 Permits and 2000 Permit were unlawful and improperly issued since the surface area of the Sign did not comply with the requirements of then-ZR § 42-53; ZR § 42-53, in effect at the time the permits were issued, regulated advertising signs that were within view of arterial highways in Manufacturing Districts and stated, in pertinent part:

> No advertising sign shall be located, nor shall an advertising sign be structurally altered, relocated or reconstructed, within 200 feet of an arterial highway or of a public park with an area of one-half acre or more, if such advertising sign is within view of such arterial highway . . . Beyond 200 feet from such arterial highway or public park, an advertising sign shall be located at a distance of at least as many linear feet therefrom as there are square feet of surface area on the face of such sign; and

WHEREAS, therefore, DOB states that signs in manufacturing districts, like the M1-5 district the Sign was in at the time of its installation until 2010 when the area was rezoned to be within a C6-2A zoning district, were and still are permitted as-of-right under the current ZR § 42-55 (under which the former ZR § 42-53 was recodified) with certain restrictions, when located more than 200 feet from an arterial highway; and

WHEREAS, however, DOB states that such signs are limited in surface area based on their distance from the arterial highway; and

WHEREAS, DOB asserts that it is undisputed that the "Holland Tunnel and Approaches" is considered an arterial highway within the meaning of then-ZR § 42-53, as indicated in Appendix H of the Zoning Resolution; and

WHEREAS, DOB disagrees with the Appellant's position that the definition of an approach under Rule 49 as "a roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network" was meant to exclude exit roadways merely because the definition does not state "to or from" a bridge or tunnel; and

WHEREAS, DOB asserts that the text of the Rule 49 definition does not support the Appellant's position, as the text simply defines an approach as "a portion of a roadway connecting an arterial highway to the local street network" and the reason the definition does not state "to or from" a bridge or tunnel is because the use of "to or from" in the sentence would be improper grammar, not because it was meant to exclude exit roadways from the definition; and

WHEREAS, DOB further asserts that the definition does not state which direction the traffic needs to flow from the "roadway" in order to be an "approach"; rather, it clearly states that if a roadway connects a local street to a tunnel without any exit to the street, it shall be considered an "approach"; and

WHEREAS, DOB argues that the exit roadway of the Holland Tunnel at issue is a "roadway connecting the local street network" to the Holland Tunnel and "from which there is no entry or exit to such network," and therefore it fits within the definition of an "approach"; and

WHEREAS, DOB also disagrees with the Appellant's position that, assuming the exit roadway of the Holland Tunnel is an "approach," the Sign is not subject to the restrictions on surface area set forth in the former ZR § 42-53 because it is not "within view" of the arterial highway – the Holland Tunnel and approaches; and

WHEREAS, DOB states that it has examined photographs of the Sign taken from the approaches and finds that the Sign is clearly visible and thus "within view" of the approach to the tunnel; and

WHERWEAS, DOB notes that the Appellant's effort to register the Sign reflects a concession on the Appellant's part that the Sign is within view of the arterial highway since Rule 49-15 specifically requires "a sign inventory that shall include all signs, sign structures and sign locations located (1) within a distance of 900 linear feet from and within view of an arterial highway; or (2) within 200 linear feet from and within view of a public park of one half acre or more;" and

WHEREAS, DOB asserts that since the Sign is within view of the arterial highway and located 317 feet from it, the maximum permitted surface area of the Sign was 317 sq. ft. when the 1998 Permits and 2000 Permit were erroneously issued; DOB notes that the 1998 Permits indicate a surface area of 560 sq. ft., the 2000 Permit indicates a surface area of 1,600 sq. ft., and the Sign Registration Application indicates a surface area of 936 sq. ft., which exceeded the then-ZR § 42-53 and still exceeds the permitted surface area per the current ZR § 42-55; and

WHEREAS, accordingly, DOB finds that the 1998 Permits and the 2000 Permit for the Sign were unlawful and improperly issued and the Sign must be removed since no advertising sign is permitted as-of-right in the current C6-2A zoning district pursuant to ZR § 32-63; and

WHEREAS, DOB states that the Appellant cites to ZR § 42-58 but does not make an argument that the Sign should be granted non-conforming use status pursuant to ZR § 42-58 and any such future claim that the Sign should be granted non-conforming use status is without merit; and

WHEREAS, DOB cites to ZR § 42-58, which states in pertinent part:

> A sign erected prior to December 13, 2000, shall have non-conforming use status pursuant to Section 52-82 (Non-Conforming Sings Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the

degree of non-conformity of such sign as of such date with the provisions of Section 42-52, 42-53, and 42-54, where such sign shall have been issued a permit by the Department of Buildings on or before such date; and

WHEREAS, DOB concludes that the 1998 Permits and the 2000 Permit for the Sign were unlawful and improperly issued since the proposed sign did not comply with the surface area requirements of then- ZR § 42-53; therefore, the sign cannot be granted non-conforming use status under ZR § 42-58; and

CONCLUSION

WHEREAS, the Board agrees with DOB that (1) the exit roadway to the Holland Tunnel qualifies as an "approach," and as such is a designated arterial highway under ZR § 42-55, and (2) that the Sign is "within view" of the Holland Tunnel approach and thus subject to the restrictions of ZR § 42-55; and

WHEREAS, on the analysis of the meaning of an "approach," the Board finds that the exit roadway to the Holland Tunnel fits within the Rule 49 definition of an "approach" and therefore is considered an arterial highway within the meaning of former ZR § 42-53 (and current ZR § 42-55), as indicated in Appendix H of the Zoning Resolution which includes "Holland Tunnel and Approaches" among the designated arterial highways; and

WHEREAS, the Board finds the Appellant's position that the definition of an "approach" under Rule 49 was meant to exclude exit roadways because the definition does not state "to or from" a bridge or tunnel to be misguided, and agrees with DOB that the definition does not state which direction the traffic needs to flow from the "roadway" in order to be an "approach"; and

WHEREAS, the Board finds that the Rule 49 definition of "approach" is clear and that the exit roadway to the Holland Tunnel meets the relevant criteria of the definition, in that it is 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

WHEREAS, the Board notes that the Rule 49 definition of "approach" makes no distinction as to whether traffic is entering or exiting the tunnel via the roadway, and the Board does not find the Appellant's attempt to insert the direction of the traffic as an additional criteria in the definition to be compelling; and

WHEREAS, as noted above, the Board considers the Rule 49 definition of "approach" to be clear and unambiguous, and therefore does not find it necessary to resort to dictionary definitions in order to ascertain the intent of the Zoning Resolution; and

WHEREAS, on the analysis of the meaning of "within view," the Board finds that the Appellant's assertions about intent are misplaced and the Appellant's interpretation of the meaning of the term is strained; and

WHEREAS, the Board notes that (1) there is not any indication in the text that the intended audience for signs is relevant, and (2) the plain meaning of "within view" is a more objective and less-nuanced concept than the Appellant proposes; and

WHEREAS, the Board finds that regardless of whether travelers on the approach to the Holland Tunnel were the intended audience for the Sign, if they are within the travelers' view, ZR § 42-55 must apply; and

WHEREAS, the Board finds that the goal of the statute was to regulate signs within view of arterial highways and that enforcement is best-served by applying an objective standard, rather than a subjective standard involving a scale of the levels of visibility; and

WHEREAS, the Board finds that the Appellant's approach and emphasis on discernibility of a message is untenable due to the individuality associated both with the sense of sight and the amount of time it takes to communicate a message as well as the broad range of advertising messages, which can include large logos and illustrations or smaller text; and

WHEREAS, similarly, the Board is not persuaded that obstructions (like light poles and traffic signs) along the arterial highway at certain points along the traveler's path renders the Sign outside of view; and

WHEREAS, contrary to the Appellant's assertion that the orientation and position of the Sign combined with the aforementioned obstructions render the Sign extremely difficult, if not impossible, to view from the exit roadway of the Holland Tunnel, the Board notes that DOB submitted two photographs which clearly reflect that the Sign can be viewed from different points along the exit roadway of the Holland Tunnel; and

WHEREAS, as to the Appellant's contention that DOB has inequitably changed its position on the meaning of "within view," the Board notes that there is no indication that DOB formerly had a different interpretation of "within view," or that it relies on the definition set forth in Rule 49; but, even if DOB did change its position, it has the ability to correct erroneous determinations; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing the 1998 Permits and the 2000 Permit, but it does note that the Appellant has enjoyed the benefit of the Sign since that time; and

WHEREAS, the Board also declines to take a position on whether the Sign could be established as a legal non-conforming sign because that alternate relief was not at issue in the appeal; and

WHEREAS, accordingly, the Board finds that DOB appropriately applied ZR § 42-55 to the Sign and it is not permitted; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's registration of the Sign.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 12, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, January 8, 2013.

213-12-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Linda McDermott-Paden, lessee.
SUBJECT – Application July 20, 2012 – Proposed reconstruction and enlargement of existing single family dwelling located partially within the bed of the mapped street, contrary to Section 35 of the General City Law. R4 zoning district.
AFFECTED PREMISES – 900 Beach 184th Street, east side Beach 184th Street, 240' north of Rockaway Point Boulevard. Block 16340, Lot p/o50. 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 28, 2012, acting on Department of Buildings Application No. 420566541, reads in pertinent part:

A1- The existing building to be altered lies within the bed of a mapped street, contrary to General City Law Article 3 , Section 35 ; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated January 7, 2013, the Fire Department states that it has no objection to the subject proposal; and

WHEREAS, by letter dated July 20, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated September 12, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency'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 June 28, 2012, acting on Department of Buildings Application No. 420566541, 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 shall substantially conform to the drawing filed with the application marked "Received July 10, 2012"-one (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) only;

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;

THAT the home shall be sprinklered in accordance with the BSA-approved plans; and

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

Adopted by the Board of Standards and Appeals, January 8, 2012.

239-12-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Donald Greaney, lessee.
SUBJECT – Application August 2, 2012 – Proposed reconstruction and enlargement of existing single family dwelling not fronting a mapped street, contrary to Section 36 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system located partially in the bed of the Service Road, contrary to Building Department policy. R4 zoning district.
AFFECTED PREMISES – 38 Irving Walk, west side of Irving Walk, 45' north of the mapped Breezy Point Boulevard. Block 16350, Lot p/o 400. 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 20, 2012, acting on Department of Buildings Application No. 420583915, reads in pertinent part:

A1- The street giving access to the existing building to be altered is not duly placed on the map of the City of New York, therefore:
A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
B) Existing dwelling to be altered does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of

New York; and

A2 - The proposed upgraded private disposal system in the bed of the service lane is contrary to the Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated October 25, 2012, the Fire Department states that it has reviewed the subject proposal and requires that the applicant provide a revised site plan showing the building to be fully sprinklered; 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 April 5, 2012, acting on Department of Buildings Application No. 420583915, 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 1, 2012 - one (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) only;

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;

THAT the home shall be sprinklered in accordance with the BSA-approved plans;

and

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

Adopted by the Board of Standards and Appeals, January 8, 2013.

240-12-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Zorica & Jacques Tortoroli, owner.

SUBJECT – Application August 2, 2012 – Proposed reconstruction and enlargement of existing single family dwelling located partially in the bed of the mapped street, contrary to Section 35 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system in the bed of the mapped street is contrary to Article 3 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 217 Oceanside Avenue, north side Oceanside Avenue, west of mapped Beach 201st Street, Block 16350, Lot p/o 400, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated July 20, 2012 acting on Department of Buildings Application No. 420579662, reads in pertinent part:

A1- The existing building to be altered lies within the bed of a mapped street, contrary to General City Law Article 3, Section 35; and

A2- The proposed upgrade of the existing private disposal system in the bed of a mapped street is contrary to General City Law Article 3, Section 35; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated October 25, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections to the proposal; and

WHEREAS, by letter dated August 9, 2012, the Department of Environmental Protection states that it has no objections to the proposal; and

WHEREAS, by letter dated September 12, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency'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 June 28, 2012 acting on Department of Buildings Application No. 420579662, 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 shall substantially conform to the drawing filed with the application marked "Received July 20, 2012"-one (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) only;

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;

THAT the home shall be sprinklered in accordance with the BSA-approved plans; and

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

Adopted by the Board of Standards and Appeals, January 8, 2013.

89-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.
COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for continued hearing.

92-07-A thru 94-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.
COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for continued hearing.

95-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue),
contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.
COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for continued hearing.

103-12-A
APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.
SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.
PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.
COMMUNITY BOARD #2BK
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 12, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 8, 2013
1:30 P.M.

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

ZONING CALENDAR

73-12-BZ
APPLICANT – Jeffrey Chester, Esq./GSHLLP, for 41-19 Bell Boulevard LLC, owner; LRHC Bayside N.Y. Inc., lessee.
SUBJECT – Application March 20, 2012 – Application for a special permit to legalize an existing physical culture establishment (*Lucille Roberts*). C2-2 zoning district.
PREMISES AFFECTED – 41-19 Bell Boulevard between 41st Avenue and 42nd Avenue, Block 6290, Lot 5, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 9, 2012, acting on Department of Buildings Application No. 420527111, reads in pertinent part:

> Physical Culture Establishment is not permitted as per Section of Code ZR 32-31; and

WHEREAS, this is an application under ZR §§73-36 and 73-03, to permit, on a site partially within a C2-2 (R6B) zoning district and partially within a C8-1 zoning district, the legalization of a physical culture establishment (PCE) on the cellar level, first floor, and mezzanine of a one-story building contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in *The City Record*, with continued hearings on October 23, 2012 and November 27, 2012, and then to decision on January 8, 2013; 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, Queens, recommends approval of this application on condition that (1) the gate in the driveway be removed, (2) exposed wires on the outside of the building be removed, and (3) the PCE take additional steps to reduce vibrations and noise felt by the adjacent building at 41-23 Bell Boulevard; and

WHEREAS, the Queens Borough President recommends approval of the application and supports the Community Board's conditions; and

WHEREAS, the owner of the adjacent building at 41-23 Bell Boulevard (the "Neighbor") provided written and oral testimony in opposition to the application, expressing concerns about (1) noise and vibration from the PCE use, (2) the live load capacity of the subject building, and (3) the history of illegal use of the building as a PCE without the required special permit; and

WHEREAS, specifically, the Neighbor asserts that it is unable to keep tenants in all of its three units due to complaints about sound and vibration and its existing tenants are significantly disturbed by the sound and vibration from the PCE; and

WHEREAS, the subject site is located on the east side of Bell Boulevard, between 41st Avenue and 42nd Avenue in a C2-2 (R6B) zoning district; a small portion at the back of the lot is within the adjacent C8-1 zoning district; and

WHEREAS, the PCE occupies 6,848 sq. ft. of floor area on the first floor and mezzanine and 4,700 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE is operated as a Lucille Roberts Health Club; and

WHEREAS, the PCE began operation at the site in 1993 when the site was within a C4-2 zoning district, a district where PCE's are allowed by special permit; and

WHEREAS, accordingly, the applicant filed an application for a special permit at the Board pursuant to BSA Cal. No. 132-93-BZ; and

WHEREAS, however, while the application was pending, the site and surrounding area was rezoned from C4-2 to C1-2 (R6B); the special permit is not available in C1-2 zoning districts; and

WHEREAS, thus, because the special permit was not available to the PCE at the site after the rezoning, the Board dismissed the application in 1995 for lack of jurisdiction; and

WHEREAS, the applicant subsequently sought a variance to legalize the PCE, pursuant to BSA Cal. No. 393-04-BZ, but ultimately withdrew the application; and

WHEREAS, the applicant states that it pursued other avenues for legalizing the PCE but was only successful after filing an application for an amendment of the zoning map (C080293ZMQ) in 2008 to rezone a portion of one block along Bell Boulevard, between 42nd Avenue and the Long Island Railroad right-of-way from a C1-2 to a C2-2 commercial overlay district within the underlying R6B zoning district; and

WHEREAS, on December 15, 2010, the City Planning Commission (CPC) approved the zoning map amendment and on January 18, 2011, the City Council ratified CPC's resolution; and

WHEREAS, finally, the applicant filed the subject application for a special permit to legalize the PCE as it is once again within a zoning district which allows the special

permit; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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, in response to the Neighbor's concerns, the applicant consulted a sound expert who visited the subject building and the Neighbor's building to observe the conditions and make recommendations; and

WHEREAS, the sound expert concluded that the sound levels comply with Noise Code requirements and recommended sound control measures to ensure continued compliance and to protect the Neighbor from excessive noise; and

WHEREAS, specifically, the sound expert identified the sound system, performed sound testing within the building during the loudest class with high enrollment, and found that the sound system at its typical maximum level measured 95 dBc in the center of the gym area; and then tested the sound in the adjacent building; and

WHEREAS, the test reflected that the sound was slightly to faintly audible on the first and second floors of the adjacent building and inaudible on the third floor; and

WHEREAS, the tests conclude that (1) the tested low-frequency sound levels are lower than the Noise Code 45 dB limit; (2) the dBA levels were below 42 dBA; (3) the music is inaudible in the third floor unit; and (4) the third floor unit is occupied by a school and is not "a receiving property dwelling unit" as described in the Noise Code; and

WHEREAS, the consultant made the following recommendations: (1) remount the existing speakers using spring mounts to reduce the transfer of bass vibration to building walls; (2) the system should be set up in stereo; and (3) the system should include a recommended sound limiter to be locked with a security cover; and

WHEREAS, the Neighbor called the applicant's sound study into question and performed its own informal analysis of the sound and vibration, which concluded that the sound and vibration where excessive; and

WHEREAS, the Neighbor suggests that the applicant maintain lower dB emission and/or include sound-deadening materials; and

WHEREAS, the applicant's sound consultant asserts that sound-deadening materials would not be effective in reducing sound or vibration, given the existing wall construction and adjacency of the two buildings' walls and that installing new concrete walls would be an extreme measure with considerable hardship, which is not warranted for the level of sound and vibration which comply with the Noise Code parameters; and

WHEREAS, the Neighbors maintain their opposition to the PCE use even with the noted conditions; and

WHEREAS, the applicant has agreed to implement all of the Community Board's conditions and all of its acoustic consultant's recommendations; and

WHEREAS, the Board notes that the applicant has modified its sound transmission in response to the concerns raised by the Neighbor, but that the PCE and the Neighbor have been unable to resolve their differences; and

WHEREAS, the Board notes that four commissioners visited the site and the adjacent building at different times and did not observe the conditions the Neighbor describes; and

WHEREAS, the Board also is not persuaded by the Neighbor's and its tenants' unspecific complaints about the sound and vibration and the absence of a professional sound study like that produced by the applicant's sound expert, which the Board finds to be credible; and

WHEREAS, the Board concludes that the measures to be installed appear to address the primary concerns and are consistent with the measures the Board has seen proposed for similar facilities; and

WHEREAS, with regard to the noise and live load concerns, the Board notes that the applicant is required to comply with all Building Code, Noise Code, and all other regulations; and

WHEREAS, as far as the Neighbor's concerns about the history of illegality of the PCE use, the Board notes that the applicant has made efforts during its history to obtain a special permit and legalize a use that would have been legal by special permit at the beginning of its existence there; and

WHEREAS, the Board notes that due to the applicant's significant efforts, the PCE use is now within a zoning district where it is permitted; and

WHEREAS, the Board notes that the site is within an active commercial strip directly adjacent to Long Island Railroad tracks; and

WHEREAS, the Board also notes that the PCE's hours of operation are reasonable and significantly shorter than those for other PCE's; and

WHEREAS, the Board has taken care to visit the site unannounced at various times to observe conditions, visit the Neighbor's building, and to review all of the Neighbor's concerns and the applicant's responses, and is satisfied that the applicant has sufficiently addressed sound and vibration matters; 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 New York City Department of City Planning ("DCP") 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. 08DCP044Q, dated August 26, 2009; 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 adopts the Negative Declaration issued by the Department of City Planning on July 23, 2010, 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 C2-2 (R6B) zoning district and partially within a C8-1 zoning district, the legalization of a physical culture establishment on the cellar level, first floor, and mezzanine of a one-story building contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 21, 2012" - Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on January 8, 2023;

THAT the hours of operation will be limited to Monday to Thursday 8:00 a.m. to 9:00 p.m.; Friday 9:00 a.m. to 8:00 p.m.; Saturday 9:00 a.m. to 2:00 p.m.; and Sunday 9:00 a.m. to 1:00 p.m.;

THAT the sound limiter will be placed with a secure lock and in a location not accessible to the public;

THAT the speakers will hang from the mezzanine, padded carpeting will be maintained throughout the club, and other acoustical attenuation measures will be installed and maintained as reflected on the BSA- approved plans;

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 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

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, January 8, 2013.

110-12-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance to §§26(7) and 30 of the Multiple Dwelling Law (pursuant to §310) to facilitate the new building, contrary to court regulations. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

Adopted by the Board of Standards and Appeals, January 8, 2013.

156-12-BZ

CEQR #12-BSA-137K

APPLICANT – Sheldon Lobel, for Prospect Equities Operation, LLC, owner.

SUBJECT – Application May 17, 2012 – Variance (§72-21) to permit construction of a mixed-use residential building with ground floor commercial use, contrary to minimum inner court dimensions (§23-851). C1-4/R7A zoning district.

PREMISES AFFECTED – 816 Washington Avenue, southwest corner of Washington Avenue and St. John's Place, Block 1176, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #8BK

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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 17, 2012, acting on Department of Buildings Application No. 320373742, reads in pertinent part:

> Proposed inner court for the residential portion of proposed 'mixed building' does not comply with minimum required dimensions; contrary to ZR 23-851; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an C1-4 (R7A) zoning district, a five-story mixed-use commercial/residential building with UG 6 on the ground floor and eight affordable housing units, which does not comply with the requirements for inner courts, contrary to ZR § 23-851; and

WHEREAS, a public hearing was held on this application on November 27, 2012, after due notice by publication in the *City Record*, and then to decision on January 8, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

WHEREAS, Councilmember Letitia James submitted a letter in support of the application; and

WHEREAS, the subject premises is a corner lot bounded by Washington Avenue to the east and St. John's Place to the north, within an C1-4 (R7A) zoning district; and

WHEREAS, the site is irregular in shape with approximately 22'-6" of frontage on Washington Avenue and 87'-10" of frontage on St. John's Place, with a total lot area of 3,972 sq. ft.; and

WHEREAS, the site is currently vacant, as a fire in June 2011 destroyed the mixed-use four-story building previously on the site; and

WHEREAS, the applicant proposes to construct a five-story and cellar mixed-use building, with Use Group 6 commercial use on the first floor and Use Group 2 affordable housing units on the second through fifth floors; and

WHEREAS, the proposed building will measure approximately 15,700 sq. ft. in floor area, with an FAR of 3.95 (the zoning district permits 15,888 sq. ft. and a maximum allowable FAR of 4.0), and will contain a total of eight residential units; and

WHEREAS, however, ZR § 23-851 requires a minimum inner court dimension of 30 feet and a minimum area of 1,200 sq. ft.; and

WHEREAS, the applicant proposes an inner court with dimensions of 23'-10" by 19'-7 1/8" and 730 sq. ft. of area, a reduction of 7'-0" and approximately 10'-0" in dimensions, and 472 sq. ft. of area; and

WHEREAS, the applicant asserts that the irregular shape of the lot and the history of the site contribute to the unique physical condition, which creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the applicant states that the site has an irregular trapezoid shape, with a depth ranging from 22'-6" along Washington Avenue to 63'-3" at the rear of the site; and

WHEREAS, the applicant's land use map reflects that due to the angle at which Washington Avenue intersects St. John's Place and other parallel streets within the 400-ft. radius, there are approximately seven sites within the area that are of similar shape and size, but only the subject site is vacant; and

WHEREAS, as to the history of the site, in June 2008, the applicant purchased the mixed-use four-story building on the site in foreclosure as part of the Department of Housing Preservation and Development's (HPD) Third Party Transfer Program; and

WHEREAS, the applicant states that the program requires developers to temporarily relocate existing tenants while the building is being rehabilitated and reinstall the tenants in units of the same size once the restoration of the building is complete; and

WHEREAS, further, the applicant states that the owner entered into a regulatory agreement with the City of New York which requires compliance with certain restrictions for a 30-year period, including mandated residential rent levels and minimum household sizes; and

WHEREAS, the applicant submitted a letter from HPD reflecting that it supports the proposal and has given the applicant a low-interest rate loan through the Third Party Transfer Program, which dictates unit sizes and number of dwelling units for each proposed project; and

WHEREAS, the applicant states that the former building was occupied by three four-bedroom units with floor areas of 1,223 sq. ft. each and three three-bedroom units with floor area of 1,007 sq. ft. each; and

WHEREAS, the proposed building will have four four-bedroom units with floor area of 1,286 sq. ft. each and four three-bedroom units with floor area of 1,040 sq. ft. each; and

WHEREAS, the applicant's analysis reflects that the complying building can accommodate units with 998 sq. ft. and 1,185 sq. ft., which can accommodate two and three bedrooms, respectively, rather than three and four bedrooms in the former building; and

WHEREAS, accordingly, the applicant states that a fully complying building would only accommodate smaller units with fewer bedrooms or fewer units and would not satisfy the requirement to replace the former units; and

WHEREAS, the applicant notes that a complying building may be able to accommodate more units, but they would not be able to replace the existing ones without creating duplexes which are impractical and inefficient for such a small building due to the introduction of individual circulation space; and

WHEREAS, the applicant states that to reflect the conditions of the prior building on the site, to be re-occupied by former tenants, the proposal includes four three-bedroom units and four four-bedroom units, similar in size to the prior

units; and

WHEREAS, the applicant represents that due to the irregular shape of the lot and the court requirements, no complying building can be accommodated that would meet both inner court and HPD requirements regarding restoration of former tenants to dwelling units with identical room counts; and

WHEREAS, further, the applicant provided an analysis of a similar sized lot that is regular and rectangular in shape that showed that a conforming building accommodates and satisfies all HPD requirements regarding restoration of former tenants to dwelling units with former sizes and room counts; and

WHEREAS, the applicant states that the analysis confirms that the irregular shape of the site, which is a unique condition, creates a hardship for a conforming proposal to comply with zoning regulations and meet the programmatic needs established by HPD; and

WHEREAS, the applicant represents that the proposed inner court dimensions are the minimum needed to create units that meet HPD requirements; and

WHEREAS, the Board notes that the floor plate is dictated by the prior conditions and irregular lot and, thus there is little flexibility in satisfying the required quantity and size of units, but that because additional floor area was available, it allowed for another floor in the same footprint as the required floors; and

WHEREAS, further, the Board notes that it is not feasible to create duplex units to replace existing single floor units in such a small building; and

WHEREAS, the Board agrees that the unique shape, and history of the building on the site, with related HPD requirements, creates practical difficulties and unnecessary hardship in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) an as-of-right scenario with mixed-use and a complying inner court; (2) an as-of-right scenario with mixed-use and a side yard with a width of eight feet; (3) an as-of-right scenario with an outer court; and (4) the proposed scenario; and

WHEREAS, the study concluded that the only scenario which would result in a reasonable return is the proposed; 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 and history, 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 variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the court is not required on the ground floor, which will be occupied by commercial use, thus, the waiver only applies to floors two through five; and

WHEREAS, the applicant states that on both the Washington Avenue and St. John's Place sides of the building, a fully complying court would result in the building abutting the adjacent buildings for a greater depth than they do in the proposed scenario; and

WHEREAS, the applicant notes that the new building will replace the former building, which was constructed in approximately 1920 and did not provide a complying inner court, or required egress or fire safety measures; and

WHEREAS, accordingly, the applicant asserts that the proposed building will comply with all egress and fire safety requirements and will therefore provide increased safety to residents of the building as well as adjacent buildings; and

WHEREAS, the applicant represents that the impacts of the proposed waiver of inner court regulations on adjacent properties will be negligible when compared to available as-of-right scenarios; 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 applicant represents that the hardship was not created by the owner or a predecessor in title, but that the irregular shape of the lot is a historic condition; and

WHEREAS, based on the above, the Board agrees that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant states that the proposal complies with all bulk regulations except inner court dimensions and that it is 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 Unlisted action pursuant to Section 617 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. 12BSA137K, dated May 17, 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 within an C1-4 (R7A) zoning district, a five-story mixed-use commercial/residential building with UG 6 on the ground floor and eight affordable housing units, which does not comply with the requirements for inner courts, contrary to ZR § 23-851; *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 3, 2013"– eleven (11) sheets; and *on further condition*:

THAT the parameters of the building will be: five stories, a total height of 52'-1/2" without bulkhead, a total floor area of 15,700 sq. ft. (3.95 FAR), an inner court with the minimum dimensions of 23'-9" by 19'-7", and a lot coverage of 79 percent, as illustrated on the Board-approved plans;

THAT the internal floor layouts on each floor of the proposed building 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) only;

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

THAT substantial 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, January 8, 2013.

189-12-BZ

APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.

SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00). C1-3/R7-1, R6 zoning districts.

PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated May 30, 2012 acting on Department of Buildings Application No. 320374304, reads in pertinent part:

> Proposed transient hotel use (UG 5) is not permitted in R6 (LH-1) lot portion; contrary to ZR 22-10.
>
> Proposed transient hotel use (UG 5) is not permitted in C1-3/R7-1 (LH-1) lot portion; contrary to ZR 32-14; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R6 zoning district and partially within a C1-3 (R7-1) zoning district within the Special Limited Height (LH-1) District and the Brooklyn Heights Historic District, the modification and conversion of an existing building into a transient hotel (Use Group 5) with 280 rooms, accessory hotel use (Use Group 5), and commercial use (Use Group 6), which does not conform with use regulations pursuant to ZR §§ 22-10 and 32-14; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in the *City Record*, with continued hearings on October 23, 2012 and November 27, 2012, and then to decision on January 8, 2013; 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, Brooklyn, recommends approval of the application; and

WHEREAS, the Montague Street BID, Court/Livingston/Schermerhorn BID, the Brooklyn Chamber of Commerce, and certain community members and representatives of local businesses provided testimony in support of the proposal; and

WHEREAS, certain community members (including some represented by counsel) provided written and oral testimony in opposition to the proposal (the "Opposition"); their primary concerns are related to (1) increased vehicle traffic to the site; (2) potential for noise from the hotel and specifically the rooftop restaurant to be heard in nearby residential buildings; (3) the absence of a hardship associated with an as-of-right residential development; (4) the operation plan for the hotel and specifically the rooftop restaurant to minimize impact on nearby uses; and (5) the enforcement of the conditions imposed to improve the operation plan; and

WHEREAS, the existing building has 14 stories (the "Existing Building") and is located on the block bounded by Montague Street, Hicks Street, Remsen Street, and Henry Street, occupying the entire blockfront of Hicks Street between Montague and Remsen streets; the northern half of the site is within a C1-3 (R7-1) zoning district, and the southern half is within an R6 zoning district, within the Special Limited Height (LH-1) District and the Brooklyn Heights Historic District; and

WHEREAS, the site has 200 feet of frontage on Hicks Street, 78 feet of frontage on each of Montague and Remsen streets, and a total lot area of 15,635 sq. ft.; and

WHEREAS, the applicant states that the C1-3 (R7-1) zoning district permits residential use with a maximum FAR of 3.44, subject to the height factor and open space regulations, and community facility floor area of up to 4.8 FAR; commercial use of up to 2.0 FAR is permitted, but in a building containing residences or community facility uses, commercial uses are permitted only on the first floor of the building; and

WHEREAS, the applicant states that the R6 zoning district permits residential use with a maximum 2.43 FAR, subject to the height factor and open space regulations, and community facility floor area of up to 4.8 FAR; and

WHEREAS, the entire site is located within a Special Limited Height (LH-1) District, which limits the height of new buildings to 50 feet, pursuant to ZR § 23-691; the Existing Building is a contributing building in the Brooklyn Heights Historic District; and

WHEREAS, the Existing Building has the following non-complying bulk conditions: (1) a floor area of 180,533 sq. ft. (11.55 FAR) (approximately 75,000 sq. ft. would be permitted for community facility uses); (2) a streetwall height of 147 feet (50 feet is the maximum permitted) and a total height of 172 feet (50 feet is the maximum permitted); and (3) does not provide a setback (a setback with a depth of 20 feet is required); and

WHEREAS, the Board notes that the proposed building will maintain existing non-compliances; and

WHEREAS, the applicant proposes to restore and reconvert the Existing Building to Use Group 5 hotel use, with Use Group 6 restaurant use on the ground floor, and with limited accessory hotel signage; the existing floor area will be retained and converted to hotel use; and

WHEREAS, the first floor will be occupied by accessory hotel use, including meeting space limited to hotel guests, and a restaurant; the second through 13th floors will be occupied by guest rooms, and the partial 14th floor will be occupied by the rooftop restaurant; and

WHEREAS, the proposal reflects 280 hotel units, an approximately 2,884 square-foot restaurant on the ground floor, and a 2,953 square-foot accessory hotel restaurant and lounge in the 14th floor penthouse (the "Proposed Building"); and

WHEREAS, the Board notes that the use of the Existing Building includes four rent-stabilized units, which will remain; and

WHEREAS, the entrance to the hotel lobby would be located on Montague Street, and a complying restaurant space would also be entered from Montague Street; the existing loading entrance on Hicks Street would remain to service the hotel, and a conveyor belt system would be added to bring deliveries to the cellar and speed hotel deliveries; the height of the Proposed Building is approximately 172 feet, as at present, exclusive of mechanical space; and

WHEREAS, the applicant states that the current certificate of occupancy indicates community facility use, which is permitted in the subject zoning districts, although until 1997, the certificates of occupancy showed Use Group 5 transient hotel use, which was a pre-existing non-conforming use, and also Use Group 2 residential use; and

WHEREAS, the applicant adds that the latest Department of Housing Preservation & Development Multiple Dwelling Registration for the building shows 51 "Class A" units and 221 "Class B" units, which indicates that the building has been primarily used for transient occupancy; and

WHEREAS, the use of the Proposed Building as a hotel does not conform with the use regulations of the Zoning Resolution governing C1-3(R1-7) and R6 zoning districts, thus, the requested variance is required; 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: the building's historic use and configuration as a transient hotel and transient community facility accommodations; and

WHEREAS, as to the Existing Building, the applicant states that the original portion of the hotel was constructed in 1909 and as the Hotel Bossert, and has been used as a residence hall and Class "B" transient hotel throughout its history; and

WHEREAS, the building was built in two phases, with the first half (occupying the portion of the site within 100 feet of Montague Street) completed in 1909, and the latter half (toward Remsen Street) completed in 1912; and

WHEREAS, the applicant states that hotel was formerly occupied by the "Marine Roof," a two-level restaurant at the 14th floor; and

WHEREAS, the building deteriorated in the 1960s and 1970s, and was used as a single-room-occupancy hotel until it was acquired by the Jehovah's Witnesses in 1983; the Jehovah's Witnesses' restoration of the building earned a "Preservation Award" from the New York Landmarks Conservancy in 1991 and a Special Award for Architectural Excellence from the Brooklyn Heights Association in 1993; and

WHEREAS, the applicant asserts that Pre-1961 certificates of occupancy list the building as a Class "B" transient hotel containing guest rooms, a dining room, bar, lounge, ballroom, cabaret, and hotel support features; and

WHEREAS, certificates of occupancy in 1968, 1983, 1992, and 1995 showed both Use Group 2 "apartments" and also Use Group 5 "guest rooms" on each of the upper floors, with continued use of the lower floors for dining rooms, a lounge, and a kitchen; and

WHEREAS, most recently, the Watchtower Bible and Tract Society (the Jehovah's Witnesses) began to occupy the Existing Building in 1983, and converted it to community facility use in 1997; the Jehovah's Witnesses currently use the building for both long-term and short-term stays by their members; and

WHEREAS, the most recent certificate of occupancy for the building, which indicates "J-2 non-profit institution with sleeping accommodations," with both "apartments" and "guest rooms" on each of the upper floors; and

WHEREAS, the applicant states that the Existing Building is configured with four narrow "fingers" extending off of its main hallway; the rooms located in these fingers have windows facing an inner court with pre-Multiple Dwelling Law ("MDL"), tenement-like dimensions, which does not meet modern standards for legal light and air, at some places with a width as narrow as 12 feet; and

WHEREAS, the Existing Building is currently arranged with 224 rooms, including several one- and two-bedroom suites; and

WHEREAS, the applicant asserts that given its current use and layout, with relatively small rooms and a noncomplying inner court, the building is best suited for transient hotel use; conversion to a complying residential use would require extensive demolition and rebuilding in the rear to create a complying inner court, which is highly visible at the building's eastern façade and would be subject to LPC's review and approval; and

WHEREAS, specifically, the applicant states that the construction of the building in two phases resulted in many redundancies in the building's systems, including four separate egress stairs, two passenger elevator shafts, and a very long hallway that shifts by approximately five feet at the junction between the first and the second building segments; thus, the Existing Building is uniquely inefficient, even by the standards of its time; and

WHEREAS, the consulting architect provided a statement which asserts that as a result of the historic conditions, development of the Existing Building for residential use, in compliance with the Zoning Resolution, would require substantial demolition and reconstruction in the rear of the building to create a complying inner court; and

WHEREAS, the architect states that conversion of this non-residential building to residential use may be done in accordance with Article 1, Chapter 5 of the Zoning Resolution, which substitutes MDL § 277 standards for light and air in place of the Zoning Resolution Article 2 requirements; however, the Existing Building's courts measure 12 to 13 feet in width, which do not meet the minimum width court dimension of 15 feet required by MDL § 277 for legal windows, so a complying court would need to be constructed for a complying residential scheme; and

WHEREAS, the architect concludes that the area in the rear of the building would constitute an inner court, as defined in the MDL, but does not have a minimum dimension of 15 feet for all of the windows facing the court; some windows face a court with a dimension of as little as 12 feet; thus, the Existing Building does not meet even the more liberal court standards of MDL § 277; and

WHEREAS, the applicant submitted a plan scheme for a complying residential building, which reflects that the "fingers" in the rear of the Existing Building would be cut back, and certain areas of the existing court would be filled in, to create a regularly shaped, rectangular inner court with dimensions of 30 feet by 78 feet; and

WHEREAS, the applicant notes that the Existing Building has floor plate widths of approximately 36 feet to 39 feet as compared to the 60-ft. width of the typical modern residential building with a double-loaded corridor, so the reconfiguration of the court and the additions to the floor slab would allow for a more efficient internal layout, although, the layout would still be less efficient than in a modern residential building; and

WHEREAS, the applicant submitted a report which describes the extensive structural work that would be required in order to create the complying court shown in the as-of-right residential scheme drawings; and

WHEREAS, the applicant asserts that the required work would include: (1) demolition of the existing masonry façade, cladding, windows and interior partitions in the area of the rear half of the building; (2) demolition of the portion of the building protruding into the new proposed court yard area, at floors 2-14 and the roof, including existing elevator shafts and general floor framing; (3) installation of new floor framing plus concrete on metal deck within the "old/existing" light well area which would become new enclosed space, upon floors two through the roof; (4) construction of the new façade around the new proposed courtyard area; (5) upgrading the existing columns along the "old/existing" light well area, via the concrete encapsulation or plating with new steel; (6) upgrading of the portion of the existing columns which are within the existing building below the second floor; and (7) upgrading of the foundation supporting the columns as required for the new loads; and

WHEREAS, the applicant represents that the premium costs associated with the reconfiguration of the Existing Building to comply with minimum court regulations amount to $4 million; and

WHEREAS, the applicant notes that the need to add kitchens to all of the rooms and reconfigure the bathrooms with new plumbing would further add to the cost of this work; and

WHEREAS, the applicant asserts that even with the noted reconfiguration of the Existing Building, inefficiencies in the layout would remain; specifically, the apartment units along the street-side perimeter of the building would be too narrow for well-designed, marketable apartment units and the inefficiency results in a reduction in the number of units from the existing 224 down to 137 in the as-of-right residential scheme; and

WHEREAS, the applicant has documented the additional costs associated with demolishing the interior portion of the building in order to provide the courtyard; and

WHEREAS, the Board notes that that the demolished floor area cannot be replaced as of right because the building would still be overbuilt and the heights of both wings of the existing building exceed the height limits set forth in the Limited Height District; and

WHEREAS, thus, the applicant asserts that the layout of the floors is more compatible with the proposed use and requires less significant modifications to accommodate the proposed use than would be required to accommodate a conforming residential use; and

WHEREAS, as noted, the applicant represents that the considerable costs associated with converting the building to a conforming residential use cannot be overcome because the building cannot feasibly accommodate residential units that would be marketable; and

WHEREAS, the applicant states that the configuration and history of development of the building are unique and create hardships that are not found on other sites in the neighborhood; 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 and compliance with the applicable zoning district regulations; and

WHEREAS, the applicant assessed the financial feasibility of three scenarios: (1) the as-of-right residential scheme involving the conversion of the Existing Building to residential use with 137 units, in compliance with the use regulations of the C1-3 (R7-1) and R6 districts with a ground-floor restaurant, an accessory restaurant in the penthouse, and community facility spaces on the ground-floor and in the basement; (2) a lesser variance residential scheme, which would involve the conversion of the Existing Building to residential use, in compliance with the applicable use regulations, but without the demolition in the rear of the building to create a complying court; the lesser variance scheme requires a variance pursuant to MDL § 310 to allow residential units to have windows facing the existing noncomplying inner court; and (3) the Proposed Building, with 302 transient hotel rooms; and

WHEREAS, during the hearing process, and in response to the Board's and the Oppositions questions, the applicant clarified certain points including condominium valuation, the value of the four rent-regulated units, and hotel comparables; and

WHEREAS, ultimately, at the Board's direction, the applicant reduced the number of hotel rooms from 302 to 280 and explained that it could still achieve a reasonable rate of return by offsetting the reduction in rooms by an increase in premium suite-type units; and

WHEREAS, the applicant concluded that only the transient hotel scheme would result in a sufficient return; and

WHEREAS, the applicant revised the proposal to its current iteration as a 280-room transient hotel with accessory uses and has submitted evidence reflecting that it achieves 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 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 notes that the Existing Building, designed for and used as a hotel and, later, a community facility, with transient sleeping accommodations, has not been used for conforming residential use; and

WHEREAS, the applicant represents that the immediate area is a mix of commercial, residential, and institutional uses; and

WHEREAS, the applicant states that the block on which the site is located is improved with retail and other buildings of between one and eight stories along Montague Street and four- to five-story brownstone buildings along Remsen Street; and

WHEREAS, the applicant notes that the proposed commercial use is permitted by underlying zoning district regulations; and

WHEREAS, the applicant states that Montague Street, where the hotel's entrance is located, is an active retail corridor, with mostly restaurants, cafes, clothing stores, and personal service establishments in one- to two-story retail buildings or four- to eight-story mixed residential and commercial buildings; immediately to the east of the site, on Montague Street, is a single-story supermarket building and the building to the east of the site on Remsen Street is a four-story, multi-family brownstone building; and

WHEREAS, the applicant represents that the building is among a diverse collection of brownstones, 6-12-story multi-family apartment building, retail, and institutional uses; the office district of Downtown Brooklyn and Borough Hall lies three blocks to the east of the site; the Proposed Building will continue to have its entrance on Montague Street, which is an active retail street between Hicks Street and Cadman Plaza; and

WHEREAS, the alterations necessary to reconvert the Proposed Building to hotel use are subject to approval by the LPC; and by letter dated September 7, 2012, LPC issued a Certificate of No Effect; and

WHEREAS, the applicant asserts that the Proposed Building will be operated in a very similar manner to the Existing Building, which, although it is classified on its certificate of occupancy as a community facility use, in practice operates very much like a typical transient hotel; and

WHEREAS, the applicant asserts that the Jehovah's Witnesses' use of the Existing Building includes many rooms used for short-term stays by their members who are visiting New York City from out of town and generally stay in the hotel for one to three nights; and

WHEREAS, the applicant states that although the Existing Building is currently configured with 224 rooms, with some one- and two-bedroom suites, the Jehovah's Witnesses have historically operated it to maximize occupancy, and have unrelated individuals in a single room,

akin to a dormitory; and

WHEREAS, thus, the applicant asserts, the hotel has been operated, in practice, like a hotel with more than 224 rooms; and

WHEREAS, the applicant states that the Jehovah's Witnesses use the dining rooms on the ground floor and basement level as a commissary, to feed staff from many different facilities in the Brooklyn Heights neighborhood, accommodating several hundred people for lunch at the site, with meals prepared in the large commercial kitchen in the building's cellar; and

WHEREAS, the applicant asserts that the layout of the Proposed Building, with 280 rooms, results from breaking up the existing multi-room suites into individual rooms according to natural room partitions; and

WHEREAS, the applicant asserts that this reconfiguration will effectively accommodate the same number of people who are currently accommodated by the Jehovah's Witnesses, but in a more traditional hotel layout, with individual, private rooms and bathrooms; and

WHEREAS, the applicant states that the Proposed Building will include a (1) ground-floor restaurant, entered from Montague Street, which will be an elegant, "white table cloth" restaurant and (2) a penthouse restaurant and lounge on the 14th floor of the building, with indoor and outdoor dining; and

WHEREAS, during the hearing process, the applicant provided several iterations of an operation plan to address the Opposition's concerns related to: (1) increased vehicle traffic to the site; (2) potential for noise from the hotel and specifically the rooftop restaurant to be heard in nearby residential buildings; (3) the absence of a hardship associated with an as-of-right residential development; (4) the operation plan for the hotel and specifically the rooftop restaurant to minimize impact on nearby uses; and (5) the enforcement of the conditions imposed to improve the operation plan; and

WHEREAS, as to traffic, the applicant states that its EAS analysis shows that there will be fewer than 50 incremental vehicle trips and fewer than 200 incremental pedestrian trips in any intersection in any peak hour as a result of the proposed project; therefore, a detailed traffic study is not warranted for CEQR purposes, as the additional traffic generated by the project would not exceed the applicable CEQR thresholds; and

WHEREAS, the applicant represents that the hotel will actively manage its taxi traffic and loading operations to avoid any potential traffic conflicts in the surrounding area; a hotel loading zone is designated in front of the hotel on Montague Street, which allows for efficient taxi drop-off and pick-ups; and

WHEREAS, in addition, the entire block of Hicks Street adjacent to the hotel, between Remsen and Montague streets, is designated as a loading zone, with no parking during daytime hours; this loading zone is adjacent to the hotel's dedicated loading entrance on Hicks Street; and

WHEREAS, the applicant states that it has developed a traffic management plan for the project, which includes the following elements: (1) taxis and cars will drop off in the hotel loading zone on Montague Street, which can accommodate two parked vehicles; (2) the hotel will contract with Quik Park to valet any private vehicles to the facility at 360 Furman Street, which is a 10-minute walk from the site; (3) the hotel loading zone on Hicks Street of 140-150 feet in length will accommodate several small trucks at any time; (4) it is anticipated that there will be mostly two small trucks at any given time for the deliveries to the hotel, which will be primarily food and beverage, some laundry, and private trash carting; and (5) take all reasonable measures to limit deliveries to 7:00 a.m. – 10:00 a.m., and will consult with the Community Board concerning delivery hours and any related issues; and

WHEREAS, additionally, the applicant asserts that the planned modifications to the loading area in the Proposed Building will improve the hotel's loading operations; and

WHEREAS, the applicant proposes the following additional measures: (1) dedicated staff of at least two door/bellman at the entrance to manage taxi and auto traffic, to do the following: (i) enforce double-parking prohibition, (ii) unload guest vehicles as promptly as practicable, (iii) take vehicles to the off-site parking garage as soon as the guest's luggage has been unloaded, and (iv) summon radio cars when needed by guests, using a dispatch system; (2) to provide additional staffing as required to prevent traffic congestion and adjust doormen and parking staff schedule daily based on guests' transportation data collected from advanced reservations; and (3) to develop projections of guest transportation needs for the days ahead by asking guests to identify their means of transportations in and out of the hotel; and

WHEREAS, the applicant also (1) proposes to maintain a "No Standing Hotel Loading Zone" regulation in front of the hotel on Montague Street, and a "No Standing Except Trucks" regulation on Hicks Street; (2) has requested that DOT extend the hotel loading zone on Montague Street for one additional space to the east, in an area that is currently a metered space so that the resulting loading zone will accommodate three vehicles; and (3) will not allow tour or charter buses to load or unload at the hotel; and

WHEREAS, the applicant notes that the Existing Building currently contains a small loading area at the ground-floor level, which leads directly to the building's freight elevator and the limited size of this loading area limits the ability to stage deliveries in this area; and

WHEREAS, the applicant states that it will install a conveyer belt system in this loading area to bring deliveries directly to the cellar as well as a trash compactor in the building to minimize waiting times for trash carting by reducing the volume of trash to be collected; and

WHEREAS, the applicant asserts that these improvements will speed the unloading of deliveries and loading of trash, and minimize truck waiting time along Hicks Street; and

WHEREAS, as to the use of the rooftop restaurant, the applicant proposes (1) that no music will be permitted on the

outdoor terrace or in any other outdoor location; (2) indoor rooftop restaurant music will be developed with noise abatement measures and will be limited to 69 dbA at all times; (3) the proposed outdoor terrace measures a maximum of 11 feet by 159 feet; (4) maximum occupancy at any given time in the rooftop restaurant and on the terrace will not exceed 120 in total, of which not more than 40 at any given time may occupy the terrace; (5) no opening of the walls or windows of the rooftop restaurant, whether permanent or temporary, will be permitted; (6) the rooftop restaurant and terrace will include (i) vestibules at each exit point onto the terrace, (ii) soundproofing material on the exterior walls of the restaurant and walls of the terrace, (iii) sound-absorbing finishes for the exterior areas, and (iv) insulated glass; (7) the rooftop terrace will close at 10:00 pm on all nights (meaning that no patrons will be allowed on the terrace after this time, except on New Year's Eve); (8) the indoor rooftop restaurant will close by 11:00 pm on weekdays, and 12:00 am on Fridays and Saturdays; and (9) that no additional occupiable outdoor space shall be developed on any floor, including the 13th and 14th floors, except as may be required by code for egress from terrace; and

WHEREAS, the Board notes that restaurant closure means closure of the entire restaurant and not just the kitchen; and

WHEREAS, as to other event and restaurant space, the applicant states that (1) the meeting rooms on the ground floor and in the basement will be restricted to use by registered hotel guests, and may not be rented to or used by non-guests; (2) there are no event spaces in the hotel available for rental by non-hotel guests; (3) the applicant will not apply for a DCA Cabaret license or enter into any special events contracts with third-party booking agents advertising events to the public for any of the spaces in the hotel; (4) sound-absorbing interior finishes will be used for the meeting rooms and the ground-floor restaurant; (5) total capacity of ground-floor restaurant spaces will be 240 persons, which may be distributed between the Montague Street (C1-3) restaurant and the rear restaurant/lounge; (6) no rope lines, checkpoints, or check-in tents will be established at any time outside of the hotel; (7) the applicant agrees to use all reasonable measures to ensure that all people waiting to use the hotel facilities will be accommodated within the hotel building; and (8) the applicant will post a sign outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors." and will instruct hotel staff to take all reasonable measures to reduce noise by patrons outside of the hotel and restaurants; and

WHEREAS, the applicant proposes the following additional conditions: (1) to make improvements to the HVAC systems, including central air, which will help to reduce noise in the surrounding area; (2) to establish a Community Liaison to respond to all community concerns; (3) to hold monthly meetings with community members through the Community Board; (4) to focus lighting away from neighboring buildings, and provide very soft and not obtrusively bright lighting; and (5) to limit the use the Remsen Street entrance to required egress; and

WHEREAS, the applicant notes that any noise levels generated by all units and ventilation systems provided are dictated by the Building Code, and as such will operate within the maximum 45 dB (decibel) level prescribed by the Building Code; and

WHEREAS, the Board notes that the applicant and the Opposition had a series of conversations about the operation plan and that both parties appeared at the hearings on the matter; and

WHEREAS, the Board is pleased that the parties have come to a resolution on nearly all of the conditions that caused concern to the Opposition; and

WHEREAS, the Board notes that only the following issues remain unresolved, per the Opposition's requests: (1) no music be permitted within the rooftop restaurant, and no sound amplification system of any kind be installed or used in such space; (2) no parties or other loud events be permitted on the rooftop terrace; (3) no cabaret, dance, DJ or other loud event be permitted on the rooftop, whether indoors or on the outdoor terrace; (4) an 11:00 p.m. closure time for the indoor rooftop restaurant on all days; (5) to have its acoustic consultant review the plans for baffling and make recommendations; (6) that the hotel be limited to a maximum of 225 guest rooms in order to minimize adverse traffic impacts; and (7) that the variance not be effective until the applicant has entered into an agreement with the Casino Mansion Company (CMC), requiring it to observe all restrictions and allowing CMC to enforce such restrictions directly; and

WHEREAS, the Board finds that the applicant has committed to institute numerous measures to satisfy the Opposition's concerns; and

WHEREAS, the Board notes that the applicant will impose significant mitigation to prevent the sound from reaching nearby uses, which is supported by the applicant's acoustical consultant and is consistent with the measures employed in other similar cases; and

WHEREAS, accordingly, the Board finds the applicant's proposal satisfactorily addresses the Opposition's concerns related to the use of the rooftop and other noise; and

WHEREAS, the Board finds that the applicant similarly proposes significant mitigation measures to address the Opposition's concerns about traffic; and

WHEREAS, with regard to the Opposition's proposal that the applicant enter an agreement which would allow CMC to directly enforce any non-compliance with the conditions of the grant, the Board does not take a position as to the appropriateness of such a proposal, but notes that the Department of Buildings enforces the conditions of the Board's grants and that in the event of non-compliance, the Board may ultimately review the use and evaluate the compliance with its conditions; and

WHEREAS, the Board notes that the Opposition

raised several supplemental issues concerning the applicant's methodology and other matters and that the applicant provided responses to clarify its analysis, which the Board accepts as rational and thorough; and

WHEREAS, thus, the Board supports the applicant's proposed conditions, but notes that it finds 11:00 p.m. to be a more appropriate closure time for the restaurant during the week and it finds a limitation on the ground floor restaurant use to an occupancy of 240 to be more compatible with the surrounding area; and

WHEREAS, the Board agrees that the proposed use has been designed to minimize any effect on nearby conforming uses; 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 development of the Proposed Building result from the history of development of the Existing Building, its purpose-built character, and its incompatibility with a conforming use; 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 Existing Building; and

WHEREAS, the applicant asserts that the lesser variance residential scenario, which requires a waiver for inner court dimensions required pursuant to ZR § 15-112, for residential conversions, does not realize a reasonable rate of return; and

WHEREAS, further, the applicant asserts that the residential units would have diminished marketability due to the conditions associated with the insufficient court dimensions and other compromised layout conditions; and

WHEREAS, the Board notes that the applicant initially proposed 302 transient hotel rooms and certain other conditions related to the restaurant uses to overcome the hardship at the site; and

WHEREAS, the Board notes that the current proposal reflects fewer units than the original proposal and many conditions to increase compatibility with nearby conforming uses; and

WHEREAS, accordingly, the Board finds 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. 12BSA143K, dated September 21, 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 and grants a variance, to permit, on a site partially within an R6 zoning district and partially within a C1-3 (R7-1) zoning district within the Special Limited Height (LH-1) District and the Brooklyn Heights Historic District, the modification and conversion of an existing building into a transient hotel (Use Group 5) with 280 rooms and accessory hotel use (Use Group 5) and commercial use (Use Group 6), which does not conform with use regulations pursuant to ZR §§ 22-10 and 32-14, *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 7, 2013" – twenty-four (24) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the Proposed Building: 14 stories, a wall height of 147 feet, and a total height of 172 feet; a total floor area of 180,533 sq. ft. (11.55 FAR); transient hotel floor area of 177,649 sq. ft.; commercial floor area of 2,884 sq. ft.; and a maximum of 280 hotel rooms (including suites);

<u>14th Floor Restaurant and Terrace</u>

THAT no music, amplified or unamplified, and no sound amplification system of any kind will be permitted on the outdoor terrace;

THAT the 14th floor restaurant and terrace will contain sound attenuation measures as shown on the approved plans and indoor music will be limited to 69 dbA at all times;

THAT the maximum occupancy at any given time both in the 14th floor restaurant and on the terrace will comply with Building Code occupancy regulations and not exceed 120 persons in total, of which not more than 40 patrons at any given time may occupy the terrace;

THAT the 14th floor restaurant will close by 11:00 p.m. on weekdays, and by 12:00 a.m. on Fridays and

Saturdays (i.e., no patrons will be allowed in the restaurant after these times);

THAT the 14th floor terrace will close at 10:00 p.m. on all nights (i.e., no patrons will be allowed on the terrace after this time), except that the 14th floor terrace may remain open beyond 10:00 p.m. on New Year's Eve;

Ground Floor Restaurant and Meeting Rooms

THAT the meeting rooms on the ground floor and in the basement will be restricted to use by registered hotel guests, and may not be rented to or used by non-hotel guests;

THAT the meeting rooms and the ground-floor restaurant will contain sound attenuation measures as shown on the approved plans;

THAT the capacity of both ground-floor restaurant spaces shall be limited to a combined total of 240 persons;

Pedestrian and Vehicular Traffic

THAT the hotel will provide 75 to 100 spaces dedicated for use by the hotel at the parking garage at 360 Furman Street, which will be available for parking 24 hours a day, seven days a week;

THAT at least two dedicated staff at the hotel entrance will manage taxi and other vehicle traffic, including enforcing double-parking prohibition, unloading guest vehicles, taking vehicles to the off-site parking garage, and summoning radio cars when needed by guests, using a dispatch system;

THAT no rope lines, checkpoints, or check-in tents will be permitted at any time outside of the hotel;

THAT no tour or charter buses will be permitted to load or unload in front of the hotel;

THAT deliveries will be limited to hours between 7:00 a.m. and 7:00 p.m.;

THAT the Remsen Street entrance will only be used for required egress;

Other Conditions

THAT no cabaret license will be issued for any space in the hotel;

THAT no occupancy will be permitted in any other outdoor space, other than the 14th floor terrace except as may be required by code for egress from terrace;

THAT a sign will be posted outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors";

THAT any exterior lighting will at all times be directed away from neighboring buildings;

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

Adopted by the Board of Standards and Appeals, January 8, 2013.

200-12-BZ
CEQR #12-BSA-148M
APPLICANT – Sheldon Lobel, P.C., for Oversea Chinese Mission, owner.
SUBJECT – Application June 26, 2012 – Variance (§72-21) to permit the enlargement of UG4 house of worship (*The Overseas Chinese Mission*), contrary floor area (§109-121), lot coverage (§109-122) and enlargement of non-complying building (§54-31). C6-2 zoning district.
PREMISES AFFECTED – 154 Hester Street, southwest corner of Hester Street and Elizabeth Street, Block 204, Lot 16, 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 5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 31, 2012, acting on Department of Buildings Application No. 121048801 reads, in pertinent part:

ZR 109-121 - The existing floor area exceeds the 4.8 permitted by this section with Preservation Area A.

ZR 109-122 - The proposed enlargement exceeds lot coverage permitted by this section.

1. ZR 54-31 – In a C6-2G Zoning District within Preservation Area A, the existing bulk and lot coverage are non-complying, therefore the proposed enlargement increases the non-compliance and is not permitted; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in a C6-2G zoning district within the Special Little Italy District (LI) Area A the enlargement of an existing nine-story community facility building (Use Group 4), which does not comply with the underlying zoning district regulations for floor area and lot coverage and increases the degree of non-complying floor area and lot coverage conditions, contrary to ZR §§ 109-121, 109-122, and 54-31; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

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

WHEREAS, the applicant submitted approximately 70 letters in support of the application from community members and businesses in the area; and

WHEREAS, this application is being brought on behalf of Oversea Chinese Mission ("OCM"), a non-profit religious entity; and

WHEREAS, the subject site is located on the southwest corner of Hester Street and Elizabeth Street, within a C6-2G zoning district with the Special Little Italy District (LI) Area A; and

WHEREAS, the subject site has a width ranging from 54'-7" to 55'-1", a depth of 99'-10", and a lot area of 5,473 sq. ft.; and

WHEREAS, the subject site is currently occupied by a pre-existing non-complying nine-story building built in 1912, which was used as a school when OCM purchased it in 1966 and is now occupied by OCM for its house of worship and ancillary uses; and

WHEREAS, the cellar and first floor are built full to the lot lines and floors two through eight are built full with the exception of a light well located along the western lot line measuring approximately three feet by 40 feet for a total of approximately 320 sq. ft. per floor; the ninth floor is a partial floor along the north half of the building; and

WHEREAS, the applicant proposes to undertake a full renovation of the building to accommodate its growing needs and to enlarge the building by filling in the light well on floors two through eight; and

WHEREAS, the applicant states that the existing building has the following non-complying parameters: a total floor area of 43,650 sq. ft. (8.39 FAR) (which exceeds the maximum permitted 26,270 sq. ft. and 4.8 FAR for community facility use); a total lot coverage of 95 percent (which exceeds the maximum permitted 70 percent); and a height of 126'-6" (which exceeds the maximum permitted height of 75'-0"); and

WHEREAS, the applicant proposes to enlarge the building to the following parameters: a floor area of 45,959 sq. ft. (8.5 FAR); and a lot coverage of 100 percent; and

WHEREAS, the applicant notes that the enlargement increases the degree of non-compliance of the floor area and lot coverage, but does not affect any other bulk parameters; and

WHEREAS, the proposal provides for the following uses: (1) a multipurpose room/chapel at the first floor; (2) the main sanctuary on the second floor; (3) a multipurpose room/chapel and a nursery on the third floor; (4) a children's library and classrooms on the fourth floor; (5) classrooms, a computer lab, and a youth worship room on the fifth floor; (6) classrooms, offices, and a conference room on the sixth floor; (7) classrooms on the seventh floor; (8) classrooms and two accessory apartments on the eighth floor; and (9) classrooms and a rooftop terrace on the ninth floor; and

WHEREAS, the applicant states that due to the building's non-complying bulk, without a variance, no enlargement of the building envelope would be allowed; and

WHEREAS, the applicant states that the following are the primary programmatic needs of OCM which necessitate the requested variances: (1) to increase the seating capacity of the sanctuary space; (2) to provide additional classroom space; (3) to provide improved and increased ADA-compliant facilities; (4) to provide additional office and support space; (5) to provide additional mechanical space without disrupting floor plans; and (6) to improve the efficiency of the building, its security, access, and circulation; and

WHEREAS, the applicant states that the congregation's size has grown consistently and continues to grow, but the building has never undergone any significant renovations and thus, some worship services overflow into different floors due to high attendance and members must participate remotely via audiovisual equipment; and

WHEREAS, the applicant states that the number of existing classrooms limits the number of fellowship activities that can be offered, particularly on Friday evenings and Sunday afternoons; and

WHEREAS, the applicant states that OCM has had to rent auditorium, gymnasium, and classroom space from a nearby public school to accommodate its programmatic needs; and

WHEREAS, the applicant states that the proposed floor area and lot coverage waivers will allow OCM to increase its floor area while allowing for more program space, improved interior layouts and circulation, and ADA-compliant restrooms and elevator; and

WHEREAS, the applicant represents that OCM also requires additional and improved space for its many community-based programs including language classes and activities for children; and

WHEREAS, the applicant provided a chart which analyzes the existing, as-of-right, and proposed conditions, which includes that (1) the existing sanctuary space accommodates 704 occupants, the as-of-right would accommodate 966, and the proposed will accommodate 1,018; and (2) the existing number of classrooms is 23, the as-of-right would accommodate 24, and the proposed reflects 28; and

WHEREAS, further, the chart reflects that the current building does not provide central HVAC or sprinklers, there are not any Code- or ADA-compliant restrooms, and that the existing stair tower is exposed to the elements; and

WHEREAS, the proposal reflects adding HVAC and sprinklers, providing complying restrooms, and enclosing the stair tower to enhance comfort and promote building-wide vertical circulation; and

WHEREAS, as to the existing conditions, the applicant notes that the building is nearly 100 years old and was formerly occupied by a school with many small offices and classrooms; and

WHEREAS, the applicant asserts that the pre-existing

non-complying conditions of the 1912 building cannot accommodate modern use and the programmatic needs of OCM including large assembly areas, useful classroom configurations, required mechanicals, and circulation space; and

WHEREAS, the Board acknowledges that OCM, 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 OCM coupled with the constraints of the existing buildings 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 OCM 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 enlargement 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 that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant notes that OCM has occupied the building for more than 50 years and, thus, its use is established in the community and will not change; and

WHEREAS, the applicant states that the existing light well to be enclosed cannot be viewed from three sides of the building, including both street frontages; and

WHEREAS, the applicant states that no other changes are proposed to the envelope of the existing nine-story building and that the pre-existing non-complying height will not change; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram which reflects that the area is developed primarily with mixed-use commercial/residential buildings and multiple dwellings between five and seven stories; and

WHEREAS, the applicant asserts that the enlargement will not have a negative impact on the light and air accessed by the adjacent seven-story commercial building or eight-story apartment building; and

WHEREAS, the applicant performed a shadow study which reflects that the incremental increase in shadows associated with the enlargement is negligible; and

WHEREAS, with regard to noise, the applicant states that the new windows proposed for the enlargement will be inoperable on the first through third floors, which will be occupied by large assembly spaces, and will only be operable on the fourth through eighth floors; additionally, the wall construction and new windows will have higher STC ratings than the existing wall and windows, and provide a greater level of noise attenuation; 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 OCM could occur in its existing building; and

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

WHEREAS, the applicant notes that the application reflects an increase in the total floor are of only approximately 2,300 sq. ft. (a five percent increase over the existing floor area) and an increase in lot coverage of approximately five percent; and

WHEREAS, the applicant notes that the building envelope will be unchanged except for the enclosure of the existing light well; otherwise, the renovation is within the envelope of the building; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford OCM 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.12BSA148M, dated June 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, 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 in a C6-2G zoning district within the Special Little Italy District (LI) Area A, the enlargement of an existing nine-story community facility building (Use Group 4), which does not comply with the underlying zoning district regulations for floor area and lot coverage and increases the degree of non-complying floor area and lot coverage conditions, contrary to ZR §§ 109-121, 109-122, 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 December 21, 2012" – Thirteen (13) sheets, and *on further condition*:

THAT the building parameters will include: a maximum floor area of 45,959 sq. ft. (8.5 FAR); and a maximum height of 126'-6", as illustrated 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 shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall 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 8, 2013.

209-12-BZ
CEQR #13-BSA-002K
APPLICANT – The Law Offices of Stuart Klein, for 910 Manhattan Avenue Realty Corp., owner.
SUBJECT – Application July 6, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-3A zoning district.
PREMISES AFFECTED – 910 Manhattan Avenue, north east corner of Greenpoint and Manhattan Avenues, Block 2559, Lot 4, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 7, 2012, acting on Department of Buildings Application No. 320299663, reads in pertinent part:

> #Physical Culture or health establishments#, including gymnasiums (not permitted under Use Group 9) will require a special permit by the Board of Standards and Appeals as per ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3A zoning district, the operation of a physical culture establishment (PCE) on a portion of the first, second, and third floors of a three-story commercial building contrary to ZR § 32-31; and

WHEREAS, the Board notes that the proposal also includes an enlargement to the existing two-story and mezzanine building to create a third floor; and

WHEREAS, the Board has not reviewed and does not take a position as to the zoning compliance of the enlargement, which the applicant represents is as-of-right; any such enlargement is subject to DOB review and approval; and

WHEREAS, a public hearing was held on this application on November 15, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; 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 on condition that (1) the hours of operation be limited to 10:00 p.m., rather than midnight on weeknights, and (2) the PCE provide bicycle parking; and

WHEREAS, the subject site is located on the northeast corner of Manhattan Avenue and Greenpoint Avenue in a C4-3A zoning district; and

WHEREAS, the PCE will occupy approximately 16,567.54 sq. ft. of floor area on a portion of the first, second, and third floors; and

WHEREAS, the PCE will be operated as G Energy; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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, at hearing, the Board inquired about the sound attenuation measures proposed to mitigate any impact on residential uses in adjacent buildings; and

WHEREAS, in response, the applicant described the following sound attenuation plan: (1) the floor plan is designed in a way to locate the group exercise space and open gym areas away from the residential use by installing closet space, locker rooms, and staircases along much of the lot line walls to serve as a sound buffer; (2) the lot line walls are independent non-combustible walls constructed of brick and masonry with a Sound Transmission Class of 59 that exceeds the Building Code requirement of 50; and (3) the majority of the interior walls will be insulated and furred to provide additional buffering; and

WHEREAS, the applicant proposes the following hours of operation: Monday through Friday, 5:00 a.m. to midnight and Saturday and Sunday, 7:00 a.m. to midnight; and

WHEREAS, as to the hours of operation, at the Board's request, the applicant performed an analysis of area businesses which reflects that within a one-block radius there are ten establishments that are open daily until 10:00 p.m. and five of those ten are open 24 hours a day; and

WHEREAS, further, the adjacent McDonald's is open weekdays until 12:00 a.m. and open 24 hours a day on the weekend; and

WHEREAS, the applicant adds that two other PCE's in the area – Otom Gym and the YMCA – are open daily until midnight; and

WHEREAS, accordingly, the applicant states that the proposed hours of operation are compatible with nearby uses and that it requires the proposed hours to remain competitive in the PCE market; and

WHEREAS, in response to community feedback, the applicant reduced the size of the PCE so that an existing business on the first floor can remain; and

WHEREAS, the Board concludes that the measures to be installed appear to address the primary concerns and are consistent with the measures the Board has seen proposed for similar facilities; and

WHEREAS, the Board also notes that the PCE's hours of operation are consistent with other businesses in the area; 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA002K, dated June 5, 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 issues a Negative Declaration action 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, the operation of a physical culture establishment on a portion of the first, second, and third floors 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 December 24, 2012" - Five (5) sheets and "Received January 4, 2013" - One (1) sheet and *on further condition*:

THAT the term of this grant will expire on January 8, 2023;

THAT the hours of operation will be limited to Monday through Friday, 5:00 a.m. to midnight and Saturday and Sunday, 7:00 a.m. to midnight;

THAT acoustical attenuation measures will be installed and maintained as reflected on the Board-approved plans;

THAT massages may only be performed by New York State-licensed masseurs;

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 above conditions will appear on the Certificate of Occupancy;

THAT DOB will review the building enlargement for full zoning compliance;

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

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, January 8, 2013.

212-12-BZ
CEQR #13-BSA-003Q
APPLICANT – Gerald J. Caliendo, R.A., AIA, for Conver Realty/Pat Pescatore, owners; Sun Star Services, LLC, lessee.
SUBJECT – Application July 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Massage Envy*) in the cellar and first floor of the existing commercial building. C2-2/R6B zoning district.
PREMISES AFFECTED – 38-03 Bell Boulevard, east side of Bell Boulevard, 50.58' south of intersection formed by Bell Boulevard and 38th Avenue, Block 6238, Lot 18, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 7, 2012, acting on Department of Buildings Application No. 420293346, reads in pertinent part:

Proposed Physical Culture Establishment not permitted in R6B with C2-2 overlay; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-2 (R6B) zoning district, the operation of a physical culture establishment (PCE) on the cellar level and first floor of a one-story commercial building contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Bell Boulevard, 50 feet from the intersection at 38th Avenue, within a C2-2 (R6B) zoning district; and

WHEREAS, the PCE will occupy approximately 1,623 sq. ft. of floor area on the first floor and 1,623 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as Massage Envy; and

WHEREAS, the applicant represents that the services at the PCE will include massage; 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 applicant proposes the following hours of operation: Monday through Friday, 9:00 a.m. to 9:00 p.m.; Saturday 9:00 a.m. to 8:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.; and

WHEREAS, at the Board's direction, the applicant analyzed the underlying parking requirements; and

WHEREAS, the applicant concluded that the parking requirement is three spaces and, thus, can be waived pursuant to ZR § 36-231, which allows waiver for fewer than 15 spaces; 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA003Q, dated July 5, 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 issues a Negative Declaration action 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 (R6B) zoning district, the operation of a physical culture establishment on the cellar level and first floor of a one-story commercial building contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 2, 2013" - Five (5) sheets and *on further condition*:

THAT the term of this grant will expire on January 8, 2023;

THAT the hours of operation will be limited to Monday through Friday, 9:00 a.m. to 9:00 p.m.; Saturday 9:00 a.m. to 8:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.;

THAT massages may only be performed by New York State-licensed masseurs;

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 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

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, January 8, 2013.

258-12-BZ
CEQR #13-BSA-024M

APPLICANT – Holland & Knight, LLP, for Old Firehouse No. 4 LLC, owner.

SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the conversion of two buildings into a single-family residence, contrary to lot coverage, minimum distance between buildings and minimum distance of legally required windows. R8B zoning district.

PREMISES AFFECTED – 113 East 90th Street, north side of East 90th Street, 150' west of the intersection of 90th Street, and Park Avenue, Block 1519, Lot 7, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner dated July 21, 2012 acting on Department of Buildings Application No. 121133308, read in pertinent part:

ZR 23-155 The proposed conversion creates a non-compliance with respect to allowable lot coverage

ZR 23-711 The proposed residential buildings do not comply with the minimum distance between buildings

ZR 23-861 The proposed legally required windows do not comply with the required distance from the lot line; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R8B zoning district, the conversion of two existing buildings into a single-family home that exceeds the allowable lot coverage, minimum distance between buildings, and minimum distance from windows to lot line/wall, contrary to ZR §§ 23-155, 23-711, and 23-861; and

WHEREAS, a public hearing was held on this application on December 4, 2012 after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

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

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

WHEREAS, the site is located on the north side of East 90th Street between Park and Lexington avenues, within an R8B zoning district; and

WHEREAS, the subject site is a rectangular shaped zoning lot with 25 feet of frontage along East 90th Street, a depth of 100.71 feet, and a total lot area of 2,517.75 sq. ft.; and

WHEREAS, the zoning lot is occupied by two buildings; in the front and extending for a depth of 60 feet is a

three-story building (the "Front Building"), while the rear portion is occupied by a two-story building (the "Rear Building") with a depth of 15 feet; an open area of approximately 25 feet separates the two buildings; and

WHEREAS, the existing buildings were constructed around 1880 to serve as the quarters for New York Fire Patrol 4 which served the Upper East Side; and

WHEREAS, the applicant states that after the fire patrol disbanded in the 1940s, the site was purchased by the American Alpine Club and used as a private club and museum; and

WHEREAS, in April 1994, the Board approved a variance (BSA Cal. No. 165-93-BZ) to permit a Use Group 6 commercial art gallery on the ground floor of the Front Building with two apartments on the upper floors and a Use Group 3 museum in the Rear Building; and

WHEREAS, most recently, on June 16, 2009, the Board granted an additional 15-year term for the art gallery and museum; and

WHEREAS, the subject proposal is for the conversion of all floors of both buildings to residential use as a single-family home; and

WHEREAS, the Front Building would have a vestibule, living room and kitchen on the first floor, with living quarters on the second and third floor, and the rear building would have guest quarters with a vestibule on the ground floor and bedroom on the second floor; and

WHEREAS, the applicant does not propose any changes to the buildings' envelopes, but will excavate below the open area separating the two buildings and underneath the Rear Building to create a cellar; and

WHEREAS, the application does not propose any increase in floor area above the existing conditions; and

WHEREAS, the combined floor area for the buildings is 5,317.25 sq. ft. (2.11 FAR) which is less than the 10,071 sq. ft. (4.0 FAR) permitted by the R8B zoning; and

WHEREAS, however, the applicant proposes to maintain the following historic conditions which are non-complying for residential use: (1) lot coverage of 1,899.75 square feet or 75.4 percent (70 percent is the maximum permitted); (2) distance between front and rear buildings of 24.72 feet (a minimum distance of 35 feet is required); and (3) distance between a legally required window and a wall of 24.72 feet (30 feet is required); and

WHEREAS, the applicant states that the requested relief is necessary for the reasons stated below; and

WHEREAS, the applicant states that the configuration of the historic buildings on the lot is a unique physical condition, which creates practical difficulties and unnecessary hardship in converting the existing buildings to a conforming use in a manner that is in full compliance with underlying district regulations; and

WHEREAS, the applicant states that the buildings were designed and built in 1880 for use by the old New York City Fire Patrol; and

WHEREAS, the applicant states that the Front Building housed the actual firefighting equipment and the rear building was a horse stable and, thus, the buildings were designed to function together on the same lot; and

WHEREAS, the applicant states that two buildings located on a site with a width of 25 feet is a condition that occurs very infrequently, if at all, in this neighborhood; and

WHEREAS, the applicant notes that the Fire Patrol buildings where permitted to be converted to commercial and museum use by the 1994 variance, but both uses have ceased and the art gallery is no longer in business; and

WHEREAS, the applicant represents that due to the significant increase in property values, the art gallery was unable to generate sufficient income; and

WHEREAS, the Board's resolution approving the 1994 variance found that "[T]he history of development of this small lot with two (2) separate buildings not designed or used for residential uses creates a unique condition and an unnecessary hardship in now utilizing both buildings [for] a conforming use . . . ."; and

WHEREAS, the applicant asserts that in order to satisfy lot coverage and distance between buildings, and distance between window and wall regulations, the Rear Building would have to be demolished as its depth (measured from exterior walls) would only be approximately five feet if the full 35-ft. distance between the Front Building and wall of the Rear Building were provided; 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 regulations; and

WHEREAS, the applicant submitted an Economic Analysis Report analyzing the feasibility of two alternative development scenarios; and

WHEREAS, specifically, the applicant submitted a feasibility study which analyzed: (1) the Front Building with a Use Group 3 medical office on the first floor and residential uses on floors two and three and medical use in the entire Rear Building; and (2) a commercial art gallery on the first floor with residential uses on floors two and three of the Front Building and a museum in the entire Rear Building; and

WHEREAS, the study concluded that the two alternative scenarios would not result in a reasonable return; and

WHEREAS, the Board has determined that because of the subject site's unique condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a reasonable return; 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 both buildings will be used as a single-family residence, which is a conforming use in the zoning district, and would remove a non-conforming commercial use; and

WHEREAS, the applicant notes that the remainder of the block is entirely occupied by residential use and the proposed variance would be consistent with the existing character of the neighborhood; and

WHEREAS, specifically, there is a nine-story apartment

building to the east of the site and then a group of six five-story buildings; to the west, and extending to Park Avenue is a 14-story apartment building, which is separated from the subject site by an open space with a width of 9'-6"; and

WHEREAS, the south side of East 90th Street is characterized by nine- to 15-story apartment buildings; and

WHEREAS, the applicant states that the distance between the two buildings on the site is 24.72 feet which is not significantly less than the required 30 feet; and

WHEREAS, the applicant asserts that there will be substantial light and air available to all rooms fronting on the areas where the two buildings are adjacent; and

WHEREAS, specifically, the applicant notes that the Front Building has a height of 39.54 feet and the Rear Building has a height of 20 feet, so only the lower portion of the Front Building is even within the scope of the non-complying distance between buildings; the remainder of the Front Building overlooks the open area above the Rear Building; 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 applicant states that the unnecessary hardship encountered by compliance with the zoning regulations have existed since the 19th century when the two buildings were constructed by the New York Fire Patrol; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic development and use of the zoning lot; 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.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II 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, in an R8B zoning district, the conversion of two existing buildings into a single-family home that does not provide the allowable lot coverage, minimum distance between buildings, and minimum distance from windows to lot lines, contrary to ZR §§ 23-155, 23-711, and 23-861; *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 19, 2012"- eleven (11) sheets; and *on further condition*:

THAT the parameters of the proposed home will be as follows: 5,317.25 sq. ft. of floor area (2.11 FAR); and a minimum distance of 24.72 feet between the Front Building and Rear Building, as illustrated in the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed home shall 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) only;

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

THAT substantial 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, January 8, 2013.

276-12-BZ
CEQR #13-BSA-031K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 833 Flatbush, LLC c/o Jem Realty, owner; Blink 833 Flatbush Avenue Inc., lessee.

SUBJECT – Application September 11, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Blink)* within portions of an existing commercial building. C2-4 zoning district.

PREMISES AFFECTED – 833/45 Flatbush Avenue, aka 2/12 Linden Boulevard, northeast corner of Flatbush Avenue and Linden Boulevard, Block 5086, Lot 8, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 23, 2012, acting on Department of Buildings Application No. 320534720, reads in pertinent part:

Proposed Physical Culture Establishment in a C2-4 (R7A) zoning district is contrary to Section 32-10 ZR; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-4 (R7A) zoning district and partially within an R6B zoning district, the operation of a physical culture establishment (PCE) on a portion of the first floor and second floor of a two-story commercial building contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 27, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

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

WHEREAS, the subject site is located on the northeast

corner of Flatbush Avenue and Linden Boulevard, partially within a C2-4 (R7A) zoning district and partially within an R6B zoning district; and

WHEREAS, the PCE will occupy approximately 15,436 sq. ft. of floor area on the first and second floors; and

WHEREAS, the applicant notes that the segment of the building at the corner of Flatbush Avenue and Linden Boulevard (formerly Lot 13) was constructed pursuant to a variance to permit a residence in a business district which exceeded the permitted floor area (BSA Cal. No. 498-48-BZ) and an appeal related to egress (BSA Cal. No. 1128-48-A); and

WHEREAS, the building segment on Lot 8 was constructed prior to 1921; and

WHEREAS, subsequently, the variance building was occupied by a bank and, most recently, a store and a restaurant; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant represents that the PCE use is limited to the portion of the site within the C2-4 (R7A) zoning district; 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 applicant proposes the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m. and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA031K, dated September 10, 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 issues a Negative Declaration action 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 (R7A) zoning district and partially within an R6B zoning district, the operation of a physical culture establishment on a portion of the first floor and second floor 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 7, 2013" - Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on January 8, 2023;

THAT the hours of operation will be limited to Monday through Saturday, 5:30 a.m. to 11:00 p.m. and Sunday, 7:00 a.m. to 9:00 p.m.;

THAT massages may only be performed by New York State-licensed masseurs;

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 PCE use is not permitted within the portion of the site in the R6B zoning district;

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

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, January 8, 2013.

147-11-BZ
APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.
SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.
PREMISES AFFECTED – 24-47 95th Street, east side of 95th Street, between 24th and 25th Avenues, Block 1106, Lot 44, Borough of Queens.
COMMUNITY BOARD #3Q
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 5, 2013, at 1:30 P.M., for decision, hearing closed.

157-11-BZ
APPLICANT – Sheldon Lobel, P.C., for 1968 2nd Avenue Realty LLC., owner.
SUBJECT – Application October 5, 2011– Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard (§33-261) and loading berth (§36-683) requirements. C1-5/R8A and R7A zoning districts.
PREMISES AFFECTED – 1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101st Street, Block 1673, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #11M
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 26, 2013, at 1:30 P.M., for decision, hearing closed.

1-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Harran Holding Corp., owner; Moksha Yoga NYC LLC, lessee.
SUBJECT – Application January 3, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Moksha Yoga*) on the second floor of a six-story commercial building. C4-5 zoning district.
PREMISES AFFECTED – 434 6th Avenue, southeast corner of 6th Avenue and West 10th Street, Block 573, Lot 6, Borough of Manhattan.
COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 12, 2013, at 1:30 P.M., for continued hearing.

12-12-BZ
APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.
SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.
PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.
COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for deferred decision.

55-12-BZ
APPLICANT – Eric Palatnik, P.C., for Kollel L'Horoah, owner.
SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based, non-profit school (*Kollel L'Horoah*), contrary to use regulations (§42-00). M1-2 zoning district.
PREMISES AFFECTED – 762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot 19, Borough of Brooklyn.
COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to February 12, 2013, at 1:30 P.M., for continued hearing.

63-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.
SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.
PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27th Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.
COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for continued hearing.

72-12-BZ
APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.
SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.
PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.
COMMUNITY BOARD #6BK
ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for adjourned hearing.

82-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.
SUBJECT – Application – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 2011 East 22nd Street, between Avenue S and Avenue T, Block 7301, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to February 12, 2013, at 1:30 P.M., for continued hearing.

115-12-BZ
APPLICANT – Sheldon Lobel, P.C., for RMDS Realty Associates, LLC, owner.
SUBJECT – Application April 24, 2012 – Special Permit (§73-44) to allow for a reduction in parking from 331 to 221 spaces in an existing building proposed to be used for ambulatory diagnostic or treatment facilities in Use Group 6 parking category B1. C4-2A zoning district.
PREMISES AFFECTED – 701/745 64th Street, Seventh and Eighth Avenues, Block 5794, Lot 150 & 165, 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 January 29, 2013, at 1:30 P.M., for decision, hearing closed.

235-12-BZ
APPLICANT – Slater & Beckerman, LLP, for NBR LLC, owner.
SUBJECT – Application July 30, 2012 – Special Permit (§73-242) to allow a one-story building to be used as four eating and drinking establishments (Use Group 6), contrary to use regulations (§32-00). C3 zoning district.
PREMISES AFFECTED – 2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north. Block 8839, Lots 33, 38, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for continued hearing.

241-12-BZ
APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new mixed residential and retail building, contrary to use regulations (§42-10 and 42-14D(2)(b)). M1-5B zoning district.
PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for deferred decision.

261-12-BZ
APPLICANT – Sheldon Lobel, P.C., for One York Property, LLC, owner; Barry's Bootcamp Tribeca LLC, lessee.
SUBJECT – Application August 31, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Barry's Bootcamp*) on the first and cellar floors of existing building. C6-2A (TMU) zoning district.
PREMISES AFFECTED – 1 York Street, south side of Laight Street between Avenue of Americas, St. John's and York Streets, Block 212, Lot 7503, Borough of Manhattan.
COMMUNITY BOARD #1M
ACTION OF THE BOARD – Laid over to February 12, 2013, at 1:30 P.M., for continued hearing.

280-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Sheila Weiss and Jacob Weiss, owners.
SUBJECT – Application September 21, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1249 East 28th Street, east side of 28th Street, Block 7646, Lot 26, Borough of Brooklyn.
COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for continued hearing.

298-12-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.
SUBJECT – Application October 17, 2012 – Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university use (*New York University*), contrary to use regulations. M1-5B zoning district.
PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4th Street, Block 545, Lot 15, 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 12, 2013, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on December 4, 2012, under Calendar No. 5-86-BZ and printed in Volume 97, Bulletin No. 50, is hereby corrected to read as follows:

5-96-BZ
APPLICANT – Sheldon Lobel, P.C., for St. Johns Place LLC, owner; Park Right Corporation, lessee.
SUBJECT – Application August 2, 2012 – Extension of Time to obtain a Certificate of Occupancy of an approved variance which permitted the operation a one-story public parking garage for no more than 150 cars (UG 8) which expired on February 2, 2011; Waiver of the Rules. R7-1 zoning district.
PREMISES AFFECTED – 564-592 St. John's Place, south side of St. John's Place, 334' East of Classon Avenue. Block 1178, Lot 26. Borough of Brooklyn.
COMMUNITY BOARD #8BK
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 5
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; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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

WHEREAS, the premises is located on the south side of St. John's Place, between Classon Avenue and Franklin Avenue, within an R7-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 29, 1919 when, under BSA Cal. No. 263-19-BZ, the Board granted a variance to permit the construction of a one-story building to be used for the storage of more than five motor vehicles; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on January 18, 1966, under BSA Cal. No. 327-63-BZ, the Board granted a change in use to permit the assembly of mirrors into frames, the storage and cutting of sheet glass, the manufacturing of plastic and wood frames and novelties, with an off-street loading berth; and

WHEREAS, on March 18, 1997, under the subject calendar number, the Board reinstated the expired variance and legalized a change in use to a public parking garage for not more than 150 cars (Use Group 8), for a term of ten years; and

WHEREAS, most recently, on February 2, 2010, the Board granted a ten year extension of term, to expire March 18, 2017, an extension of time to obtain a certificate of occupancy to February 10, 2011, and an amendment to the previously approved plans to legalize the modification of the parking layout and the installation of 75 two-level automobile stacking devices; and

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

WHEREAS, the applicant states that the requested extension of time is necessary to resolve the open violations issued against the site; and

WHEREAS, at hearing, the Board questioned whether the automobile stacking requirements comply with Materials and Equipment Acceptance Division ("MEA") requirements, in accordance with the prior grant; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the Office of Technical Certification and Research ("OTCR") has replaced the MEA division, but that the substantive MEA conditions have been adequately addressed; and

WHEREAS, specifically, the architect states that the ceiling height, which is a minimum of 12'-0" in height, provides adequate height for the stackers and sprinkler coverage, the floor loads are not an issue because the stackers are located on the ground floor, the garage is sprinklered, and the parking spaces comply with the DOB standard size of 8'-6" by 18'-0"; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on March 18, 1997, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to December 4, 2014; *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application; and *on further condition*:

THAT the term of this grant will expire on March 18, 2017;

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

THAT a new certificate of occupancy will be obtained by December 4, 2014;

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)/configuration(s) not related to the relief granted."
(DOB App. No. 310233841)

Adopted by the Board of Standards and Appeals, December 4, 2012.

***The resolution has been amended. Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**

***CORRECTION**

This resolution adopted on November 20, 2012, under Calendar No. 156-11-BZ and printed in Volume 97, Bulletin Nos. 46-48, is hereby corrected to read as follows:

156-11-BZ
CEQR #12-BSA-028X
APPLICANT – Sheldon Lobel, P.C., for The Rector Church Warden and Vestry Men of St. Simeon's Church owners.
SUBJECT – Application October 5, 2011 – Variance (§72-21) to permit the construction of a 12-story mixed residential (UG 2 supportive housing) and community facility (*St. Simeon's Episcopal Church*) (UG4 house of worship) building, contrary to setback (§23-633(b)), floor area (§§23-145, 24-161, 77-22), lot coverage (§23-145) and density (§§23-22, 24-20) requirements. R8 zoning district.
PREMISES AFFECTED – 1020 Carroll Place, triangular corner lot bounded by East 165th Street, Carroll Place and Sheridan Avenue, Block 2455, Lot 48, Borough of Bronx.
COMMUNITY BOARD #4BX
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated September 28, 2011, acting on Department of Buildings Application No. 220137233, reads, in pertinent part:

1. Proposed floor area ratio (FAR) exceeds the maximum permitted pursuant to ZR 23-145, 24-161, and 77-22
2. Proposed lot coverage exceeds the maximum permitted pursuant to ZR 23-145
3. Proposed Quality Housing building does not provide required setbacks of 10 and 15 feet above maximum base height in an R8 district along wide and narrow streets respectively, pursuant to ZR 23-633(b)
4. Proposed number of dwelling units exceeds maximum permitted pursuant to ZR 23-22 and 24-20; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, a proposed 12-story community facility (UG 4) and affordable housing (UG 2) building, which does not comply with floor area ratio ("FAR"), lot coverage, setback, and density regulations and is contrary to ZR §§ 23-22, 23-145, 23-633, 24-161, 24-20 and 77-22; and

WHEREAS, the application is brought on behalf of St. Simeon's Episcopal Church and the Canterbury Heights Development Corporation (CHDC) a not-for-profit organization affiliated with St. Simeon's, the owner of the site and the occupant of the proposed house of worship; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 16, 2012, and then to decision on November 20, 2012; 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, Bronx, recommends approval of the application and cites the need for affordable housing in the area; and

WHEREAS, the applicant submitted letters of support from New York State Assemblywoman Vanessa Gibson and the Mount Hermon Baptist Church; and

WHEREAS, the subject site is located on a triangular corner lot, which is its own small city block, bounded by East 165th Street, Carroll Place, and Sheridan Avenue and has a total area of 5,154 sq. ft.; and

WHEREAS, the majority of the zoning lot (95.8 percent) is located within 100 feet of East 165th Street; and

WHEREAS, the site was formerly occupied by St. Simeon's Episcopal Church, in a building that was deemed unsafe in 1998 and, despite attempts to rehabilitate it, was eventually demolished in 2003 due to withdrawal of insurance coverage; the site is currently vacant; and

WHEREAS, the applicant proposes to occupy the 12-story building (with a total height of 117 feet) with community facility use at the cellar and ground floor level, for St. Simeon's, including the church sanctuary and an accessory pastor's apartment; and the 11 upper floors will be occupied by residential use, including 50 affordable dwelling units ranging from studios to three-bedroom units; and

WHEREAS, the applicant states that ten of the residential units (20 percent) will provide supportive housing for the formerly homeless; supportive social services will be provided by Comunilife, an institution that provides supportive services including those for mental health counseling and benefits management for the formerly homeless; and

WHEREAS, the conditions which trigger the need for the variance are (1) floor area of 49,072 sq. ft. (9.52 FAR) (36,851 sq. ft. (7.15 FAR) is the maximum permitted); (2) the portion of the first floor occupied by community facility use complies with lot coverage regulations, but the residential floors above have a lot coverage of 85 percent (80 percent is the maximum permitted lot coverage); (3) the absence of setbacks above the maximum permitted base height of 85 feet (setbacks of 10 feet from the wide street and 15 feet from the narrow streets are required above the base height); and (4) the provision of 50 dwelling units (density regulations limit the number of units to 44); 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 triangular shape; and (2) the slope and poor soil conditions; and

WHEREAS, as to the shape, the applicant states that the site is irregularly-shaped with three frontages; and

WHEREAS, specifically, the applicant states that the odd shape of the site constrains the floor plate because the ratio of street frontage is so high and the angles of the intersections of the streets do not support efficient standard building design; and

WHEREAS, the applicant asserts that there are premium façade costs associated with having all of the exterior surface area of the building be a street frontage such as the need for a greater degree of fenestration; and

WHEREAS, the applicant asserts that due to inefficiencies of constructing on an irregularly-shaped site, the lot area of 5,154 sq. ft. could accommodate approximately three fewer dwelling units than if the lot were regularly-shaped; and

WHEREAS, the applicant represents that the as of right alternative would only allow for 37 dwelling units which is well below the minimum 50 units required to qualify for Low-Income Affordable Marketplace Program (LAMP) financing, as will be discussed in more detail below; and

WHEREAS, additionally, the applicant represents that if the lot coverage and setback regulations were followed strictly, the as of right floorplate would narrow significantly above a height of 85 feet and allow for only one unit on floors nine through twelve; and

WHEREAS, due to the shape and the requirement for setbacks at each of the three frontages, the upper floors of any building would be significantly constrained as at a height of 85 feet, a setback of 10'-0" is required at East 165th Street and setbacks of 15'-0" are required at Carroll Place and Sheridan Avenue; and

WHEREAS, the applicant asserts that a standard shaped lot with only one or two street frontages would not be similarly constrained by the setback requirements; and

WHEREAS, the applicant proposes a larger floor plate, in conflict with lot coverage requirements so that a larger amount of floor area can be accommodated on the lower floors, where a setback would not be required; and

WHEREAS, as to the uniqueness of the shape, the 400-ft. radius diagram reflects that the site is one of two triangular sites in the area and is the smaller of the two; and

WHEREAS, the diagram reflects that the subject site is the only site so affected by the curve of Carroll Place which, along with the intersections of Sheridan Avenue and East 165th Street, creates the unique triangular block, with one curved side that is occupied solely by the subject site; the subject site is the only such triangular block and the smallest block in the study area; and

WHEREAS, as to the slope and soil, the applicant asserts that the site has a change in grade varying in elevation from 72 feet to 82 feet and with bedrock encountered at varying depths of 12 feet to 28 feet below grade; and

WHEREAS, the applicant asserts that the presence of bedrock makes construction of the foundation more costly as the removal of bedrock is more expensive than typical soil excavation; and

WHEREAS, the applicant states that the geotechnical report indicates a variety of sub-grade conditions including areas of pre-existing fill and old concrete foundations; and

WHEREAS, the applicant represents that there are additional costs associated with the labor and materials for an uneven foundation and the removal of unsuitable fill materials below proposed footings; and

WHEREAS, the applicant asserts that it will employ a slab on grade foundation with spread footing, a strategy that requires the minimization of the differential settlement; and

WHEREAS, the applicant asserts that additional floor area is required to help balance out the premium costs associated with construction on the triangular lot with compromised soil conditions; and

WHEREAS, the applicant states that in addition to the site's unique physical conditions, CHDC has specific programmatic needs, which require (1) a permanent house of worship for St. Simeon's, (2) community services, and (3) affordable housing; and

WHEREAS, CHDC's mission as set forth in its mission statement is to "support and strengthen individuals, families, neighborhoods and communities with the means that would enable them to live their lives in the best way possible" through affordable and better housing, child care and educational services, and social and psychological services; and

WHEREAS, the applicant states that it will receive financing for the proposal from the New York City Housing Development Corporation, LAMP, as well as New York City Department of Housing Preservation and Development's Low Income Program (LIP); and

WHEREAS, the applicant states that the proposal will also be partially funded by grants from the Office of the Bronx Borough President and Councilmember Helen Foster; and

WHEREAS, the applicant represents that the building program is determined in part by the requirements of the government funding sources concerning building design and unit count; and

WHEREAS, the applicant states that in order to be eligible for financing from LAMP, the minimum number of residential units is 50, of which 50 percent must be two-bedroom units or larger and each unit must comply with HPD's design guidelines, including suggested minimum floor area per unit type; and

WHEREAS, accordingly, the proposal reflects a total of 50 affordable housing units, including one, two, and three-bedroom apartments and studios for low-income families and single adults; and

WHEREAS, of the 50 units, seven will be studio apartments, 18 will be one-bedroom apartments, 21 will be two-bedroom apartments and four will be three-bedroom apartments; and

WHEREAS, as noted, an as-of-right building at the

site that complies with floor area, lot coverage and height and setback regulations would allow for only 37 dwelling units, 13 units below the minimum required to qualify for LAMP financing; and

WHEREAS, accordingly, the applicant requires the waivers of residential floor area, setback, lot coverage, and density regulations; and

WHEREAS, the applicant states that LIP financing requires that at least 20 percent of the units be set aside for formerly homeless households and that a social services plan be approved to serve such residents; and

WHEREAS, the applicant states that, in accordance with LIP financing, ten of the 50 units will be designated for formerly homeless and Comunilife and CHDC will provide social services for building residents and the broader East Concourse community; and

WHEREAS, the applicant states that St. Simeon's need to rebuild its house of worship on the historic site of its church is fulfilled through its partnership with CHDC and the plan to construct a building which can accommodate both the new church space and the affordable housing; and

WHEREAS, the space available for church use includes a 1,081 sq. ft. multipurpose room in the cellar, which will accommodate meetings and social gatherings that may not be appropriate in the sanctuary; and

WHEREAS, the proposal also reflects that the first floor will contain a pastor's apartment, giving the church's pastor full-time access to church facilities and supporting his role in helping the church and building residents; and

WHEREAS, the cellar will be occupied by mechanical rooms and the tenants' laundry room, church offices, and a church multipurpose room; and

WHEREAS, the Board accepts the applicant's assertion that there are mutual benefits of St. Simeon's and CHDC occupying the same building due to an overlap of uses, programming, and leadership; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of St. Simeon's and CHDC's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since CHDC and St. Simeon's are both not-for-profit organizations and the proposed development will be in furtherance of their not-for-profit missions; 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 12-story community facility and residential building is consistent with the character of the surrounding area as the use and total height of the proposed building are permitted as-of-right; and

WHEREAS, the applicant asserts that the proposed bulk results in an envelope that is consistent with existing development within the neighborhood; and

WHEREAS, the applicant notes that the site occupies its own block and the proposed building with its non-complying lot coverage and setback conditions is, thus, not immediately adjacent to any other sites; and

WHEREAS, specifically, the applicant states that there are several tall buildings within 400 feet of the site, including a 23-story multiple dwelling building located at 1020 Grand Concourse and a ten-story multiple dwelling building located at 1000 Grand Concourse across Carroll Place; and

WHEREAS, additionally, the applicant states that ten of the 21 multiple dwelling buildings located within a 400-ft. radius have floor area well above the 49,072 sq. ft. for the proposed building; and

WHEREAS, the applicant also asserts that the percentage by which the proposed 9.52 FAR exceeds the maximum permitted FAR is consistent with the bulk of other buildings in the study area that exceed their maximum allowable FAR; and

WHEREAS, the applicant states that of the 26 buildings located within 400 feet of the site, 16 exceed the maximum permitted FAR and nine exceed the maximum allowable FAR in their respective districts by more than 20 percent; and

WHEREAS, the applicant submitted photographs and a 400-ft. radius diagram to support these assertions; 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, at hearing, the Board asked the applicant to provide additional evidence that the proposed floor area is compatible with the surrounding area; and

WHEREAS, in response, the applicant stated that there is a 23-story building complex (Executive Towers) at 1020 Grand Concourse on the corner of East 165th Street with an FAR their architect consultant assesses to be 9.10 (although Oasis notes it be 6.92); 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 the programmatic needs of CHDC and St. Simeon's; and

WHEREAS, the applicant states that there is no viable lesser variance that would allow for 50 units that conform to certain size and design requirements required by funding sources, particularly since the as of right scenario would only allow for 37 units; and

WHEREAS, accordingly, the Board finds that the proposal reflects the minimum necessary to accommodate the applicant's 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 Sections 617.2 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. 12BSA028X, dated July 24, 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 and grants a variance to permit, on a site within an R8 zoning district, a proposed 12-story community facility (UG 4) and affordable housing (UG 2) building, which does not comply with floor area ratio, lot coverage, setback, and density regulations and is contrary to ZR §§ 23-22, 23-145, 23-633, 24-161, 24-20 and 77-22, *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 19, 2012" - Sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 12 stories, a residential floor area of 44,988 sq. ft., a community facility floor area of 4,084 sq. ft., and a total floor area of 49,072 sq. ft. (9.52 FAR), a total height of 117 ft., and lot coverage of 85 percent above the first floor, all as illustrated on the BSA-approved plans;

THAT there will be no change in use or ownership of the building without the prior review and approval of 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) 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, November 20, 2012.

***The resolution has been amended. Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**

***CORRECTION**

This resolution adopted on November 20, 2012, under Calendar No. 151-12-A and printed in Volume 97, Bulletin Nos. 46-48, is hereby corrected to read as follows:

151-12-A
APPLICANT – Christopher M. Slowik, Esq./Law Office of Stuart Klein, for Paul K. Isaacs, owner.
SUBJECT – Application May 9, 2012 –
Appeal challenging the Department of Buildings' determination that a roof antenna is not a permitted accessory use pursuant to ZR § 12-10. R8 zoning district.
PREMISES AFFECTED – 231 East 11th Street, north side of E. 11th Street, 215' west of the intersection of Second Avenue and E. 11th Street, Block 467, Lot 46, Borough of Manhattan.
COMMUNITY BOARD #3M
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, this is an appeal of a Department of Buildings ("DOB") final determination dated April 10, 2012, issued by the First Deputy Commissioner (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

> The request to lift the Stop Work Order associated with application no. 120213081 to legalize a ham radio antenna above the existing 5 story residential building is hereby denied.
>
> As per ZR 22-21, radio or television towers, non-accessory, are permitted by special permit of the BSA.
>
> The proposed ham radio antenna, approximately 40 feet high, is not customarily found in connection with residential buildings and is therefore not an accessory use to the building; and

WHEREAS, the appeal was brought on behalf of the owner of 231 East 11th Street (hereinafter the "Appellant"); 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 20, 2012; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; 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 north side of East 11th Street between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the site has approximately 25'-6" of frontage of East 11th Street, a depth of 100 feet, and a total lot area of 2,550 sq. ft.; and

WHEREAS, the site is occupied by a five-story residential building with a height of approximately 58'-0" (the "Building"); a radio tower with a height of approximately 40'-0" is located on the rooftop of the Building (the "Radio Tower"); and

PROCEDURAL HISTORY

WHEREAS, on November 2, 2009 DOB issued Notice of Violation No. 34805197M charging work without a permit for the Radio Tower contrary to Administrative Code Section 28-105.1; the violation was sustained by an Administrative Law Judge of the Environmental Control Board on October 26, 2010; and

WHEREAS, on or about November 30, 2009, the Appellant filed Job Application No. 120213081 for a permit to legalize the Radio Tower, and on September 30, 2010 DOB issued Permit No. 120213081-01-AL for the Radio Tower; and

WHEREAS, on or about December 16, 2010, DOB reexamined the application and determined that it was approved in error contrary to the Zoning Resolution and on January 13, 2011, DOB issued an Intent to Revoke Approval(s) and Permit(s), Order(s) to Stop Work Immediately letter with an objection that "Proposed antenna is not accessory to the function or principal use of the building"; on or about February 9, 2011, a stop work order was served upon the Appellant and the Radio Tower permit was revoked; and

WHEREAS, on July 12, 2011, DOB denied the Appellant's request to reinstate the permit and rescind the stop work order; the July 12, 2011 determination was renewed by DOB on April 10, 2012, and forms the basis of the Final Determination; and

RELEVANT ZONING RESOLUTION PROVISIONS

WHEREAS, the Appellant and DOB cite the following Zoning Resolution provisions, which read in pertinent part:

> ZR § 12-10 (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) . . .; 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# . . .

An #accessory use# includes…

(16) #Accessory# radio or television towers…

* * *

ZR § 22-21 (By the Board of Standards and Appeals)

In the districts indicated, the following #uses# are permitted by special permit of the Board of Standards and Appeals, in accordance with standards set forth in Article VII, Chapter 3…

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

Radio or television towers, non-#accessory#...

* * *

ZR § 73-30 (Radio or Television Towers)

In all districts, the Board of Standards and Appeals may permit non-#accessory# radio or television towers, provided that it finds that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant makes the following primary arguments: (1) the Radio Tower meets the ZR § 12-10 definition of accessory use; and (2) the Zoning Resolution is preempted by federal law and regulation from precluding international communications, and to the extent DOB maintains the Radio Tower is impermissible due to its height, DOB's interpretation is subject to limited preemption because it has not "reasonably accommodated" the Appellant's needs; and

1. Accessory Use

WHEREAS, as to the definition of accessory use, the Appellant asserts that the proposed Radio Tower meets the criteria as it is: (a) located on the same zoning lot as the principal use (the residential building), (b) the Radio Tower use is incidental to and customarily found in connection with a residential building, and (c) the Radio Tower is in the same ownership as the principal use and is proposed for the benefit of the owner of the Building; and

WHEREAS, the Appellant notes that DOB acknowledges that the principal use of the site is as a residential building, and that the owner maintains a residence at the Building; and

WHEREAS, the Appellant states that the owner has been a licensed "ham" radio operator since 1957, and is in frequent contact with other amateur radio operators around the world; and

WHEREAS, the Appellant notes that the owner is an amateur radio operator (amateur radio license No. W2JGQ) and is not engaged in a commercial use of the Radio Tower; and

WHEREAS, the Appellant submitted a needs analysis prepared by an engineer which concludes that, based on the owner's desired use of the ham radio to engage in communication to Israel and the Middle East, "a significantly taller tower should be utilized to provide optimal coverage," however the proposed Radio Tower with a height of 40 feet "is an acceptable compromise adequate for moderate needs of the amateur radio operator when measured against commonly used engineering metrics;" and

WHEREAS, the Appellant cites to 7-11 Tours, Inc. v. Board of Zoning Appeals of Town of Smithtown, 454 N.Y.S.2d 477, 478 (2d Dept. 1982) for the following discussion of the definition of "accessory use":

> "[I]ncidental", when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant…The word "customarily" is even more difficult to apply. Courts have often held that the use of the word "customarily" places a duty on the board or court to determine whether it is usual to maintain the use in question in connection with the primary use. The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use; and

WHEREAS, the Appellant asserts that the owner's use of the Radio Tower is clearly that of a hobbyist engaged in an avocation from his own residence, and that the owner's hobby as an amateur ham radio operator is both "attendant to" and "commonly, habitually, and by long practice reasonably associated with" the primary use of the Building as a residence; and

WHEREAS, as to whether amateur radio antennas are customarily found in New York City, the Appellant notes that the FCC website lists the names of all amateur radio licensees in the country, and as of May 7, 2012 the site listed a total of 1,086 active amateur radio licensees in Manhattan, while at least 2,235 additional licensees are located in the other four boroughs of New York City; and

WHEREAS, the Appellant asserts that almost all of the licenses reflected on the FCC website are issued to natural persons who enjoy long distance amateur radio communications from their residences; thus, the outdoor radio antennas are commonly in use by radio amateurs in New York City to support international communications; and

WHEREAS, in support of its position that ham radio antennas are customarily found in connection with residences, the Appellant cites to the Oxford English Dictionary definition of "customarily" as "in a way that follows customs or usual practices; usually"; and

WHEREAS, the Appellant contends that a use can be "customary" without being very common, such as swimming pools and tennis courts, which are undoubtedly "customarily" found as accessories to residences, regardless of the frequency with which they so appear; and

WHEREAS, the Appellant argues that it is clear that ham radio antennas are "usually" found as accessories to residences, in that when such antennas are found, they are found appurtenant to residences, and the fact that amateur

radio towers may be a relatively rare use is irrelevant to the consideration of whether such use is accessory to a residence; and

WHEREAS, at the Board's request and to support its contention that ham radio antennas are "customarily found in connection with" a residence, the Appellant submitted a series of photographs depicting similar antennas maintained throughout New York City, which provides the borough, underlying zoning district, size, and use group of the residence to which the antenna is accessory, and where available and to the extent possible to obtain such information, it also provides the height of the antennas pictured; and

WHEREAS, specifically, the Appellant submitted photographs of nine other antennas found in Manhattan, the Bronx, Brooklyn, and Queens, which are associated with various types of buildings, from single-family homes to 19-story apartment buildings, and which are found in residential, commercial and manufacturing zoning districts; and

WHEREAS, the Appellant asserts that despite the diversity amongst the buildings depicted, they are all residences, and the ham radio antennas attached to each residence is an accessory use to the main use of the building as a residence; and

WHEREAS, the Appellant represents that the antennas pictured in the photograph array are comparable in size to the Radio Tower, and in some cases, larger than the Radio Tower; and

WHEREAS, the Appellant further represents that there are many more such antennas annexed to other residences throughout the City, however, given the time constraints of the Board's hearing process and the reluctance of some ham radio operators to expose themselves to possible enforcement action by DOB, the Appellant provided the aforementioned photographs as representative of the type of antenna systems found throughout the City; and

WHEREAS, the Appellant also submitted an array of 23 photographs of antennas from other jurisdictions, many of which are significantly taller than the subject Radio Tower with a height of 40 feet, which the Appellant argues reflects that the subject Radio Tower is modest in size and scope; and

WHEREAS, the Appellant also submitted a copy of a memorandum from then-DOB Commissioner Bernard J. Gillroy, dated November 22, 1955, on the subject of radio towers (the "1955 Memo"), which states that "[n]umerous radio towers have been erected throughout the city for amateur radio stations," and further states that such towers "may be accepted in residence districts as accessory to the dwelling;" and

WHEREAS, the Appellant contends that the 1955 Memo serves as evidence that amateur radio towers were numerous throughout New York City and DOB customarily found them as accessory to residences since at least 1955; and

2. Preemption

WHEREAS, the Appellant argues that the Zoning Resolution is preempted by federal law and regulation from precluding international communications, and to the extent DOB maintains the Radio Tower is impermissible due to its height, DOB's interpretation of the Zoning Resolution as it applies to the site is subject to limited preemption because DOB has not "reasonably accommodated" the owner's needs; and

WHEREAS, the Appellant states that federal laws and FCC regulations strongly favor the maintenance of ham radio equipment such as the Radio Tower, and pre-empt local ordinances which prohibit the maintenance of such equipment, either on their face or as applied; and

WHEREAS, specifically, the Appellant asserts that FCC Opinion and Order PRB-1, Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, 101 FCC 2d 952, 50 Fed. Reg. 38813 (Sept. 25, 1985) ("PRB-1"), requires local authorities to reasonably accommodate amateur radio; and

WHEREAS, the Appellant notes that PRB-1 was codified as a regulation of the FCC at 47 CFR § 97.15(b)(2006), which states:

> Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. See PRB-1, 101 FCC 2d 952 (1985) for details.); and

WHEREAS, the Appellant further notes that PRB-1 explains that antenna height is important to effective radio communications as follows:

> Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in…Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose; and

WHEREAS, the Appellant states that the needs analysis it submitted reflects that the proposed Radio Tower with a height of 40 feet is the minimum bulk necessary to accommodate the owner's desired communications; and

WHEREAS, accordingly, the Appellant argues that DOB's position that the Radio Tower is impermissible as an accessory use due to its height fails to reasonably accommodate the international amateur service communications that the owner desires to engage in, and therefore DOB's position is subject to the limited preemption

of PRB-1 and 47 CFR § 97.15(b), and is preempted as applied; and

DOB'S POSITION

WHEREAS, DOB makes the following primary arguments in support of its revocation of the Permit for the Radio Tower: (1) the Radio Tower is not accessory to the principal residential use and therefore requires a special permit from the Board as a non-accessory radio tower; and (2) the Zoning Resolution provides a "reasonable accommodation" in accordance with federal law; and

WHEREAS, DOB asserts that pursuant to ZR § 22-21, in R8B zoning districts, "radio or television towers, non-accessory" are permitted only "by special permit of the Board of Standards and Appeals," and because no special permit has been issued for the Appellant's radio tower, it must satisfy the ZR § 12-10 definition of "accessory use"; and

WHEREAS, DOB contends that the Radio Tower does not satisfy the ZR § 12-10 definition of accessory use primarily because it does not satisfy the criteria that such a radio tower be "customarily found in connection with" the principal use of the site as a residence; and

WHEREAS, specifically, DOB argues that the proposed Radio Tower is significantly taller and more elaborate than the traditional accessory radio towers (or "aerials") that have been found atop residences for decades in New York City, which are typically used to receive remotely broadcast television and/or AM/FM signals for at-home private listening or viewing and are usually 12 feet or less in height and often affixed directly to chimneys or roof bulkheads; and

WHEREAS, DOB distinguishes traditional "aerials" with the proposed Radio Tower which extends 40 feet above the roof of the Building and must be secured to the roof at multiple points by one-half inch steel wires; and

WHEREAS, DOB further distinguishes the proposed Radio Tower because it functions differently than traditional aerials in that it both receives and transmits radio signals (as opposed to traditional aerials which merely receive radio signals) and is powerful enough to communicate with people living in South America and the Middle East; and

WHEREAS, accordingly, DOB considers the proposed Radio Tower to be categorically distinct from the aerials that are "customarily found in connection with" New York City residences, and argues that the plain text of the Zoning Resolution does not support its use as accessory to the principal use of the zoning lot as a residence; and

WHEREAS, DOB asserts that while the Appellant has cited a number of cases from other states that support the general notion that ham radio use may be permitted as accessory to a residence, the subject case is controlled by the Court of Appeals decision in Matter of New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413 (1998); and

WHEREAS, DOB notes that in Botanical Garden the Board agreed with DOB's determination that a 480-ft. radio tower on the campus of Fordham University adjacent to the New York Botanical Garden was a permitted accessory use for an educational institution that operated a radio station, finding that the radio tower was clearly incidental to and customarily found in connection with an educational institution; and

WHEREAS, DOB states that, in upholding the Board's determination, the Court of Appeals explained that there was "more than adequate evidence to support the conclusion that [the operation of a 50,000 watt radio station with a 480-ft. radio tower] is customarily found in connection with a college or university" and articulated the following standard for determining whether a use is accessory under the Zoning Resolution:

> [w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question. Botanical Garden, 91 N.Y.2d at 420; and

WHEREAS, DOB notes that the Court also stressed that the accessory use analysis is fact-based and that "[t]he issue before the [Board] was: is a station of this particular size and power, with a 480-foot tower, customarily found on a college campus or is there something inherently different in this radio station and

tower that would justify treating it differently" Botanical Garden, 91 N.Y.2d at 421; and

WHEREAS, DOB argues that, based on the standard set forth in Botanical Garden, the proposed Radio Tower is not permitted as accessory to the Building; and

WHEREAS, specifically, DOB asserts that the Radio Tower is incompatible with the principal use and the surrounding area, in that it adds an additional 40 feet of height to the Building and its supporting wires and structures, which are permanently affixed, occupy a substantial portion of the roof; thus, when measured by its size in relation to the Building, the Radio Tower is not clearly incidental; and

WHEREAS, DOB further asserts that the Radio Tower is out of context with the subject residential neighborhood, as it is located on an interior lot situated mid-block in a contextual, medium-density residential district on a narrow street of a quintessential East Village block on which no other buildings have aerials approaching the size and complexity of the proposed Radio Tower; and

WHEREAS, DOB argues that, even if the proposed Radio Tower were considered "clearly incidental" to the residential building, the Appellant has also not demonstrated that the Radio Tower of this size and power is "customarily found in connection with" New York City residences; and

WHEREAS, as to the photographs and evidence submitted by the Appellant of other radio towers within New York City, DOB asserts that they do not constitute sufficient evidence to establish that a rooftop radio tower with a height of 40 feet is customarily found in connection with the principal use of a residential building located in an R8B zoning district; and

WHEREAS, specifically, DOB states that of the nine

photographs provided by the Appellant, five photographs show rooftop radio towers which are not comparable to the subject Radio Tower because they are located on buildings which are 11 to 19 stories tall, and none of which appear to be close to the height of the residential building below the tower; and

WHEREAS, DOB further states that of the remaining four photographs that show radio towers that are located on or near buildings less than 11 stories, only one is located on the roof of a building and that radio tower appears to be approximately half the height of the two-story dwelling; the other three photographs do not appear to show radio towers located on the roofs of the buildings, and the only one of those three that appears to be more than 40 feet in height is a stand-alone radio tower with a height of 80 feet associated with a two-story residential building, and DOB represents that it would not consider such a radio tower to be an accessory use; and

WHEREAS, DOB contends that in order for the subject Radio Tower to satisfy the "customarily found in connection with" criteria, it is not sufficient to provide evidence of other radio towers with similar heights as the subject Radio Tower; rather, the Appellant would have to provide evidence that it is customary to have a radio tower with a height of 40 feet on the rooftop of a four-story building of similar height as the Building, within an R8B zoning district; and

WHEREAS, accordingly, DOB asserts that the evidence submitted by the Appellant is insufficient to establish that a rooftop radio tower with a height of 40 feet located on a four-story residential building in an R8B zoning district is customary, and therefore it does not meet the ZR § 12-10 definition of accessory use; and

WHEREAS, DOB argues that the evidence submitted by the Appellant reflects a similarity between the facts in the subject case and those of BSA Cal. No. 14-11-A (1221 East 22nd Street, Brooklyn), which involved a challenge to DOB's denial of a permit for an accessory cellar that was nearly as large as the single-family residence to which it was to be appurtenant; and

WHEREAS, DOB asserts that the Board affirmed DOB's denial in that case, in part, because the appellant failed to demonstrate that such oversized, non-habitable cellars were customarily found in connection with residences, and that in the subject case the Appellant's evidence similarly fails to demonstrate that a rooftop radio tower with a height of 40 feet is customarily found on a four-story residential building; and

WHEREAS, by letter dated November 8, 2012, the Department of City Planning ("DCP") states that it expresses no opinion regarding the merits of the subject case but requests that the Board take the height of the antenna into account in determining whether it is accessory, as it did in BSA Cal. No. 14-11-A, because the size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use; and

WHEREAS, as to the 1955 Memo submitted by the Appellant, DOB asserts that the 1955 Memo merely deals with the permitting safety requirements, and specifications for the construction of radio towers, and does not indicate that radio towers are necessarily accessory uses to residences; and

WHEREAS, DOB acknowledges that the Zoning Resolution is clear that some radio towers are accessory, however it is also clear that some radio towers are not accessory, and the 1955 Memo does not state which type of radio towers could be considered accessory or non-accessory; and

WHEREAS, in response to the Appellant's preemption argument, DOB contends that the Zoning Resolution does provide a "reasonable accommodation" in accordance with federal law; and

WHEREAS, DOB asserts that PRB-1 is a declaratory ruling issued by the FCC requiring that "local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications;" and

WHEREAS, DOB contends that its interpretation of the Zoning Resolution to prohibit the proposed radio tower as accessory to the subject residence as-of-right was proper and consistent with PRB-1, and that it has reviewed the proposal at the highest level and determined that it had no authority to allow the radio tower because a special permit is required pursuant to ZR §§ 22-21 and 73-30; and

WHEREAS, DOB further contends that ZR § 73-30, which authorizes the radio tower by special permit, contemplates the sort of fact-finding and analysis required by PRB-1; accordingly the Zoning Resolution as interpreted by DOB is consistent with the FCC's "reasonable accommodation" requirement; and

THE APPELLANT'S RESPONSE

WHEREAS, in response to the arguments set forth by DOB, the Appellant asserts that DOB's reliance on Botanical Garden and BSA Cal. No. 14-11-A are misplaced; and

WHEREAS, as to Botanical Garden, the Appellant first notes that that case involved a radio tower that was accessory to an educational institution rather than an amateur radio tower that is accessory to a residence, and that to the extent that case is comparable to the subject case, a clear reading shows that it actually supports the Appellant's position; and

WHEREAS, at the outset, the Appellant states that in Botanical Garden, DOB, the Board, the Supreme Court, the Appellate Division, and the Court of Appeals all found that the Fordham antenna was an accessory use, using arguments similar to those advanced by the Appellant; and

WHEREAS, the Appellant notes that, in upholding the lower courts in Botanical Garden, the Court of Appeals rejected the appellant's contention that it is not customary for universities to maintain radio towers of such height, stating that "[t]his argument ignores the fact that the Zoning Resolution classification of accessory uses is based upon functional rather than structural specifics." Botanical Garden, 91 N.Y.2d at 421; and

WHEREAS, the Appellant contends that Botanical Garden therefore reflects that DOB's contention that the Radio Tower is not an accessory use because of its size

conflates use regulation and bulk regulation in a way that is not contemplated by the Zoning Resolution; and

WHEREAS, the Appellant asserts that Botanical Garden also supports its position that the Radio Tower is an accessory use because it is "customarily found in connection with" the principal use, as the Court of Appeals observed:

> The specifics of the proper placement of the station's antenna, particularly the height at which it must be placed, are dependent on site-specific factors such as the surrounding geography, building density and signal strength. This necessarily means that the placement of antennas will vary widely from one radio station to another. Thus, the fact that this specific tower may be somewhat different does not render the Board's determination unsupported as a matter of law, since the use itself (i.e., radio operations of this particular size and scope) is one customarily found in connection with an educational institution. Moreover, Fordham did introduce evidence that a significant number of other radio stations affiliated with educational institutions in this country utilize broadcast towers similar in size to the one it proposes. Botanical Garden, 91 N.Y.2d at 422; and

WHEREAS, finally, the Appellant notes that in Botanical Garden the Court of Appeals recognized that, unlike other examples of accessory uses listed in ZR § 12-10, there is no height restriction associated with accessory radio towers and that it would be inappropriate for DOB to arbitrarily restrict the height of such radio towers, as the Court stated that:

> Accepting the Botanical Garden's argument would result in the judicial enactment of a new restriction on accessory uses not found in the Zoning Resolution. Zoning Resolution § 12-10 (accessory use) (q) specifically lists "[a]ccessory radio or television towers" as examples of permissible accessory uses (provided, of course that they comply with the requirements of Zoning Resolution § 12-10 [accessory use] [a], [b] and[c]). Notably, no height restriction is included in this example of a permissible accessory use. By contrast, other examples of accessory uses contain specific size restrictions. For instance, Zoning Resolution § 12-10 defines a "home occupation" as an accessory use which "[o]ccupies not more than 25 percent of the total floor area and in no even more than 500 square feet of floor area" (§ 12-10 [accessory use][b][2]). The fact that the definition of accessory radio towers contains no such size restrictions supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of need. Botanical Garden, 91 N.Y.2d at 422-23; and

WHEREAS, accordingly, the Appellant asserts that Botanical Garden reflects that there is no "bright line" height restriction in the Zoning Resolution beyond which an accessory antenna becomes non-accessory, and since there is no law, rule, or regulation which permits DOB to deem the Radio Tower non-accessory on the grounds of its purportedly excessive height, DOB thus makes an error of law in trying to forbid the Appellant's maintenance of the Radio Tower as non-accessory in the absence of a guiding statute; and

WHEREAS, the Appellant contends that DOB's reliance on BSA Cal. No. 14-11-A to support the position that size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use is similarly misguided; and

WHEREAS, specifically, the Appellant notes that in that case, in a discussion of the Botanical Garden case, the Board expressly rejected the use of size as a criterion in evaluating whether radio antennas are accessory uses, noting that "size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers…"; and

WHEREAS, the Appellant also distinguishes BSA Cal. No. 14-11-A from the subject case in that in the former there was an attempt to promulgate and follow universally applicable standards for determining accessory use in cellars, while in the subject case DOB's determination is limited to this single antenna and not based on any articulated standard; and

WHEREAS, finally, the Appellant argues that BSA Cal. No. 14-11-A is only implicated if it is conceded that the Radio Tower is somehow "too big" for the Building; however, the Appellant asserts that the Radio Tower is in no way "too big" for the site, as it is a standard-sized, if not smaller than standard-sized, amateur radio antenna chosen specifically for the types of communications that the amateur operator desires to engage in, the intended distance of communications, and the frequency band; and

WHEREAS, the Appellant also refutes DOB's contention that, because the Radio Tower both receives and transmits signals (as opposed to merely receiving signals) the subject Radio Tower is somehow not an accessory use; and

WHEREAS, the Appellant asserts that there is absolutely no support in any statute for this proposition, and the Zoning Resolution does not treat antennas differently depending on whether or not they transmit; and

CONCLUSION

WHEREAS, the Board has determined that the subject Radio Tower satisfies the ZR § 12-10 definition of an accessory use to the subject four-story residential building, such that the maintenance of the Radio Tower at the site does not require a special permit from the Board under ZR § 73-30; and

WHEREAS, specifically, the Board finds that the Radio Tower meets the criteria of an accessory use to the residence because it is: (a) located on the same zoning lot as the principal use (the residential building), (b) the Radio Tower use is clearly incidental to and customarily found in connection with a residential building, and (c) the Radio

Tower is in the same ownership as the principal use and is proposed for the benefit of the owner of the Building; and

WHEREAS, the Board agrees with the Appellant that the owner's hobby as an amateur ham radio operator is clearly incidental to the principal use of the site as a residence, and is not persuaded by DOB's argument that the Radio Tower is not clearly incidental to the Building merely because the height of the Radio Tower (40 feet) is comparable to that of the Building (58 feet); and

WHEREAS, the Board finds that the Appellant has submitted sufficient evidence reflecting that, when amateur radio antennas are found, they are customarily found appurtenant to residences, and agrees with the Appellant that the fact that amateur radio antennas are not a common accessory use is not dispositive as to whether or not such use is accessory to a residential building; and

WHEREAS, as to DOB's contention that the subject Radio Tower does not qualify as an accessory use because it functions differently than traditional aerials in that it both receives and transmits radio signals (as opposed to traditional aerials which merely receive radio signals), the Board agrees with the Appellant that the fact that the Radio Tower transmits radio signals is of no import as to whether or not it qualifies as an accessory use; and

WHEREAS, the Board notes that DOB has acknowledged that amateur ham radio antennas can qualify as accessory uses, and since all ham radio operators by definition both receive and transmit radio signals, it appears that DOB has accepted certain amateur radio towers which both receive and transmit radio signals as accessory uses; and

WHEREAS, as to DOB's contention that the subject Radio Tower does not qualify as an accessory use because it is significantly taller and more elaborate than traditional accessory radio towers, the Board finds that the Appellant has submitted sufficient evidence to establish that radio towers similar to the subject Radio Tower are customarily found in connection with residential buildings in New York City; and

WHEREAS, specifically, the Appellant submitted photographs of nine other ham radio towers maintained throughout the City, and the Board notes that several of the photographs depict radio towers similar in size to the subject Radio Tower; and

WHEREAS, the Board further notes that the Appellant was able to ascertain the height of five of the radio towers for which it submitted photographs, which include: (1) a radio tower with a height of approximately 40 feet located on the rooftop of an 11-story residential building with ground floor commercial use within an M1-5M zoning district in Manhattan; (2) a radio tower with a height of approximately 50 feet located on the rooftop of a 13-story residential building with ground floor commercial use within an R10-A zoning district in Manhattan; (3) a radio tower with a height of approximately 28 feet located on the rooftop of a nine- story residential building within an R8B zoning district in Manhattan; (4) a radio tower with a height of approximately 80 feet located in the backyard of a two-story residential building within an R4-1 zoning district in Brooklyn; and (5) a radio tower with a height of 15 feet located on the rooftop of a two-story residential building within an R2A zoning district in Queens; and

WHEREAS, the Board considers the photographs submitted by the Appellant to be a representative sample of the amateur ham radio antennas maintained by the approximately 3,321 licensed ham radio operators located throughout the City, and finds that the photographs submitted to the Board, in particular those of the rooftop radio towers in Manhattan with heights of 40 feet and 50 feet, respectively, serve as evidence that radio towers similar in height to the subject Radio Tower with a height of 40 feet are customarily found in connection with residential buildings in the City; and

WHEREAS, the Board is not convinced by DOB's argument that these radio towers cannot be relied upon as evidence that radio towers similar in size to the subject Radio Tower are customarily found in connection with residential buildings merely because they are located on taller buildings than the subject Building; and

WHEREAS, the Board does not find the height of the building upon which a radio tower is to be located to be the controlling factor as to whether or not that radio tower is deemed to be an accessory use; and

WHEREAS, as to DOB's contention that the subject case is controlled and consistent with Botanical Garden, the Board acknowledges that the case reflects that it is appropriate to take the overall character of the particular area into consideration when determining whether an accessory use is clearly incidental to and customarily found in connection with the principal use, however, the Board agrees with the Appellant that the facts of the case actually weigh in favor of the Appellant's position; and

WHEREAS, in particular, the Board notes that DOB is requesting that the Board rely on Botanical Garden to support the position that the subject Radio Tower is not an accessory use, despite the fact that the ultimate holding in Botanical Garden was that the radio tower in question qualified as an accessory use based on similar arguments advanced by the Appellant in the subject case; and

WHEREAS, the Board agrees with the Appellant that the Court's determination that "the Zoning Resolution classification of accessory uses is based upon functional rather than structural specifics" Botanical Garden, 91 N.Y.2d at 421, and "[t]he fact that the definition of accessory radio towers contains no such size restrictions supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of need" Botanical Garden, 91 N.Y.2d at 422-23, weighs in favor of the Radio Tower as an accessory use, as the Appellant submitted a needs analysis which reflects that the antenna height of 40 feet is based upon an individualized assessment of the owner's needs to communicate with Israel and the Middle East and is the minimum necessary height required for the ham radio tower to function properly in communicating with these areas of the world; and

WHEREAS, the Board also does not find support in Botanical Garden for DOB's contention that the Radio Tower

is non-accessory merely because there are no similarly-sized radio towers located on similarly-sized buildings in the immediately surrounding block, as in that case Fordham was the only university in the surrounding area and the Court supported the Board's consideration of the custom and usage of other universities which were not located near the site in reaching its determination that such radio antennas were customarily found as accessory uses to universities; and

WHEREAS, accordingly, the Board notes that while Botanical Garden set forth a standard that the overall character of the area should be taken into consideration in the accessory use analysis, the facts of that case itself reflect that such a standard does not require that there be an identical radio tower accessory to an identical building in the immediately surrounding area, as DOB appears to be requiring in the instant case; and

WHEREAS, the Board agrees with the Appellant that the fact that no other buildings on the immediate block have similar radio towers is not dispositive of whether the subject Radio Tower is an accessory use, and finds that the Appellant has submitted evidence that rooftop radio towers with heights of 40 feet are "customarily found in connection with" residential buildings in New York City; and

WHEREAS, as to BSA Cal. No. 14-11-A, the Board agrees with the Appellant that that case is also distinguishable from the subject case, as it was based on significantly different facts and in its decision the Board specifically noted that "size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers…"; and

WHEREAS, the Board further agrees with the Appellant that, unlike the subject case, BSA Cal. No. 14-11-A involved DOB's attempt to promulgate and follow a universally applicable standard for determining whether a cellar was an accessory use, which has since been memorialized in Buildings Bulletin 2012-008; and

WHEREAS, specifically, the Board notes that in BSA Cal. No. 14-11-A, DOB sought to apply a single objective standard to all cellars in every zoning district, while in the subject case DOB is proposing to make a case-by-case analysis of each amateur ham radio tower that is constructed in the City and make a discretionary determination as to whether it is accessory based upon factors such as the height of the radio tower, the height of the associated building, the prevalence of similar radio towers on similar buildings in the immediately surrounding area, the character of the surrounding area, and other subjective criteria; and

WHEREAS, the Board agrees with the Appellant that DOB has provided no provision of the Zoning Resolution or any other law, rule, or regulation which sets forth a standard for finding the subject Radio Tower non-accessory solely based upon its height; and

WHEREAS, the Board considers the lack of an objective standard for determining whether an amateur ham radio tower of a given height is accessory to be problematic and prone to arbitrary results, and while the Board does not make a determination as to whether amateur ham radio towers of any height may qualify as accessory, it recognizes that establishing a bright line standard for the permissible height of accessory radio towers may require an amendment to the Zoning Resolution or the promulgation of a Buildings Bulletin, as was the case in BSA Cal. No. 14-11-A; and

WHEREAS, the Board agrees with DCP that the size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use; however, it finds that in the case of amateur radio towers, unlike cellars and certain other uses, there is no articulated standard to guide DOB in determining at what height a particular radio tower becomes non-accessory; and

WHEREAS, as to the Appellant's argument that in not accepting the Radio Tower as an accessory use DOB has failed to "reasonably accommodate" the owner's needs contrary to federal laws and regulations, the Board recognizes that federal laws and FCC regulations favor the maintenance of ham radio equipment such as the Radio Tower and pre-empt local ordinances which prohibit the maintenance of such equipment; and

WHEREAS, however, because the Board has determined that the subject Radio Tower satisfies the ZR § 12-10 definition of accessory use, the Board deems it unnecessary to make a determination on the preemption issue in order to reach a decision on the merits of the subject appeal; therefore, the Board finds it appropriate to limit the scope of its determination accordingly; and

WHEREAS, the Board concludes that, based upon the above, the Radio Tower satisfies the ZR §12-10 criteria for an accessory use to the subject residential building.

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated April 10, 2012, is hereby granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

The resolution has been revised to correct the amateur radio license No. which read "WTJGQ***" now reads "***W2JGQ***". Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**

***CORRECTION**

This resolution adopted on December 11, 2012, under Calendar No. 232-10-A and printed in Volume 97, Bulletin No. 51, is hereby corrected to read as follows:

232-10-A
APPLICANT – OTR Media Group, Incorporated, for 4th Avenue Loft Corporation, owner.
SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings' denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 zoning district.
PREMISES AFFECTED – 59 Fourth Avenue, 9th Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.
COMMUNITY BOARD #3M
ACTION OF THE BOARD – Appeal granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the First Deputy Commissioner of the Department of Buildings ("DOB") on November 23, 2010 (the "Final Determination"), which states, in pertinent part:

> The request to establish legality for a nonconforming advertising sign on the subject premises is hereby denied.
>
> The evidence submitted fails to establish that a lawful advertising sign was established and not discontinued as per 52-831; and

WHEREAS, a public hearing was held on this appeal on August 13, 2011 after due notice by publication in *The City Record*, with a continued hearing on October 23, 2012, and then to decision on December 11, 2012; 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 east side of Fourth Avenue, between East Ninth Street and East Tenth Street, within a C6-2A zoning district; and

WHEREAS, the site is occupied by an eight-story mixed-use commercial/residential building (the "Building"); the southern façade of the Building (the "Wall") has been used to display signage since approximately 1900, including a painted advertising sign on the upper corner of the Wall (the "Sign"), which is the subject of this appeal; and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign (the "Appellant"); and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

PROCEDURAL HISTORY

WHEREAS, on January 26, 2009, DOB issued a stop work order for "outdoor advertising company sign on display structure without permit…"; and

WHEREAS, on May 24, 2010, the Appellant filed a permit application (Job No. 120353606) with DOB for a 1,000 sq. ft. (25'-0" by 40'-0") non-illuminated painted advertising wall sign; the application stated that the sign complied with the non-conforming advertising sign regulations; and

WHEREAS, on June 8, 2010, DOB denied the permit application, finding that there was insufficient evidence that the sign was lawfully established and not discontinued; and

WHEREAS, on October 23, 2010, the Appellant filed a Zoning Resolution Determination Form ("ZRD1") with the Manhattan Borough Office requesting an override of all objections and a determination that the Sign is permitted as a legal non-conforming advertising sign; and

WHEREAS, on November 23, 2010, DOB issued the Final Determination denying the Appellant's ZRD1 request; and

WHEREAS, the Appellant initially sought a determination from the Board that signage located on the lower portion of the Wall was also permitted as a legal non-conforming advertising sign; however, the Appellant did not pursue its arguments with respect to the lower portion of the Wall; 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)*
> 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

1 DOB notes that the Final Determination improperly cites ZR § 52-83 as the basis for the denial, and that ZR §§ 52-11 and 52-61 should have been cited, as DOB's determination was that insufficient evidence had been submitted to demonstrate that a painted wall advertising sign was lawfully established at the subject site and never discontinued for a period of two or more years.

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

THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C6-2A zoning district and that the Sign is not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, the Appellant 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, in this case, the Appellant must also show that advertising signage existed on the Wall prior to June 28, 1940, the date the 1916 Zoning Resolution was amended to restrict advertising signage in the district where the subject site is located; and

WHEREAS, accordingly, DOB asserts that as per the Zoning Resolution, the Appellant must establish that the use was lawfully established before it became unlawful, by zoning, on June 28, 1940 as well as on December 15, 1961, the date the 1961 Zoning Resolution was enacted, and it must have continued without any two-year period of discontinuance since December 15, 1961; and

WHEREAS, thus, the Board notes that the standard to apply to the subject sign is (1) the sign existed lawfully on June 28, 1940 and December 15, 1961, and (2) that the use did not change or cease for a two-year period since December 15, 1961. See ZR §§ 12-10, 52-61; and

LAWFUL ESTABLISHMENT

WHEREAS, the Appellant states that a sign has existed on the Wall since at least 1900, originally as a painted advertising sign; and

WHEREAS, the Appellant contends that advertising signage existed on the Wall prior to June 28, 1940, the date the 1916 Zoning Resolution was amended to define and distinguish "advertising" signs from "accessory" signs; and

WHEREAS, the Appellant states that while the 1940 text amendment restricted advertising signage in the district where the subject site is located, by that time the Wall had been used to display signage, including advertising signage, for approximately 40 years; and

WHEREAS, the Appellant asserts that the Wall continued to be used for advertising signage prior to and after December 15, 1961; and

WHEREAS, in support of the existence of advertising signage on the Wall prior to June 28, 1940, the Appellant submitted photographs, copies of the business directory for the City of New York, and newspaper/magazine articles; and

WHEREAS, in support of the existence of the signage on the Wall prior to and since December 15, 1961, the Appellant submitted photographs reflecting that a "Hebrew National" painted advertising sign was located on the upper portion of the Wall from at least June 1, 1960 through 1965 or later; and

WHEREAS, accordingly, the Appellant states that a painted advertising sign was lawfully established on the upper portion of the Wall prior to the enactment of the 1961 Zoning Resolution; and

WHEREAS, DOB states that it accepts the Appellant's photographic and documentary evidence of the existence of advertising signage prior to June 28, 1940 through 1960; and

WHEREAS, DOB further states that it accepts the Appellant's evidence demonstrating the "Hebrew National" painted advertising sign existed prior to 1961 through 1965; and

WHEREAS, accordingly, DOB agrees that an advertising sign was lawfully established at the site prior to December 15, 1961 and lawfully existed on December 15, 1961, and therefore the owner of the site achieved a right to maintain a painted advertising sign in the same location and position of the "Hebrew National" sign, provided that such sign was not discontinued for a period of two or more years; and

CONTINUITY OF THE SIGN

WHEREAS, at the outset, DOB states that the Appellant has submitted sufficient evidence to demonstrate continuity of the non-conforming advertising sign on the top portion of the Wall from 1961 through 1992 and from 2005 until the filing of subject appeal; and

WHEREAS, accordingly, the Board finds it appropriate to limit its review of the continuity of the Sign to the period from 1992 through 2005, which is the only time period for which DOB has alleged a discontinuance of the Sign for a period in excess of two years, contrary to ZR § 52-61; and

- Appellant's Position

WHEREAS, the Appellant submitted photographs, leases, and letters as primary evidence to establish the continuity of use of the Sign between 1992 and 2005; and

WHEREAS, the Appellant also submitted an affidavit from Patrick Curley, a resident of the Building and President of the 4th Avenue Loft Corporation stating that a sign has been located on the south facing wall from 1978 continuously through the present (the "Curley Affidavit"), and an affidavit from Chris Mitrofanis, the owner of the adjacent retail establishment at 59 Fourth Avenue, stating that the upper wall has been used for advertising signs continuously from 1984 through 2009, with no two-year period of discontinuance

during that time (the "Mitrofanis Affidavit") (collectively, the "Affidavits"); and

WHEREAS, in support of the existence of the Sign in 1992, the Appellant submitted: (1) a photograph of a painted advertising sign for "Tower Records" on the upper portion of the Wall, along with evidence that the photograph was taken in approximately 1992; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1993, the Appellant submitted: (1) the 1992 photograph of the Tower Records advertising sign; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1994, the Appellant submitted: (1) the 1992 photograph of the Tower Records advertising sign; (2) an option agreement dated July 14, 1994 between the owner and Transportation Displays Incorporated/TDI ("TDI") granting the exclusive option for TDI to lease the south wall of the Building for the purpose of affixing advertising copy thereto for one year (the "1994 Option Agreement"); and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1995, the Appellant submitted: (1) a photograph showing the Building with the same painted advertising sign for "Tower Records" which it asserts was taken in June 1995 (the "Appellant's June 1995 Photograph"); (2) the 1994 Option Agreement; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1996, the Appellant submitted: (1) the June 1995 Photograph of the "Tower Records" sign; (2) the 1994 Option Agreement; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1997, the Appellant submitted: (1) a photograph showing a sign with illegible copy on the upper portion of the Wall, dated October 1997; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1998, the Appellant submitted: (1) the 1997 photograph; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1999, the Appellant submitted: (1) a photograph showing an advertising sign for "Fetch-O-Matic" on the upper portion of the Wall, along with evidence that the photograph was taken in 1999 or 2000 (the "1999/2000 Fetch-O-Matic Photograph"); and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2000, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) an October 6, 2000 letter from Vista Media Group, Inc., stating that it assumed the lease rights and obligations under the lease with TDI/Outdoor Systems/Infinity, and noting that the monthly lease payment was enclosed (the "October 6, 2000 Letter"); and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2001, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) the October 6, 2000 Letter; (3) a "Wallscape Rental Agreement" dated August 27, 2001 granting Vista Media Group, Inc., the use of a portion of the south wall of the property for the display of signage, for a term of five years, commencing on January 15, 2002 (the "August 27, 2001 Five-Year Lease"); and (4) the Affidavits; and

WHEREAS, in support of the existence of the Sign from 2002 through 2005, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) the August 27, 2001 Five-Year Lease; and (3) the Affidavits; and

WHEREAS, based on the above, the Appellant asserts that it has established that the Sign was continuously in existence as an advertising sign from 1992 through 2005, without any two-year period of discontinuance; and

- Department of Buildings' Position

WHEREAS, DOB asserts that there is insufficient evidence to show continuity of the non-conforming advertising sign on the upper portion of the Wall from 1992 through 2005; and

WHEREAS, DOB states that its Sign Enforcement Unit discovered a photograph dated 1995 on a website called nycsubway.org, which shows only the faded remnants of a painted sign on the upper portion of the Wall (the "1995 DOB Photograph"); and

WHEREAS, DOB further states that it is unable to reconcile the fact that the photograph allegedly taken in June 1995 submitted by the Appellant shows only a slightly faded painted advertising sign for Tower Records while the 1995 DOB Photograph shows a significantly faded painted advertising sign; and

WHEREAS, DOB notes that the Appellant's June 1995 Photograph was originally submitted at the Board's October 23, 2012 hearing as taken in June 1993, and asserts that if the photograph was taken in June 1995 then the Appellant is claiming that the Tower Records painted sign existed from 1987 to June 1995 with only slight fading, but from June 1995 until the time when the 1995 DOB Photograph was taken, the painted Tower Records advertising sign faded away significantly; and

WHEREAS, DOB notes that the 1997 photograph submitted by the Appellant similarly shows only the faded remnants of a painted sign on the upper portion of the Wall; and

WHEREAS, DOB states that its Sign Enforcement Unit also discovered a photograph on the flickr.com website dated September 10, 2001, which again shows only the faded remnants of a painted sign on the upper portion of the Wall (the "September 10, 2001 DOB Photograph"), which is consistent with the 1995 DOB Photograph and the Appellant's 1997 photograph; and

WHEREAS, DOB further states that the September 10, 2001 DOB Photograph shows the identical advertising sign on the lower portion of the Wall (entitled "Rivet Up") as existed on the Appellant's June 1995 Photograph; and

WHEREAS, DOB asserts that the September 10, 2001 DOB Photograph calls into question the authenticity of the Appellant's June 1995 Photograph because it is not plausible that an advertising copy for "Rivet Up" existed both in June 1995 and on September 10, 2001, particularly when there are several photographs between that time period which show a different advertising copy on the lower portion of the Wall; and

WHEREAS, DOB notes that the Appellant's June 1995

Photograph and the 1999/2000 Fetch-O-Matic Photograph are from "private collections" and that the Appellant has not submitted affidavits from the photographer attesting to the date they were taken, and indicates that as such they should be given less weight than the 1995 DOB Photograph and the September 10, 2001 DOB Photograph, both of which are publicly available; and

WHEREAS, accordingly, based on the photographs from 1995, 1997, and 2001 which DOB contends show only the faded remnants of a painted sign, and the questionable credibility of the Appellant's June 1995 Photograph, DOB concludes that the Appellant has failed to establish the continuity of the advertising sign on the upper portion of the Wall, as required by ZR § 52-61; and

APPELLANT'S RESPONSE TO DEPARTMENT OF BUILDINGS' ARGUMENTS

WHEREAS, in response to DOB's position regarding the authenticity of the Appellant's June 1995 Photograph, the Appellant asserts that 1995 is the most likely year that the photograph was taken; and

WHEREAS, the Appellant states that the date of this photograph was determined by scrutinizing the details of the photograph, including: (1) a scaffolding in front of the building located at 21 Astor Place (Block 545, Lot 7503), and that DOB records indicate that Permit No. 101007928 was approved on March 13, 1995 for a sidewalk shed at the site; (2) the building at 770 Broadway is boarded with a sidewalk shed and therefore the Kmart store that currently occupies the space, and which the Appellant established through a newspaper article opened in November 1996, had not yet opened; and (3) a 23-story building that was constructed on East 12th Street between Third Avenue and Fourth Avenue in 1996 is not visible in the photograph, and therefore was not constructed yet; and

WHEREAS, therefore, Appellant argues that the photograph was clearly taken prior to the 1996 opening of Kmart at 770 Broadway and the completion of the 23-story building, and the existence of the sidewalk shed at 21 Astor Place indicates that it was taken after March 13, 1995; and

WHEREAS, the Appellant states that the 1995 DOB Photograph shows that the lower portion of the Wall was occupied by an advertisement for an Old Navy store that the Appellant contends did not open until November of 1995, and therefore argues that the photograph was more likely taken in 1996 or later, because there are leaves on the trees in the photograph; and

WHEREAS, as to the September 10, 2001 DOB Photograph, the Appellant contends that the date on the photograph is likely incorrect, as the photograph is from flickr.com, and the dating system for the website relates to the date the photograph was uploaded, not necessarily the date it was taken; and

WHEREAS, the Appellant provides an example of a photograph on flickr.com that was taken in 1978 but for which the website states "this photo was taken on July 16, 2006"; therefore, the Appellant asserts that the date listed on the website for the photograph is not necessarily an accurate depiction of the date the photograph was taken; and

WHEREAS, as to DOB's concerns regarding the 1999/2000 Fetch-O-Matic Photograph, the Appellant submitted an affidavit from the photographer (the Mitrofanis Affidavit) which states that the photograph was taken in or around 1999, and the Appellant also submitted an August 29, 2000 press release for FetchOMatic.com, announcing an upcoming advertising campaign for the new company; and

WHEREAS, in response to DOB's indication that the photographs submitted by the Appellant should be given less weight because they are from private collections rather than publicly accessible sources, the Appellant notes that DOB Technical Policy and Procedure Notice 14/1988, which DOB issued to establish guidelines for DOB's review of whether a non-conforming use has been continuous, does not state that an appellant must provide publicly accessible photographs, or that such photographs are given more weight than photographs from private collections; and

WHEREAS, accordingly, the Appellant claims that the dates of the photographs it submitted from 1995, 1997, and 1999/2000 are credible, and along with the Affidavits, the 1994 Option Agreement, the 2000 Letter, and the 2001 Five-Year Lease, are sufficient to establish the continuous use of the advertising sign on the upper portion of the Wall from 1992 through 2005; and

CONCLUSION

WHEREAS, the Board finds that the Appellant has met its burden of establishing that the Sign was lawfully established prior to December 15, 1961 and has been in continuous use, without any two-year interruption since that date; and

WHEREAS, specifically, the Board finds the evidence submitted by the Appellant sufficient to establish the continuous use of the Sign on the upper portion of the Wall from 1992 through 2005, the only time period contested by DOB; and

WHEREAS, as to the evidence submitted by the Appellant to establish the continuous use of the Sign during this time period, the Board notes that the Appellant provided evidence in the form of photographs, leases, option agreements, letters, and affidavits, and that some combination of this evidence was provided for each year beginning from 1992 through 2005; and

WHEREAS, as to the credibility of the Appellant's June 1995 Photograph, the Board finds the Appellant's methodology for determining the date of the photograph compelling, in that it clearly was taken prior to 1996, and the presence of the sidewalk shed in front of the 21 Astor Place building, for which the Appellant found a permit was issued by DOB on March 13, 1995, indicates that it was likely taken in 1995; and

WHEREAS, the Board does not consider the fact that the Appellant originally presented the photograph at the Board's October 23, 2012 hearing as being taken in June 1993 to undermine the credibility of the photograph; and

WHEREAS, specifically, the Board notes that even if

the photograph was taken in June 1993, it still serves as relevant evidence of the continuity of the Sign, as it reflects that the same Tower Records sign that is shown in the 1992 photograph remained in place in 1993; and

WHEREAS, as to the 1995 DOB Photograph, the Board notes that it shows a faded sign on the upper portion of the Wall, similar to that shown in the 1997 photograph submitted by the Appellant; however, the Board does not find that these photographs necessarily contradict the Appellant's June 1995 Photograph; and

WHEREAS, as to the 1999/2000 Fetch-O-Matic Photograph, the Board finds the Mitrofanis Affidavit combined with the August 29, 2000 press release submitted by the Appellant to be sufficient evidence to establish that the photograph was taken in 1999 or 2000; and

WHEREAS, as to the September 10, 2001 DOB Photograph, the Board agrees with the Appellant that the dating system for the website flickr.com is not reliable, in that it does not conclusively reflect the date the photograph was actually taken; and

WHEREAS, the Board disagrees with DOB's contention that the September 10, 2001 DOB Photograph necessarily calls into question the authenticity of the Appellant's June 1995 Photograph because there is an identical advertising sign for "Rivet Up" on the lower portion of the Building in both photographs; rather, the Board finds that the presence of the "Rivet Up" sign in both photographs actually makes it more likely that the September 10, 2001 DOB Photograph was actually taken closer to the date of the Appellant's June 1995 Photograph, since the Board finds the Appellant's evidence that the latter photograph was taken prior to 1996 to be compelling and because there is no "Rivet Up" sign in the 1999/2000 Fetch-O-Matic Photograph; and

WHEREAS, the Board agrees with the Appellant that the fact that the Appellant's June 1995 Photograph and 1999/2000 Fetch-O-Matic Photograph are from private collections while the photographs submitted by DOB are publicly accessible does not automatically entitle the latter to more weight; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted sufficient evidence to establish that the Sign has been in continuous use from 1992 through 2005, without any two-year interruption; and

WHEREAS, the Board accepts DOB's determination that the painted advertising sign was lawfully established prior to June 28, 1940 as well as December 15, 1961 and has been in continuous use without any two-year interruption from 1961 through 1992 and from 2005 until the date the subject application was filed; and

WHEREAS, the Board notes that while the Appellant is requesting that the Board permit a 25'-0" by 40'-0" (1,000 sq. ft.) painted advertising sign on the upper portion of the Wall, the permitted size and location of the Sign is limited to the dimensions and location of the Hebrew National sign which existed on the site from 1960 through 1965; and

WHEREAS, while no evidence has been submitted as to the exact dimensions of the Hebrew National sign, the Board notes that if DOB determines that the Appellant's requested dimensions of 25'-0" by 40'-0" (1,000 sq. ft.) exceed the dimensions of the Hebrew National sign, the latter will be controlling; and

Therefore it is Resolved that this appeal, challenging a Final Determination issued on November 23, 2010, is granted.

Adopted by the Board of Standards and Appeals, December 11, 2012.

***The resolution has been amended. Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**

***CORRECTION**

This resolution adopted on October 16, 2012, under Calendar No. 168-11-BZ and printed in Volume 97, Bulletin Nos. 41-43, is hereby corrected to read as follows:

168-11-BZ
CEQR #12-BSA-037K
APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.
SUBJECT – Application October 27, 2011 – Variance (§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 four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§ 23-131, 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561.
PREMISES AFFECTED – 2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U, Block 7109, Lot 50 (tentative), 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 1, 2012, acting on Department of Buildings Application No. 320345710 reads, in pertinent part:

> Proposed community facility (Use Group A-3 house of worship) building in an R5 (OP Special District), R6A (OP Special District) and R5 (Subdistrict within OP Special District) does not comply with the following bulk regulations:
> 1. Proposed Floor Area Ratio (FAR) exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141, 24-11 and 24-17
> 2. Proposed Open Space Ratio (OSR) is less than minimum required pursuant to ZR Sections 113-11, 23-141, 24-11, 113-503
> 3. Proposed lot coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141, 24-11, 24-17, 113-503, 23-131
> 4. Proposed front yard is less than front yard required pursuant to ZR Sections 113-12, 23-45, 23-451, 113-11, 24-351, 23-633
> 5. Proposed side yards are less than side yards required pursuant to ZR Sections 113-11, 23-464, 113-543 and 23-461
> 6. Proposed rear yard is less than rear yard required pursuant to ZR Sections 113-11, 23-471, 23-543, 113-544, 23-53
> 7. Proposed height and setback exceeds the minimum required pursuant to ZR Sections 113-11, 23-631, 24-593, 23-633
> 8. Proposed side and rear yard setbacks exceed the minimum required pursuant to ZR Sections 113-11 and 23-662
> 9. Proposed development violates front yard planting requirements as per ZR Sections 113-12, 23-45 and 23-451
> 10. Proposed development violates special landscaping regulations as per ZR 113-30
> 11. Proposed development provides less than required parking spaces as per ZR Sections 113-561, 25-31 and 25-35; 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 four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§23-131, 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 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 June 12, 2012, after due notice by publication in *The City Record*, with continued hearings on July 24, 2012 and August 21, 2012, and then to decision on October 16, 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 15, Brooklyn, recommends approval of the application; and

WHEREAS, City Council Member Domenic Recchia provided testimony in support of the proposal; and

WHEREAS, a neighbor initially provided opposition to the proposal, but did not submit continued testimony; 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 an L-shaped corner lot fronting Ocean Parkway and Avenue U, with frontages of approximately 50 feet along Ocean Parkway and 143 feet along Avenue U within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special

Ocean Parkway Subdistrict) zoning districts; and

WHEREAS, the subject site has a lot area of 8,840 sq. ft. with 6,500 sq. ft. in the R5 (Special Ocean Parkway District), 1,800 sq. ft. in the R6A (Special Ocean Parkway District), and 540 sq. ft. in the R5 (Special Ocean Parkway Subdistrict); and

WHEREAS, the subject site, which was formerly two separate lots – 48 and 50 – was occupied by two two-story homes, which were demolished in anticipation of construction at the site; and

WHEREAS, the applicant proposes the following parameters: four stories; a floor area of 20,361 sq. ft. (2.30 FAR) (a maximum community facility floor area of 14,335 sq. ft. and an aggregate between the R5 and R6A zoning districts of 1.62 FAR is permitted); a lot coverage of 79 percent (maximum permitted lot coverage ranges from 55 to 60 percent); an open space of 21 percent (the minimum required open space ranges from 40 to 45 percent); a maximum wall height of 60'-0" and a maximum total height of 62'-4" (the maximum permitted height ranges from 35'-0" (R5) to 50'-0" (R6A)); and no parking spaces (a minimum of 17 parking spaces are required); 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 rear yard with a depth of 4'-0" on the corner portion (a rear yard with a depth of 8'-0" is required on the corner portion); the required rear yard with a depth of 30'-0" on the interior portion of the lot, but no front yard in the interior portion of the lot (a front yard with a depth of 10'-0" is required); and

WHEREAS, the proposal provides for the following uses: (1) a social hall and small kitchen at the cellar level; (2) the daily sanctuary and men's mikvah at the first floor; (3) the main sanctuary on the second floor; (4) additional worship area, including a worship gallery for female congregants at the third floor; and (5) a board room and two offices on the fourth 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 allow for a social hall of only 1,197 sq. ft. (to accommodate 80 people); a daily sanctuary of only 542 sq. ft. (to accommodate 37 people); and a main sanctuary of only 1,183 sq. ft. (to accommodate 95 people) – all of which are far too small to accommodate the Congregation; and

WHEREAS, further, the applicant asserts that the necessary women's balcony and men's mikvah could not be provided in an as-of-right scheme; 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 third 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 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 113'-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, 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 contribute to the hardship at the site; 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 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, 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 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 4'-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, 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 113'-0" of frontage, as well as plantings along Ocean Parkway; 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, during the hearing process, the Board directed the applicant to review the design of the rear of the building to determine if it could be shortened and to explain the mechanical space needs; and

WHEREAS, in response, the project architect explained how each element of the building design is required; specifically, he explained that as much mechanical use as possible had been relocated to the mechanical mezzanine and that it would not be able to relocate additional use from the rear of the building to the roof of the building above the fourth floor; 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. 12BSA037K, dated May 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, 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 four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§ 23-131, 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; *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 8, 2012" – (16) sheets; and *on further condition*:

THAT the building parameters will be: four stories; a maximum floor area of 20,361 sq. ft.; a maximum wall height of 60'-0" and 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), as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall 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 shall take place onsite;

THAT the above conditions 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;

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

THAT construction shall 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, October 16, 2012.

***The resolution has been amended**. **Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**

BULLETIN

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4-13-BZ
1623 Flatbush Avenue, East 32nd Street and New York Avenue, Block 7578, Lot(s) 49, Borough of **Brooklyn, Community Board: 17**. Special Permt (§73-36) a Physical Culture Establishment on ground and cellar floors. C8-2 zoning district.

5-13-BZ
34-47 107th Street, Eastern side of 107th Street, midblock between 34th and 37th Avenues., Block 1749, Lot(s) 66,67, Borough of **Queens, Community Board: 3**. Variance (§72-21) to permit the construction of an education center (Use Group 3A) in connection with an existing community facility contrary to lot coverage, front yard, side yard, side yard setback, and planting strips. R5 zoning district.

6-13-BZ
2899 Nostrand Avenue, east side of Nostrand Avenue and Avenue P and Marine Parkway., Block 7691, Lot(s) 13, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to permit the construction of a synagogue and school at the premises, which is contrary to bulk regulations for community facility in the residential use districts. R3-2 zoning district.

7-13-BZ
1644 Madison Place, south side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot(s) 58, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-621) for the enlargement of an single family contrary to floor area, open space and lot coverage (ZR23-141). R3-2 zoning 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 5, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 5, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

167-95-BZ
APPLICANT – Walter T. Gorman, P.E., for Springfield L. I. Cemetery Society, owners.
SUBJECT – Application September 21, 2012 – Extension of Term of a previously approved variance (§72-21) which permitted the maintenance and repairs of motor operated cemetery equipment and parking and storage of motor vehicles accessory to the repair facility which expired on February 4, 2012. An amendment of the resolution by reducing the area covered by the variance. R3A zoning district.
PREMISES AFFECTED – 121-18 Springfield Boulevard, west side of Springfield Boulevard, 166/15' south of 121st Avenue, Block 12695, Lot 1, Borough of Queens.
COMMUNITY BOARD #12Q

211-00-BZ
APPLICANT – Sheldon Lobel, P.C., for Hoffman & Hoffman, LLC, owner.
SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved Variance (§72-21) which permitted the legalization of residential units on the second through fourth floors of a mixed use four story building, manufacturing and residential (UG 17 & 2) which expired on April 17, 2005; Amendment for minor modification to the approved plans; Waiver of the Rules. M1-2 zoning district.
PREMISES AFFECTED – 252 Norman Avenue, southeast corner of the intersection of Norman Avenue and Monitor Street, Block 2657, Lot 1, Borough Brooklyn.
COMMUNITY BOARD #1BK

APPEALS CALENDAR

190-12-A, 191-12-A & 192-12-A
APPLICANT – Davidoff Hutcher & Citron, LLP, for Fuel Outdoor LLC.
OWNER OF PREMISES – JRR Realty Co., Inc.
SUBJECT – Application June 13, 2012 – Appeals from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 zoning district.
PREMISES AFFECTED – 42-45 12th Street, north of Northeast corner of 12th Street and 43rd Street, Block 458, Lot 83, Borough of Queens.
COMMUNITY BOARD #2Q

203-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, for CBS Outdoor, Inc.
OWNER OF PREMISES – Gemini 442 36th Street H LLC.
SUBJECT – Application June 28, 2013 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign. C2-5 /HY Zoning District
PREMISES AFFECTED – 442 West 36th Street, east of southeast corner of 10th Avenue and 36th Street, Block 733, Lot 60, Borough of Manhattan.
COMMUNITY BOARD #4M

FEBRUARY 5, 2013, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 5, 2013, at 1:30 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

50-12-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building contrary to use regulations, ZR 22-00. R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.
COMMUNITY BOARD #12Q

161-12-BZ
APPLICANT – Francis R. Angelino, Esq., for Soly D. Bawabeh, for Global Health Clubs, LLC, owner.
SUBJECT – Application May 31, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Retro Fitness*) on the ground and second floor of an existing building. C8-2 zoning district.
PREMISES AFFECTED – 81 East 98th Street, corner of East 98th Street and Ralph Avenue, Block 3530, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #16BK

238-12-BZ
APPLICANT – Harold Weinberg, for Stuart Ditchek, owner.
SUBJECT – Application August 1, 2012 – Special Permit (§73-622) for the enlargements of single family home contrary floor area and lot coverage (ZR §23-141); side yards (ZR 23-461) and less than the required rear yard (ZR §23-47). R 3-2 zoning district.
PREMISES AFFECTED – 1713 East 23rd Street, between Quentin Road and Avenue R, Block 6806, Lot 86, Borough of Brooklyn.
COMMUNITY BOARD #15BK

296-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 2374 Concourse Associates LLC, owner; Blink 2374 Grand Concourse Inc., lessee.
SUBJECT – Application October 16, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within existing building. C4-4 zoning district.
PREMISES AFFECTED – 2374 Grand Concourse, northeast corner of intersection of Grand Concourse and East 184th Street, Block 3152, Lot 36, Borough of Bronx.
COMMUNITY BOARD #5BX

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, JANUARY 15, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

812-61-BZ
APPLICANT – Peter Hirshman, for 80 Park Avenue Condominium, owner.
SUBJECT – Application June 28, 2012 – Extension of Term (§11-411) of approved variance permitting the use of accessory multiple dwelling garage for transient parking, which expires on October 24, 2012. R10, R8B zoning district.
PREMISES AFFECTED – 74-82 Park Avenue, southwest corner of East 39th Street and Park Avenue, Block 868, Lot 7502, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on October 24, 2012; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 15, 2013; and

WHEREAS, Community Board 6, Manhattan, does not object to this application; and

WHEREAS, the subject site is located on the southwest corner of Park Avenue and East 39th Street, partially within an R8B zoning district and partially within an R10 zoning district; and

WHEREAS, portions of the cellar and first floor are occupied by a 91-space accessory parking garage; and

WHEREAS, on October 24, 1961, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law ("MDL") to permit a maximum of 149 surplus parking spaces to be used for transient parking for a term of 21 years; and

WHEREAS, most recently, on August 5, 2003, the Board granted a ten-year extension of term, which expired on October 24, 2012; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on October 24, 1961, so that, as amended, this portion of the resolution shall read: "to permit an extension of term for an additional 10 years from the expiration of the prior grant, to expire on October 24, 2022; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked 'Received June 18, 2012-(2) sheets and 'December 31, 2013'-(1) sheet; and *on further condition*:

THAT this term will expire on October 24, 2022;

THAT a sign stating that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days' notice to the owner be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 100493814)

Adopted by the Board of Standards and Appeals, January 15, 2013.

135-01-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.
SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.
PREMISES AFFECTED – 1815/17 86th Street, 78'-8.3"northwest 86th Street and New Utrecht Avenue, Block 6344, Lot 69, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term, and an extension of time to obtain a certificate of occupancy for a high speed auto laundry (Use Group 16), which expired on October 30, 2011; and

WHEREAS, a public hearing was held on this application on February 7, 2012, after due notice by publication in *The City Record*, with continued hearings on May 1, 2012 and June 5, 2012, and then to decision on January 15, 2013; 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, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the site is an irregularly-shaped through lot with 71.3 feet of frontage on the west side of New Utrecht Avenue and 42.25 feet of frontage on the north side of 86th Street, within a C1-2 (R5) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 30, 1957 when, under BSA Cal. No. 318-56-BZ, the Board granted a variance to permit the construction of a high speed auto laundry, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on October 25, 1997; and

WHEREAS, on October 30, 2001, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a high speed auto laundry, for a term of ten years, which expired on October 30, 2011; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by October 30, 2002; and

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

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board raised concerns about the canopy on the building, which was not reflected on the previously-approved plans, and questioned whether the signage on the site was in compliance with C1 district regulations; and

WHEREAS, in response, the applicant submitted a photograph from October 9, 2000 which reflects that the canopy on the building has been in place since the previous approval and that its omission on the previously-approved plans was an oversight; and

WHEREAS, the applicant also submitted photographs reflecting that the signage that exceeded the C1 surface area requirements has been removed, and states that the site will comply with C1 district signage regulations; 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 *reopens* and *amends* the resolution, dated October 30, 2001, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from October 30, 2011, to expire on October 30, 2021; *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 31, 2012'-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on October 30, 2021;

THAT the signage on the site will comply with C1 district regulations;

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

THAT a new certificate of occupancy will be obtained by January 15, 2014;

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

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. 535)

Adopted by the Board of Standards and Appeals, January 15, 2013.

551-37-BZ
APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.
SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of approved variance for the continued operation of an automobile repair shop (*Red's Auto Repair*) which expired on July 15, 2012; Waiver of the Rules. R1-2 zoning district.
PREMISES AFFECTED – 233-02 Northern Boulevard, between 234th and 233rd Street, Block 8166, Lot 20, Borough of Queens.
COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for continued hearing.

173-99-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.
SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Matrix Fitness Club*) which expired on March 6, 2011; Amendment for an increase in floor area at the cellar level; waiver of the Rules. M-1 zoning district.
PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43rd Avenue, Block 782, Lot 1, 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 February 12, 2013, at 10 A.M., for decision, hearing closed.

18-02-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 8610 Flatlands Realty, LLC, owner.
SUBJECT – Application August 17, 2012 – Extension of Term (§11-411) of an approved variance for the continued operation of an automotive laundry (UG 16B) which expired on August 13, 2012. C2-3/R5D zoning district.
PREMISES AFFECTED – 8610 Flatlands Avenue, southwest corner of intersection of Flatlands Avenue and 87th Street, Block 8023, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #18BK
ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for continued hearing.

141-06-BZ
APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.
SUBJECT – Application August 7, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) permitting the construction of a three-story synagogue (*Congregation Tefiloh Ledovid*) which expired on June 19, 2011; Waiver of the Rules. R5 zoning district.
PREMISES AFFECTED – 2084 60th Street, corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.
COMMUNITY BOARD #12BK
ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

85-12-A
APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communication LLC.
OWNER OF PREMISES – G.A.L. Manufacturing Company
SUBJECT – Application April 6, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-1 zoning district.
PREMISES AFFECTED – 50 East 153rd Street, bounded by Metro North and the Metro North Station; an off ramp to the Major Deegan Expressway, E. 157th Street, E. 153rd Street and the Bronx Terminal Market, Block 2539, Lot 132, Borough of Bronx.
COMMUNITY BOARD #4BX
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 Montanez 5
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 March 7, 2012, denying registration for a sign at the subject site (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 Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and, as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on November 27, 2012, after due notice by publication in *The City Record*, and then to decision on January 15, 2013; 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 East 153rd Street, on the block bounded by Metro North railroad tracks/the Metro North East 153rd Street Station to the west, Exit 5 off-ramp from the Major Deegan Expressway to the northwest, East 157th Street to the northeast, East 153rd Street to the east, and the Bronx Terminal Market to the south, within an M1-1 zoning district; and

WHEREAS, the subject sign (the "Sign") is a south-facing advertising sign measuring 14 feet by 48 feet (672 sq. ft.) posted on a pylon approximately 57'-9" in height; and

WHEREAS, the Sign is located 128 feet from the Major Deegan Expressway and approximately 850 feet from the United States Bulkhead Line running along the Bronx shoreline of the Harlem River (the "Bulkhead Line"); and

WHEREAS, the Sign was installed pursuant to permits issued by DOB on August 10, 2004 under Application Nos. 200867507-01-SG and 200867062-01-AL for an "indirectly illuminated advertising sign"; and

WHEREAS, this appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on the fact that (1) the Sign lies within one-half mile of a boundary of the City of New York and is a permitted advertising sign pursuant to ZR § 42-55(d); (2) DOB's failure to accept the Appellant's evidence reflects an arbitrary change in its application of the Zoning Resolution provisions under which DOB originally granted a permit for the Sign; and (3) DOB's issuance of permits for the Sign in 2004, without more, constitutes sufficient proof of legal establishment for DOB to accept the Sign for registration; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

WHEREAS, the Board notes that 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

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, a DOB guidance document sets forth the instructions for filing under Rule 49 and asserts 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, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49 with respect to signs within 900 feet of arterial highways, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) photographs of the Signs; and (3) Permit Nos. 200867507-01-SG, 200867062-01-AL, issued August 10, 2004; (4) an approved application drawing with DOB audit stamp dated October 6, 2004; and (5) letters of completion from DOB, dated May 17 and 23, 2005; and

WHEREAS, on October 3, 2011, DOB issued two Notices of Sign Registration Deficiency, stating that it is unable to accept the Signs for registration due to "[f]ailure to provide proof of legal establishment Permit No. 200867507 is for ½ mile boundary sign;" and

WHEREAS, by letter, dated December 13, 2011 the Appellant submitted a response to DOB, stating that the Sign is located within a half-mile of a boundary of the City of New York and meets the criteria of ZR § 42-55(d), which allows advertising signs along certain designated arterial highways; the Appellant also noted that DOB had audited the file in 2004 and had verified that the permit was properly issued; and

WHEREAS, by letter, dated March 7, 2012, DOB issued the determination which forms the basis of the appeal; and

RELEVANT STATUTORY PROVISIONS

> 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.
(d) Within one-half mile of any boundary of the City of New York, permitted signs and advertising signs may be located along any designated arterial highway . . . that crosses a boundary of the City of New York, without regard to the provisions of paragraphs (a), (b) and (c) of this Section, provided any such permitted or advertising sign otherwise conforms to the regulations of this Chapter including, with respect to an advertising sign, a location not less than 500 feet from any other advertising sign, except that, in the case of any such permitted or advertising sign erected prior to August 7, 2000, such sign shall have non-conforming use status pursuant to Sections 52-82 . .

* * *

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 § 49-43 – 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 the 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; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Sign is legal pursuant to ZR § 42-55(d); (2) DOB's rejection of the Sign is an arbitrary and capricious departure from its prior

approval; and (3) DOB's permit issuance constitutes sufficient proof of legal establishment; and

A. The Sign is Legal Pursuant to ZR § 42-55(d)

WHEREAS, the Appellant asserts that advertising signs are permitted within 200 feet of an arterial highway pursuant to the following criteria of ZR § 42-55(d); and

(1) The advertising sign must be located within one-half mile from a boundary of the City of New York

WHEREAS, the Appellant cites to the permit application that was approved by DOB, on the basis that the Sign is within a half-mile of the Bulkhead Line, which is a "boundary of the City of New York;" and

WHEREAS, the Appellant notes that the issue is whether ZR § 42-55(d) includes as a boundary of the City of New York the jurisdictional boundary along the Bulkhead Line, separating the City of New York from the navigable waters under federal and/or state jurisdiction; and

WHEREAS, the Appellant asserts that "any" boundary includes the boundary created along the Bulkhead Line and therefore, ZR § 42-55(d) allows the Sign to remain; and

WHEREAS, the Appellant asserts that a plain language reading of ZR § 42-55(d) supports the conclusion that the Bulkhead Line is a "boundary of the City of New York;" and

WHEREAS, the Appellant asserts that the phrase "any boundary of the City of New York" is broad and that a boundary is something that indicates a limit; and

WHEREAS, further, the Appellant states that the Bulkhead Line delineates waters within federal and/or state jurisdiction, from those pertaining to the City; limits the City's jurisdiction; and creates a boundary of the City of New York; and

WHEREAS, the Appellant asserts that since DOB has not disputed that the Bulkhead Line is a boundary line, the Board should conclude that there exists along the East River a boundary of the City of New York for the purposes of ZR § 42-55(d); and

WHEREAS, the Appellant asserts that if it were intended that this provision of the Zoning Resolution allows advertising signs only within a one-half mile of a particular boundary, then the Zoning Resolution should state which boundary; for instance, the Zoning Resolution could have been written to limit advertising signs to one-half mile of a county or state boundary; and

WHEREAS, the Appellant cites to the Court of Appeals' decision in Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 100 (N.Y. 1997) for the point that where the Board's interpretation of the Zoning Resolution conflicts with the plain statutory language, it may not be sustained and unintended consequences of overly broad provisions should be resolved by the legislature; and

WHEREAS, additionally, the Appellant asserts that its reading of "any boundary" at ZR § 42-55(d) would not create an expansive exception to the general prohibition on advertising signs along arterial highways, but applies only to a small subset of highways; and

WHEREAS, specifically, the Appellant notes that the arterial highway at issue must also be a "principal route" or "toll crossing" that prohibits direct vehicular access to abutting land and provides complete separation of conflicting traffic flows (ZR § 42-55(d)(1)), which excludes, for example, the West Side Highway; and

WHEREAS, the Appellant asserts that if the arterial highway in question must also be a through truck route designated by DOT (ZR § 42-55(d)(2)) and it must cross a boundary of the City of New York (ZR § 42-55(d)(3)), the applicability of the provision is limited to a narrow set of routes, which includes the Major Deegan Expressway; and

(2) The advertising sign must be located along a designated arterial highway that meets the criteria of ZR §§ 42-55(d)(1), (d)(2), and (d)(3)

WHEREAS, the Appellant asserts that the Major Deegan Expressway is listed as a designated arterial highway in Appendix H of the Zoning Resolution, a condition which satisfies the second requirement of ZR § 42-55(d); and

WHEREAS, further, the Appellant states that in accordance with requirements of ZR § 42-55(d), the Major Deegan Expressway (1) is a principal route that prohibits direct access to abutting land and provides complete separation of traffic flows, (2) is a through truck route designated by DOT, and (3) crosses a boundary of the City of New York (into Westchester County); and

(3) The advertising sign must be located not less than 500 feet from any other advertising sign

WHEREAS, the Appellant represents that there are not any advertising signs within 500 feet of the Sign and, thus, ZR § 42-55(d)(3) is not in dispute; and

WHEREAS, accordingly, since all the conditions of ZR § 42-55(d) are met, the Appellant asserts that the evidence presented to DOB shows that the Sign is a permitted advertising sign and must be granted

B. DOB May Not Reverse its Prior Determination

WHEREAS, the Appellant asserts that DOB has inexplicably reversed its prior interpretation of the law under which it approved the Sign pursuant to ZR § 42-55(d) in 2004 and a failure to accept the Sign for registration as a conforming advertising sign is an arbitrary and capricious reversal of its prior decision; and

WHEREAS, the Appellant states that following the issuance of the permits, but prior to completion of the work, DOB audited Application No. 200867507-01-SG for compliance with applicable regulations; the audit included review and approval of a drawing dated May 21, 2004 and included: a diagram of the Sign, an area map showing the Sign's location 128 feet from the Major Deegan Expressway and 850 feet from the Harlem River; a note that the "Sign is within 0.5 miles from boundary of the City of New York," and a note that "there is no other sign within 500' from the proposed sign per Section 42-55(d);" and

WHEREAS, the Appellant states that DOB stamped the drawing as part of an audited folder and signed off on

the drawing and application as being accepted; on May 15, 2005 and May 23, 2005, the Bronx Borough Commissioner issued letters of completion for each of the applications; and

WHEREAS, the Appellant represents that the Sign has been in continuous use as an advertising sign since the issuance of the letters of completion through the present time; and

WHEREAS, the Appellant finds that the Final Determination is in direct contravention of DOB's prior approvals, without setting forth any basis or justification for the reversal of position; and

WHEREAS, the Appellant adds that the location of the Sign has not changed since DOB's 2004 approvals and DOB's audit and approval of a drawing that clearly indicates the Bulkhead Line in proximity to the Subject Sign, reflecting DOB's acceptance that such boundary line falls within the meaning of "any boundary of the City of New York" under ZR § 42-55(d); and

WHEREAS, the Appellant asserts that DOB reviewed and approved the file based on a reasonable interpretation of the plain meaning of the Zoning Resolution and it cannot now deny Appellant's registration based on a contrary reading; and

WHEREAS, the Appellant states that as a matter of public policy, property owners must be able to rely on DOB's actions interpreting the Zoning Resolution; and

C. DOB's Permit Issuance

WHEREAS, the Appellant asserts that DOB's issuance of permits for the Sign, without more, constitutes sufficient proof of legal establishment for DOB to accept the Sign for registration; and

WHEREAS, specifically, the Appellant states that in 2004, DOB issued permits for the Sign, which were upheld following an audit; and

WHEREAS, the Appellant asserts that DOB had the opportunity to evaluate the legality of the Sign at that time and, absent a rejection, the Appellant reasonably relied on DOB's determination, built the Sign and has continued to make substantial investments in the Sign including investments in repairs and maintenance along with the marketing costs involved in placing advertisements; and

WHEREAS, the Appellant states that for eight years, it has continued to invest in the Sign in reliance on DOB's previous determination that the Sign was legal under applicable laws; and

WHEREAS, the Appellant notes that the laws have not changed since 2004 when DOB determined that the Sign was legal; and

WHEREAS, the Appellant asserts that as a matter of public policy, DOB cannot now be allowed to change its position on the legality of the Sign to the detriment of Appellant's business; and

WHEREAS, accordingly, the Appellant asserts that the permits are sufficient proof of legal establishment for the Sign to be registered; and

WHEREAS, further, the Appellant cites to Rule 49 for the provision that no requirement for the submission of documentation to substantiate the legality of a "conforming" sign is required and that the request for substantiating information is overreaching the enforcement authority granted to DOB under Local Law 31 and Rule 49; and

WHEREAS, the Appellant represents that it has relied in good faith on DOB's approval of the Sign, has made investments in maintaining and marketing in reliance on the approvals, and equity does not allow DOB to revise its prior approvals and require the removal of the Sign; and

DOB'S POSITION

WHEREAS, DOB states that it rejected the Sign Registration Application because (1) the Appellant has failed to establish that the Sign is within one-half mile of the boundary of the City of New York and (2) the permit was issued in error; and

WHEREAS, DOB asserts that since the Sign is not within one-half mile of the City boundary, ZR § 42-55(d) is not applicable, and review of the three ZR § 42-55(d) criteria is not warranted; and

WHEREAS, DOB contends that the permit was issued in error and it cannot be estopped from correcting its error; and

WHEREAS, DOB notes that it has not yet revoked the permit, but it has determined that the Sign is not lawful because, contrary to Appellant's argument, it is not located within one-half mile of the boundary of the City of New York City; and

A. The United States Bulkhead Line is Not a Boundary of the City of New York

WHEREAS, specifically, DOB states that contrary to the Appellant's assertion, the Bulkhead Line along the Harlem River, as shown on Zoning Resolution Map 6a, is not a City boundary; and

WHEREAS, DOB finds that while the Harlem River does create a boundary between the boroughs of Manhattan and the Bronx, it does not create a City boundary; and

WHEREAS, DOB states that the boundaries of the City are found in the Administrative Code ("AC") and per AC § 2–201, the City contains "all that territory within the boroughs;" and

WHEREAS, further, DOB asserts that AC § 2-202, is titled "Division into boroughs and boundaries thereof" and the border of the Bronx is specifically described as the area "bounded on the west by the borough of Manhattan and county of New York….;" and

WHEREAS, DOB states that the AC delineates the Bulkhead Line as a borough boundary and thus a City boundary at some locations (in the Long Island Sound for example), but this is not the case for the Bulkhead Line near the site; and

WHEREAS, DOB concludes that at the subject site, the borough of Manhattan is the western boundary of the borough of the Bronx and since the City includes all that is "contained within the boroughs" and the borough of the Bronx abuts the borough of Manhattan, there is no gap between Manhattan and the Bronx where a City boundary could possibly exist; and

WHEREAS, DOB states that therefore, the Bulkhead Line is not a City boundary at this location, and the Sign is not located within one-half mile of a boundary of the City of New York; and

B. The Purpose of the Bulkhead Line

WHEREAS, DOB asserts that the Bulkhead Line merely represents the farthest offshore line to which a structure may be constructed without interfering with navigation in the Harlem River; and

WHEREAS, DOB cites to People v. Delaware & Hudson Co., 107 N.E. 506, 507 [1914], in which the Court of Appeals declared that "[t]he bulkhead line…determines the point beyond which wharves, docks, and piers cannot be lawfully erected, and it fixes the boundaries to be devoted to navigable channel;" and

WHEREAS, further DOB cites to the Department of City Planning's (DCP) Zoning Handbook which states that the "bulkhead line is a line shown on zoning maps which divides the upland and seaward portions of waterfront zoning lots" and the "pierhead line is a line shown on the zoning maps which defines the outermost seaward boundary of the area regulated by the ZR;" and

WHEREAS, accordingly, DOB concludes that unless specifically designated as a City boundary in the Code, the Bulkhead Line solely affects the interplay between waterfront property rights and the rights to navigable water; the intent of the Bulkhead Line is to balance such property owners' rights to water areas with the right of the general population's right to use such body of water for commercial or recreational purposes; and

WHEREAS, DOB adds that acceptance of the Bulkhead Line between Manhattan and the Bronx as a City boundary would lead to absurd results; and

WHEREAS, for example, DOB states that such an interpretation would permit advertising signs along the entire portion of the Major Deegan Expressway bounded by the Harlem River; and

WHEREAS, DOB asserts that an expansive interpretation which would allow for dozens more signs within 200 feet of this arterial is contrary to the intent of the Zoning Resolution provision, which was to "aid New York City outdoor advertisers in maintaining a competitive equality with advertisers that operate immediately outside of the City's boarders [sic]." Clear Channel v. City of New York, 608 F.Supp.2d 477, 491 (2010); and

WHEREAS, DOB concludes that the subject site not only fails to meet the criteria set forth at ZR § 42-55(d), it also fails to serve the purposes and intent of that section; and

WHEREAS, further, DOB states that there are several bridges that connect Manhattan and the Bronx by crossing the Harlem River and are identified as part of the local street network and that following Appellant's arguments, these bridges would exit and reenter the City along their courses, which is contrary to DOT's description of local streets (which cannot traverse City boundaries); and

WHEREAS, finally, DOB states that if the Harlem River bridges cross City boundaries as the Appellant's logic suggests, the middle spans of these bridges, from bulkhead line to bulkhead line, would be considered locations outside the boundaries of the City of New York, but not located in any other municipality; and

WHEREAS, thus, DOB contends, the middle span of such bridges would not be maintained because they would be outside the jurisdiction of the DOT, which only has jurisdiction over bridges and roadways within the City and such portions of the bridge would be outside the jurisdiction of the New York City Police and Fire Departments responding to an accident on that portion of the bridge; and

CONCLUSION

WHEREAS, the Board notes that the only interpretation that the Appellant and DOB debate is whether the Bulkhead Line is a boundary of the City of New York to satisfy ZR § 42-55(d); and

WHEREAS, the Board agrees with DOB that the Bulkhead Line is not a boundary of the City of New York as contemplated by ZR § 42-55(d) and thus the ZR § 42-55(d) exception does not apply to the Sign; and

WHEREAS, the Board agrees with DOB that the Administrative Code, at Section 2-201, et seq, clearly describes the boundaries of the City of New York as that which contains the territory of all the boroughs without exception and that the boundaries of the City are the outermost borders; and

WHEREAS, accordingly, the Board finds that a boundary of the City of New York means the boundary surrounding the entire City; a boundary of the City of New York can be distinguished from a boundary within the City of New York such as a borough, community district, or bulkhead or pierhead line; and

WHEREAS, the Board notes that there is a hierarchy of boundary lines related to the City, which includes zoning district boundary lines, boundary lines between boroughs and Community Board districts, boundary lines for legislative districting, and, ultimately boundary lines that separate the City from other counties/municipalities/states that are outside the City's jurisdiction; and

WHEREAS, the Board notes that the hierarchy of boundary lines allows different lines to serve different, sometimes overlapping, purposes, but that all boundaries are not relevant in all situations; and

WHEREAS, the Board finds that the Appellant's reading of "any boundary of the City of New York" is overly broad in including boundaries within the City, which are not boundaries of the City; and

WHEREAS, the Board notes that the Zoning Resolution only applies to the City of New York and its application is clearly limited by the boundary around the perimeter of the City, "the boundary of the City of New York"; and

WHEREAS, the Board notes that as per ZR § 11-16 (Pierhead Lines, Bulkhead Lines and Marginal Streets), the bulkhead lines on the zoning maps are the lines adopted by the United States Army Corps of Engineers and that such lines primarily relate to regulating waterfront uses; the

Board finds that the Bulkhead Line has no relevance to ZR § 42-55(d), except where a bulkhead line and the boundary of the City of New York are coincident; and

WHEREAS, the Board does not find that the Bulkhead Line in the Harlem River, 850 feet from the subject site has any bearing on the regulation of the Sign, particularly in light of the fact that, as DOB asserts, the purpose of the exception for signs within a half-mile of a boundary of the City of New York was to improve the market for signs within and near to City boundaries as compared to those just across the boundary into other jurisdictions outside of the City; no such concern was articulated for benefitting signs near to bulkhead lines, pierhead lines, or other kinds of boundaries within the City; and

WHEREAS, the Board finds that just because the Bulkhead Line is a boundary (as are zoning district boundary lines, legislative district lines, etc.) it does not mean that it is a boundary of the City of New York as contemplated by ZR § 42-55(d); and

WHEREAS, the Board finds that the plain meaning of "boundary of the City of New York" is clear, and that ZR § 42-55(d) contemplates those connected lines which form the perimeter of the City rather than the expansive list of boundaries within the City; the use of "any boundary" recognizes that the boundaries of the City of New York take multiple forms on land and in the water; and

WHEREAS, as to DOB's 2004 approval of the Sign, the Board notes that DOB concedes that it was erroneous and agrees that DOB has the authority to correct its error; and

WHEREAS, the Board distinguishes DOB's action to correct its error in the subject case from the facts in BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue) in that in the subject case there is a clear meaning of "boundary of the City of New York," which was misapplied to the Bulkhead Line; and

WHEREAS, the Board finds that it is clear that DOB's auditor did not have the authority to deem the Bulkhead Line a boundary of the City of New York for satisfaction of ZR § 42-55(d); and

WHEREAS, the Board notes that, in contrast, in the 12th Avenue case, it determined that DOB had not established that a Borough Commissioner's reconsideration, based on an evaluation of the sufficiency of evidence within the context of a somewhat subjective analysis, had been in error; and

WHEREAS, the Board finds that DOB does not have the duty to explain, in the subject case, why the error was made in 2004 and why it accepted the Bulkhead Line as a boundary of the City of New York; the Board recognizes that, regardless of how the error occurred, DOB was clearly wrong in 2004 and has the authority to correct its error now; and

WHEREAS, the Board considers that the Appellant's survey associated with the 2004 audit may be the source of the error as it identified the Bulkhead Line as a boundary of the City, a mistake which DOB did not realize in 2004; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing the 2004 permits, but it does note that the Appellant has enjoyed the benefit of the Sign pursuant to erroneously-issued permits since that time; and

WHEREAS, accordingly, the Board finds that DOB appropriately applied ZR § 42-55 to the Sign, which does not conform with zoning regulations; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's registration of the Sign.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 7, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, January 15, 2013.

90-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communication LLC.

OWNER OF PREMISES – Robal Arlington Corporation.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-6 zoning district.

PREMISES AFFECTED – 111 Varick Street, between Broome and Dominick Street, Block 578, Lot 71, Borough of Manhattan.

COMMUNITY BOARD #2M

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 Montanez 5

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 March 12, 2012, denying registration for a sign at the subject site (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 Signs Enforcement Unit. As evidence related to the sign points to its having been of various sizes, orientations, and even removed, 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 November 27, 2012, after due notice by publication in *The City Record*, and then to decision on January 15, 2013; and

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

WHEREAS, the subject site is located at the northwest corner of Varick Street and Broome Street, within an M1-6 zoning district; and

WHEREAS, the site is occupied by a six-story parking garage (the "Building") with a 58'-0" high by 78'-3" wide sign located on the south wall of the Building (the "Sign"); and

WHEREAS, the Sign faces Broome Street and is located approximately 57'-0" from the northern boundary of the Holland Tunnel approaches, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

WHEREAS, the Appellant identifies the relevant statutory requirements related to sign registration in effect since 2005; and

WHEREAS, the Appellant states that 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

WHEREAS, the Appellant asserts that 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, the Appellant notes that affidavits are also listed as an acceptable form of evidence; and

REGISTRATION PROCESS

WHEREAS, the Appellant states that on April 4, 2011, pursuant to the requirements of Article 502 and Rule 49, it submitted a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) photographs of the Sign; and (3) 1953 plans associated with BSA Cal. No. 796-53-A which showed an "advertising wall sign" taking up the second through sixth floors of the south wall of the building; and

WHEREAS, on September 12, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that it is unable to accept the Sign for registration due to "Failure to provide proof of legal establishment;" and

WHEREAS, by letter, dated November 30, 2011, the Appellant submitted a response to DOB, referencing the previously-submitted evidence that the Sign has existed as an advertising sign since the 1920's, and providing three additional photographs in support of the establishment of the Sign; and

WHEREAS, by letter dated January 30, 2012, the Appellant submitted to DOB an affidavit from Donald Robinson, an employee of various outdoor advertising companies from 1959 until 1989, stating that there was an advertising wall sign on the Building from 1963 through 1989; and

WHEREAS, by letter, dated March 12, 2012, DOB issued the determination which forms the basis of the appeal, stating that "the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

> ZR § 12-10 *Definitions*
>
> Sign
>
> A "sign" is any writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or
>
> pennant), or any other figure of similar character, that:
>
> (a) Is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a #building or other structure#;
> (b) Is used to announce, direct attention to, or advertise; and
> (c) Is visible from outside a #building#. A #sign# shall include writing, representation or other

figures of similar character, within a #building#, only when illuminated and located in a window…

* * *

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. . .

* * *

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 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 § 52-83

Non-Conforming Advertising Signs

In all Manufacturing Districts, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Section…42-55, any non-conforming advertising sign except a flashing sign may be structurally altered, reconstructed, or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

(a) The creation of a new non-conformity or an increase in the degree of non-conformity of such sign;

(b) An increase in the surface area of the sign; or

(c) An increase in the degree of illumination of such sign; 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…

* * *

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 the 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; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Sign was established as an advertising sign prior to June 1, 1968, as required under ZR § 42-55, and may therefore be maintained as a legal non-conforming advertising sign pursuant to ZR § 52-11, and (2) the Sign has operated as an advertising sign with no discontinuance of two years or more since its establishment; and

WHEREAS, as to the establishment of the Sign prior to June 1, 1968, at the outset DOB states that it does not contest the Appellant's claim that the Sign existed on May 31, 1968; however, DOB asserts that the use was discontinued and must terminate per ZR § 52-61 because the wall was used to display artwork for a period of approximately ten years; and

WHEREAS, the Appellant contends that the art installation at the site from approximately 1979 to 1989 (the "Art Installation") constituted an "advertising sign" within the meaning of ZR § 12-10, and therefore the use of the Sign as an advertising sign was continuous during that time period; and

WHEREAS, the Appellant notes that ZR § 12-10 defines the term "sign" as follows:

> any writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or pennant), or any other figure of similar character, that: (a) is a structure or any part thereof, or is attached to , painted on, or in any other manner represented on a #building or other structure#; (b) is used to announce, direct attention to, or advertise; and (c) is visible from outside a #building#; and

WHEREAS, the Appellant argues that the Art Installation met the ZR § 12-10 definition of a "sign," in that (1) it was a pictorial representation (including illustration or decoration), (2) it was attached to the Building; (3) it was used to direct attention to and advertise the artist Terry Fugate-Wilcox and his works; and (4) it was visible from outside the Building; and

WHEREAS, as to the requirement that a "sign" be "used to announce, direct attention to, or advertise," the Appellant asserts that as with any other type of business an artist must develop his or her brand in order to be successful in the marketplace, and that the Art Installation served to direct attention to the artist and his work by attracting attention to the Art Installation itself; and

WHEREAS, the Appellant argues that many other types of advertisements are similarly abstract and do not explicitly direct viewers to a particular location; the Appellant points to the example of advertisements for the chain-store Target, which often contain representation of the retailer's logo, building awareness of the brand but not necessarily displaying any particular products or directing viewers to any particular store; and

WHEREAS, the Appellant notes that ZR § 12-10 further defines an "advertising sign" as "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#"; and

WHEREAS, the Appellant argues that the Art Installation "direct[ed] attention to a business, profession, commodity, service or entertainment" by directing attention to the artist and his work, which can be construed as a "business" (the business of creating artwork), a "profession" (being an artist), a "service" (providing commissioned works) or "entertainment" (the viewing and enjoyment of artwork); and

WHEREAS, the Appellant asserts that the fact that the artist was not paid for posting the Art Installation and that the work included his signature reflects that the Art Installation was posted as an opportunity to promote his brand and his work; and

WHEREAS, the Appellant contends that many other types of advertisements, such as the Target bullseye logo, are abstract representations that direct attention to a brand and do not explicitly direct viewers to a particular product or location; and

WHEREAS, the Appellant argues that the Art Installation also met the criteria that the business, profession, commodity, service or entertainment be "conducted, sold, or offered elsewhere than upon the same #zoning lot#" in that the work of the artist was not performed on the zoning lot and his other works were offered and sold elsewhere as well; and

WHEREAS, the Appellant argues that, based on the Board's decision in BSA Cal. Nos. 88-12-A and 89-12-A, it is not the intent but the effect of a sign that is relevant in reviewing the applicability of the Zoning Resolution, and the effect of posting the Art Installation in a high traffic area on a wall that had been used for advertising signs for more than 50 years was that the artist and his work received publicity because the Art Installation directed attention to the artist and his work; and

WHEREAS, the Appellant contends that the context and circumstances applicable to the Sign make it clear that the Art Installation was simultaneously used for artistic and advertising purposes; and

WHEREAS, specifically, the Appellant asserts that the Sign has a long history of use as an advertising sign from as early as the 1920's, the Art Installation was affixed in the exact same position and location as advertising signs that had been posted on the Building for six decades prior, and that it met all of the elements of the definition of a "sign," and based on this context the Art Installation may properly be construed as an advertising sign for the purposes of establishing a history of continuous use under the Zoning Resolution; and

WHEREAS, the Appellant acknowledges that not every public art installation qualifies as an advertising sign, but where an art installation is displayed in a space typically and historically used for advertising, is signed and identified with the name of the artist and takes the shape of an advertising billboard, context dictates that it should be considered an advertising sign; and

WHEREAS, the Appellant notes that DOB has previously issued Technical Policy and Procedure Notice ("TPPN") # 8/96 to establish DOB's policy that abstract architectural features of buildings are subject to sign regulations, and argues that DOB cannot consider certain abstract representations to be signs while denying other abstract representations constitute signs; and

DOB'S POSITION

WHEREAS, DOB states that it does not contest the Appellant's claim that the Sign existed prior to June 1, 1968; however, DOB asserts that during the time the building wall was used to display the Art Installation, the non-conforming advertising sign use was discontinued, and therefore the use must terminate pursuant to ZR § 52-61; and

WHEREAS, DOB states that pursuant to ZR § 12-10, a non-conforming "sign" must continue to be used to "announce, direct attention to or advertise," and a non-conforming "advertising sign" must continue to be used as 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

WHEREAS, DOB notes that the Wikipedia website states that the artist, Terry Fugate-Wilcox, was commissioned to create the Art Installation, identified as the "Holland Tunnel Wall," as an art piece; and

WHEREAS, DOB states that the webpage describes the artwork as a 60'-0" by 80'-0" billboard covered in layers of different colors of paint that would be revealed in patterns as the work weathered, and notes that the Art Installation was dismantled and the plywood panels were reclaimed by the artist as individual works of art; and

WHEREAS, DOB further states that a New York Times article dated August 7, 1981 titled "Outdoor-Sculpture Safari Around New York," describes the Art Installation as "sheets of plywood painted yellow" covering the façade; and

WHEREAS, DOB asserts that painted plywood, whether visible in solid colors or eroded into patterns, does not announce, direct attention to or advertise a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot, and therefore, does not constitute a "sign" or "advertising sign" pursuant to the ZR § 12-10 definitions of those terms; and

WHEREAS, DOB further asserts that the Art Installation is a creative expression that attracts attention to itself rather than directing attention to a use or product off the site, and therefore it lacks the message element of the ZR § 12-10 definition of "sign"; and

WHEREAS, DOB argues that murals similar to the Art Installation are displayed throughout the City and none are subject to the sign regulations of the Zoning Resolution; and

WHEREAS, DOB contends that, contrary to the Appellant's argument, the Art Installation cannot be compared with the Target bullseye logo because (1) the purpose of the Art Installation is to be art while the purpose of the logo is to promote Target products, (2) the Target bullseye design is a registered trademark of Target Brands, Inc., and is the distinctive symbol used to distinguish products from those of another manufacturer, and (3) there is no indication that the Art Installation was installed to reference the product of the artist, his studio, the source of the work, or the availability of his artwork for purchase; and

WHEREAS, as to the Appellant's argument that TPPN

8/96 supports the notion that abstract representations are signs and therefore the Art Installation should be recognized as a Sign, DOB asserts that TPPN # 8/96 incorrectly allowed the display of a corporate logo to be exempt from sign regulations if it could be treated as a "distinctive architectural feature", and it was rescinded on July 14, 1998 by TPPN # 6/98; and

WHEREAS, accordingly, DOB concludes that during the approximately ten years that the Art Installation was displayed, the non-conforming advertising sign use was discontinued and must be terminated pursuant to ZR § 52-61; therefore the sign registration application was properly denied because the sign is not entitled to non-conforming use status per ZR § 42-55; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the non-conforming advertising sign use was discontinued during the approximately ten years that the Art Installation was displayed on the Building, and therefore the use must be terminated pursuant to ZR § 52-61; and

WHEREAS, the Board finds that the Art Installation, which consisted of sheets of plywood painted in layers of solid colors, did not meet the ZR § 12-10 definition of a "sign" or an "advertising sign" because it did not announce, direct attention to, or advertise a business, profession, commodity, service, or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot; and

WHEREAS, the Board agrees with DOB that the Art Installation is a creative expression that attracts attention to itself rather than directing attention to a use or product off the site, and therefore it lacks the message element of the ZR § 12-10 definition of "sign"; and

WHEREAS, the Board finds that in order to satisfy the ZR § 12-10 definition of "sign" or "advertising sign," the sign must announce, direct attention to, or advertise something outside of the sign itself, and that interpreting the definition otherwise would lead to absurd results, as any object that is visible could be argued to direct attention to itself by the mere act of being seen; and

WHEREAS, the Board disagrees with the Appellant that the Art Installation is comparable to other types of abstract advertisements that do not explicitly direct viewers to a particular location, in that the Art Installation is not an advertisement and does not provide any information that would direct attention to products or uses found off the site; and

WHEREAS, the Board agrees with distinctions made by DOB between the Art Installation and the Target bullseye logo; and

WHEREAS, the Board disagrees with the Appellant that, merely because the artist was not paid for creating the Art Installation and because his signature was on the work, the purpose of the Art Installation was to promote the artist's business and his other work; rather, the Board finds the primary purpose of the Art Installation to be one of creative expression and aesthetic appreciation; and

WHEREAS, the Board finds the fact that the Art Installation is similar to many other murals displayed throughout the City, which DOB noted are not subject to the sign regulations of the Zoning Resolution, to be further evidence that an artist's signature is not sufficient to transform a piece of art into an advertising sign, since it is standard practice for artists to sign their work; and

WHEREAS, the Board disagrees with the Appellant's contention that context dictates that the Art Installation be construed as an advertising sign, and does not find the fact that the Art Installation was displayed in a space that was previously used for advertising or that it takes the shape of an advertising billboard to be relevant to the Board's determination; and

WHEREAS, the Board finds the Appellant's reliance on BSA Cal. Nos. 88-12-A and 89-12-A, for the proposition that the relevant consideration is not the intent of the sign but the effect of the sign, to be misplaced; and

WHEREAS, specifically, the Board notes that BSA Cal. Nos. 88-12-A and 89-12-A concerned an analysis of the meaning of "within view" in the context of whether the signs at issue were within view of an arterial highway pursuant to ZR § 42-55, and the Board's discussion of intent was limited to a determination that the intended audience of the signs was not relevant in determining whether the signs were "within view" of the arterial highway; the Board did not make a broad determination that the intent of a sign is never a relevant consideration; and

WHEREAS, notwithstanding the above, the Board finds that regardless of whether it reviews the Art Installation based on its intent or effect, it does not meet the ZR § 12-10 definition of an advertising sign; and

WHEREAS, therefore, the Board finds that the non-conforming advertising sign use was discontinued for more than two years and must be terminated pursuant to ZR § 52-61, and as such, DOB properly rejected the Appellant's registration of the Sign.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 12, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, January 15, 2013.

142-12-A

APPLICANT – Sheldon Lobel, P.C., for 108-59 Ditmas Boulevard, owner.

SUBJECT – Application May 3, 2012 – Amendment of a previously approved (BSA Cal No. 187-99-A) waiver of the General City Law Section 35 which permitted the construction of a two family dwelling in the bed of a mapped street (24th Avenue). The amendment seeks to construct a community facility building. R3-2 zoning district.

PREMISES AFFECTED – 24-02 89th Street, between Astoria Boulevard and 23rd Avenue, Block 1100, Lot 101, Borough of Queens.

COMMUNITY BOARD #3Q

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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 21, 2012 acting on Department of Buildings Application No.420356741, reads:

> The proposed development at the premises is located partially within the bed of a mapped street, which is contrary to General City Law § 35. Refer to BSA for approval; and

WHEREAS, this is an application under General City Law ("GCL") § 35, to permit the construction of a two-story community facility building within the bed of 24th Avenue, a mapped but unbuilt street; and

WHEREAS, the proposed building will contain a house of worship and school uses; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, with a continued hearing on December 12, 2012, and then to decision on January 15, 2013; and

WHEREAS, the subject site is located on the west side of 89th Street approximately 522 feet north of the intersection of 89th Street and Astoria Boulevard, within an R3-2 zoning district; and

WHEREAS, on May 2, 2000, under BSA Cal. No. 187-99-BZ, the Board granted a waiver under GCL § 35 to permit the construction of a two-family home at the site, within the bed of 24th Avenue; the applicant states that the approved home was never constructed; and

WHEREAS, the applicant notes that in 2008 the City Planning Commission ("CPC") and City Council approved an application seeking to eliminate, discontinue, and close a portion of 24th avenue located between 88th Street and 90th Place from the City Map (ULURP Application No. C060466MMQ), and that this application includes the portion of 24th Avenue that is mapped across the site; and

WHEREAS, the applicant states that despite the CPC and City Council approval, the post-ULURP steps necessary to effectuate the change to the City Map have not been completed, and therefore the applicant desires to continue with the instant GCL § 35 application to allow construction of the proposed community facility building to commence prior to finalizing the City Map change; and

WHEREAS, by letter dated October 2, 2012, the Fire Department states that it has no objections to the subject proposal; and

WHEREAS, by letter dated June 27, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated December 13, 2012, the Department of Transportation ("DOT") states that the improvement of 24th Avenue, which would involve the taking of a portion of the applicant's property, is not presently included in DOT's Capital Improvement Program, however, according to City records it appears that the lot was acquired from the City subject to a "Dollar Condemnation" recapture clause for the portion of the property lying in the street bed; and

WHEREAS, therefore, because the City has no plans to improve or widen the referenced street, the applicant requests that the Board approve the subject application to permit construction in the bed of the mapped but unbuilt street pursuant to GCL § 35; 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 September 21, 2012, acting on Department of Buildings Application No. 420356741, 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 shall substantially conform to the drawing filed with the application marked "Received January 14, 2013" – (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) only;

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;

THAT the building be fully sprinklered as noted in the BSA approved plan; and

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

Adopted by the Board of Standards and Appeals January 15, 2013.

45-03-A thru 62-03-A & 64-03-A
APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.
SUBJECT – Application October 3, 2011 – Proposed construction of a single-family dwelling which is not fronting on a legally mapped street and is located within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R3-1 zoning district.
PREMISES AFFECTED – Hall Avenue, north side of Hall Avenue, 542.56' west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lot 60, 80, 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 January 29, 2013, at 10 A.M., for decision, hearing closed.

144-12-A
APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.
SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f).
PREMISES AFFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for adjourned hearing.

145-12-A
APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.
SUBJECT – Application May 3, 2012 – Appeal challenging the determination of the Department of Buildings requiring the owner to obtain approval from the Landmarks Preservation Commission, prior to reinstatement and amendments of the permits. R8B zoning district.
PREMISES A.FFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for deferred decision.

208-12-A
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 647-649 Washington Avenue, LLC, owner.
SUBJECT – Application July 2, 2012 – Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.
PREMISES AFFECTED – 17 McGee Lane, north side of McGee Lane, east of Harbor Road and West of Union Avenue, Block 01226, Lot 123, 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 January 29, 2013, at 10 A.M., for decision, hearing closed.

216-12-A thru 232-12-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 647-649 Washington Avenue, LLC, owner.
SUBJECT – Application July 2, 2012 – Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.
PREMISES AFFECTED – 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47 and 49 McGee Lane, north side of McGee Lane, east of Harbor Road and West of Union Avenue, Block 01226, Lots 122, 121, 120, 119, 118, 117, 116, 115, 114, 113, 112, 111, 110, 109, 108, 107 and 106, 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 January 29, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 15, 2013
1:30 P.M.

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

ZONING CALENDAR

113-11-BZ
APPLICANT – Slater & Beckerman, LLP, for St. Patrick's Home for the Aged and Infirm, owners.
SUBJECT – Application August 10, 2011 – Variance (§72-21) to permit a proposed enlargement of a Use Group 3 nursing home (*St. Patricks Home for the Aged and Infirm*) contrary to rear yard equivalent requirements (§24-382). R7-1 zoning district.
PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated July 11, 2011, acting on Department of Buildings Application No. 220069146, reads in pertinent part:

> ZR 24-382. Proposed rear yard equivalent or lack of one is contrary to the stated section of the code; and

WHEREAS, this is an application under ZR § 72-21, to permit the enlargement of an existing nursing home (Use Group 3), which does not comply with the required rear yard equivalent, contrary to ZR § 24-382; and

WHEREAS, a public hearing was held on this application on July 17, 2012, after due notice by publication in the *City Record*, with a continued hearing on December 11, 2012, and then to decision on January 15, 2013; 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, this application is brought on behalf of St. Patrick's Home for the Aged and Infirm ("St. Patrick's"), a not-for-profit institution; and

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

WHEREAS, the adjacent property owner to the south, represented by counsel, provided testimony at the hearing requesting (1) lighting be provided around the landscaping for security purposes, and (2) certain aesthetic improvements to the facade; and

WHEREAS, the site is an irregularly-shaped corner through lot located on the south side of Van Cortlandt Park South, the east side of Saxon Avenue, and the west side of Dickinson Avenue, within an R7-1 zoning district; and

WHEREAS, the site has 289 feet of frontage along Van Cortlandt Park South, 155 feet of frontage along Saxon Avenue, and 236 feet of frontage along Dickinson Avenue, and has a total lot area of 54,708 sq. ft.; and

WHEREAS, the site is currently occupied by two buildings: an eight-story Use Group 3 nursing home containing approximately 118,547 sq. ft. of floor area (the "Nursing Home"), and a seven story Use Group 3 convent containing approximately 14,472 sq. ft. of floor area; and

WHEREAS, the site is also occupied by a 38-space accessory parking lot for the Nursing Home; and

WHEREAS, the applicant states that the Nursing Home contains 264 beds, areas for physical and occupational therapy, a wellness center, recreation area, a chapel, gift shop, and a resident coffee shop; and

WHEREAS, the applicant proposes to construct a four-story structure in the area currently occupied by the accessory parking lot, which will include 104 self-parking spaces on three-levels, as well as space for storage, a recreation room, and an outdoor terrace (the "Proposed Facility"); and

WHEREAS, the Proposed Facility will have approximately 20,845 sq. ft. of floor area (0.3 FAR), increasing the total floor area on the site from 133,019 sq. ft. (2.5 FAR) to 153,864 sq. ft. (2.8 FAR) (the maximum permitted floor area for the site is 188,196 sq. ft. (3.44 FAR), and will provide a non-compliant 30'-0" rear yard equivalent; and

WHEREAS, the applicant states that the Proposed Facility will have direct connections to the Nursing Home and will have the following uses: (1) parking for 32 cars and storage space for St. Patrick's records and housekeeping on level one, which will align with the Nursing Home's basement level; (2) parking for 35 cars and no access to the Nursing Home on level two; (3) parking for 37 cars and storage for the Nursing Home on level three, which will align with the ground floor lobby level of the Nursing Home; and (4) a recreation room and an open space terrace on level four, which will align with the second floor of the Nursing Home; and

WHEREAS, the applicant states that construction of the Proposed Facility will also require a special permit from the City Planning Commission ("CPC") pursuant to ZR § 74-90, to permit the enlargement of an existing nursing home located within Community District 8 in the Bronx; the applicant notes that it has simultaneously filed the required application with CPC; and

WHEREAS, because the Proposed Facility does not comply with the rear yard equivalent requirement in the underlying R7-1 zoning district, the applicant requests the subject variance; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the programmatic needs of St. Patrick's; (2) the irregular shape of the lot; (3) the existence and configuration of the existing buildings on the lot; and (4) the inability of a complying facility to satisfy New York State Department of Health ("DOH") regulations; and

WHEREAS, the applicant states that the following are the programmatic needs of St. Patrick's which require the requested waiver: (1) locating the Proposed Facility on the same site as the Nursing Home; (2) improving the effectiveness of St. Patrick's employee recruitment and retention programs by creating a safe, secure, and convenient parking area; (3) providing a parking area for the family and visitors of the residents; (4) relocating the existing Physical Therapy Department ("PTD") into a larger area and providing additional space for the Occupational Therapy Department ("OTD"); (5) enhancing resident activities programs and creating the opportunity to broaden and upgrade the scope of other resident services; and (6) providing sufficient storage space for the Nursing Home; and

WHEREAS, as to the location of the Proposed Facility, the applicant states that St. Patrick's existing facilities have been located entirely on the site since 1931, and in order for St. Patrick's to satisfy its need of delivering quality resident services, improving the effectiveness of its employee recruitment and retention programs, as well as improving St. Patrick's competiveness as a destination of choice for individuals seeking skilled and rehabilitative care, the Proposed Facility must be located on the site; and

WHEREAS, as to the need to improve the employee recruitment and retention programs, the applicant states that St. Patrick's employs approximately 375 full- and part-time individuals, and that the existing 38-space accessory parking lot and the extremely limited supply of off-street parking in the surrounding neighborhood is insufficient to handle St. Patrick's current demand for employee parking; and

WHEREAS, the applicant represents that one of the defining factors in the recruitment and retention of high quality nursing home staff is the availability of safe and secure on-site parking or, in the alternative, safe, secure and easily accessible off-street parking, and the lack of adequate parking on the site has negatively impacted the success of its employee recruitment and retention programs; and

WHEREAS, the applicant states that St. Patrick's is not easily accessible from public transportation, as the closest subway station to the site is over a half-mile away, and although there is a nearby bus stop, certain employee shifts end and begin late at night and early in the morning; therefore, without adequate on-site parking, employees must wait for the bus during late night and early hours in this fairly remote area of the Bronx, potentially creating a dangerous condition; and

WHEREAS, in response to the Board's question whether stackers and attended parking could be provided to reduce the amount of space required to satisfy St. Patrick's parking needs, the applicant states that St. Patrick's employees work on three shifts (a day shift, night shift, and overnight shift) and during these shifts all the employees arrive and depart at approximately the same time, such that the use of stackers would disrupt the traffic flow and create congestion during the change of shifts and forcing employees to wait lengthy durations while their vehicle is being parked or removed from the Proposed Facility, which could further impact St. Patrick's employee recruitment and retention efforts; and

WHEREAS, the applicant represents that many of St. Patrick's approximately 260 residents receive visitors daily and the lack of on-site parking is frustrating and inconvenient to the visitors, a majority of whom do not live in the five boroughs of New York City, such that public transportation is not an option; and

WHEREAS, as to the need to relocate the PTD into a larger area and provide additional space for the OTD, the applicant states that doing so is necessary to deliver a wider range of modern, more sophisticated sub-acute physical therapy services and to provide additional space for the delivery of enhanced occupational therapy services allowing the Nursing Home the opportunity to more favorably address the ongoing needs of its residents; and

WHEREAS, specifically, the applicant states that the construction of the Proposed Facility, including the recreation room and open air terrace, will permit St. Patrick's to reallocate program space within the Nursing Home, and the PTD and OTD will be redesigned resulting in the delivery of improved services to the residents; and

WHEREAS, the applicant states that currently the PTD shares space with the OTD and the existing space is crowded and has limited maneuverability as well as storage areas for wheelchairs and other ambulation equipment; therefore the redesign and relocation of group activities to the new proposed rooftop terrace and recreation room will free up space for physical therapy activities and make the space accessible to residents utilizing wheelchairs; and

WHEREAS, the applicant further states that the relocation of the PTD will further enhance the usable space of the OTD and permit the improved delivery of occupational therapy services, and the enhanced scope of physical therapy and occupational therapy services will allow St. Patrick's to maintain a competitive operating profile necessary to ensure its ongoing operational viability and improve the general effectiveness of St. Patrick's on-site training and instruction programs; and

WHEREAS, as to the need for the proposed recreation room and open air terrace, the applicant states that the size and configuration of the Nursing Home has constrained St. Patrick's ability to optimize the range of care it can offer to its evolving resident population, and the Proposed Facility will include an approximately 10,186 sq. ft. recreation room and an approximately 7,137 sq. ft. open-air terrace for its residents, which will become the focal point of its enhanced resident activities program and create the opportunity to

broaden and upgrade the scope of other resident services; and

WHEREAS, the applicant states that, due to the volume of wheelchairs and other ambulation aids required by St. Patrick's typical resident population, there is a lack of adequate space in St. Patrick's existing building to accommodate a facility-wide event or planned activity and as a consequence, programs or events specifically designed to promote interaction and socialization within and among large resident groups are located in the main entrance creating a confined condition, or must be limited, and in some cases, simply set aside; and

WHEREAS, the applicant represents that the Proposed Facility will satisfy St. Patrick's need of improving its activities department by providing a variety of stimulating activities available to each and every resident on a personal, family or group basis, and the daily life of each of St. Patrick's residents will be enhanced by the availability of secure, accessible space in the recreation room and on the open-air terrace and will improve St. Patrick's outreach programs; and

WHEREAS, as to the Nursing Home's need for storage space, the applicant states that as St. Patrick's has evolved over the years, it has had to lease appropriate off-site space for record storage and the storage of various items of furniture and other seasonal items due to the lack of on-site storage; and

WHEREAS, the applicant represents that under these conditions, whenever a set of stored items has to be retrieved, and ultimately returned, St. Patrick's must employ additional labor, incur fees and address operational coordination, which results in St. Patrick's bypassing opportunities to purchase operating supplies and materials in lower-costing bulk quantities, due to the general lack of storage space; and

WHEREAS, the applicant states that the Proposed Facility will address this problem by providing a secure storage space on two levels, sufficient in size to allow St. Patrick's to retain materials currently stored off-site, and permit it to make cost-saving bulk purchases in the future; and

WHEREAS, the applicant represents that the programmatic needs cannot be accommodated within a complying development based on the unique conditions on the lot, including (1) the irregular shape of the lot and (2) the configuration of the existing building; and (3) the DOH regulations; and

WHEREAS, as to the irregular shape of the lot, the applicant states that the polygonal shape of the site creates a practical difficulty in constructing a compliant facility; and

WHEREAS, the applicant submitted a drawing reflecting that if the site consisted of a regularly-shaped lot the Proposed Facility could be located at the site while providing a compliant rear yard equivalent; and

WHEREAS, the applicant states that because the site is occupied by two existing buildings, the only location that the Proposed Facility can be located is the site of the existing parking lot, and the irregular shape of the lot combined with the configuration of the existing buildings precludes the construction of a complying facility that can satisfy St. Patrick's programmatic needs as well as the applicable DOH regulations; and

WHEREAS, as to the DOH regulations, the applicant states that it has analyzed a compliant design which satisfies its programmatic needs, however, such compliant design is contrary to DOH regulations as referenced in Title 10 of the New York Codes, Rules and Regulations ("NYCRR") § 713-3.4; and

WHEREAS, the applicant states that pursuant to NYCRR § 713-3.4, public resident spaces, such as the proposed recreation room and outdoor space, are not permitted to be accessed via nursing units; and

WHEREAS, the applicant submitted plans of a complying facility, which reflects that in order to accommodate a compliant rear yard equivalent and 96 parking spaces (which is less than the proposed 104 spaces), the facility would need to be increased from four to five levels; and

WHEREAS, the applicant states that the fifth level of the complying facility, which includes the outdoor terrace, would align with the existing third floor of St. Patrick's instead of the second floor, and because the third floor is a nursing unit area, when residents access the proposed recreation room and outdoor space at the fifth level of the complying facility, they would have to utilize a nursing unit area, contrary to New York State's "Standards of Construction for Nursing Homes"; and

WHEREAS, the applicant represents that because the Proposed Facility provides access to the recreation room and outdoor space from the second floor of the Nursing Home, which contains the physical and occupational therapy public spaces and is not a nursing unit area, it complies with NYCRR § 713-3.4; and

WHEREAS, the Board notes that the applicant also asserts that St. Patrick's is an educational institution, and as such 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, pursuant to Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986); and

WHEREAS, the Board finds that the applicant did not submit sufficient evidence into the record to establish that St. Patrick's is an educational institution as contemplated by the courts, and as such, it cannot rely solely on the programmatic needs of St. Patrick's to support the subject variance application; and

WHEREAS, accordingly, based upon the above, the Board finds that the irregularity of the subject lot, the configuration of the existing buildings on the site, and the need to comply with DOH regulations, when considered in conjunction with the programmatic needs of St. Patrick's, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since St. Patrick's 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 St. Patrick's has existed on the site since 1931; and

WHEREAS, the applicant notes that Van Cortlandt Park is located directly north of the site across Van Cortlandt Park South, to the south of the site are the Amalgamated Houses (two separate 20-story buildings, providing affordable housing for 1500 moderate-income families), directly to the west of the site is a six-story residential building, with single- and two-family detached buildings to the southwest, and to the east of the site is an open space owned by the New York City Department of Environmental Protection; and

WHEREAS, the applicant notes that the Proposed Facility complies with all use and bulk regulations of the underlying R7-1 zoning district, with the exception of rear yard equivalent; and

WHEREAS, the applicant submitted plans reflecting that it will landscape the area of the Proposed Facility adjacent to Van Cortlandt Park South, providing a soft transition between the Proposed Facility and the sidewalk, and the applicant states that along Saxon Avenue and Van Cortlandt Park South, the existing mature street trees will remain; and

WHEREAS, in response to the concerns raised by the adjacent property owner, the applicant submitted a revised plan reflecting that lighting will be provided for the proposed landscaping; 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 St. Patrick's 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, the Proposed Facility complies with all regulations of the R7-1 zoning district with the exception of rear yard equivalent; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary; 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; and

WHEREAS, the Department of City Planning, as Lead Agency, 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. 11DCP043X, dated September 28, 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.

Therefore it is Resolved that the Board of Standards and Appeals adopts the CEQR determination of the Department of City Planning and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit the enlargement of an existing nursing home (Use Group 3), which does not comply with the required rear yard equivalent, contrary to ZR § 24-382; *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 7, 2013"– (11) sheets; and *on further condition;*

THAT the following shall be the bulk parameters of the building: 20,845 sq. ft. of floor area (0.3 FAR) for a total floor area on the site of 153,864 sq. ft. (2.8 FAR), a minimum rear yard equivalent of 30'-0", a total height of 48'-0", and 104 accessory parking spaces, as indicated on the BSA-approved plans;

THAT prior to the issuance of any DOB permits, the applicant shall obtain a special permit from the City Planning Commission pursuant to ZR § 74-90;

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, January 15, 2013.

190-11-BZ
CEQR #12-BSA-051X
APPLICANT – Sheldon Lobel, P.C., for 1197 Bryant Avenue Corp., owner.
SUBJECT – Application December 15, 2011 – Variance (§72-21) to legalize Use Group 6 retail stores, contrary to use regulations (§22-10). R7-1 zoning district.
Community Board #3BX
PREMISES AFFECTED – 1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street. Block 2993, Lot 27, Borough of Bronx.
COMMUNITY BOARD #3BX
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 15, 2011, acting on Department of Buildings Application No. 210044708, reads in pertinent part:

> Proposed use of existing building at the premises for Use Group 6 commercial use is not permitted as-of-right in the R7-1 district pursuant to ZR Section 22-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R7-1 zoning district, the legalization of the use of an existing one-story building for Use Group 6 retail, which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with continued hearings on October 30, 2012, and December 11, 2012, and then to decision on January 15, 2013; 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 3, Bronx, recommends approval of this application; and

WHEREAS, a neighbor provided testimony expressing a concern that businesses at the site attract too many visitors and the number of businesses should be limited; and

WHEREAS, the subject site is located on the northwest corner of Bryant Avenue and Home Street within an R7-1 zoning district; and

WHEREAS, the site has approximately 91 feet of frontage on Bryant Avenue and 25 feet of frontage on Home Street, with a total lot area of 2,328 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story formerly manufacturing building currently occupied by three commercial uses (Use Group 6), with a floor area of 2,328 sq. ft. (1.0 FAR); and

WHEREAS, the building was constructed in 1931 and formerly occupied by a legal non-conforming meat processing plant (Use Group 18); and

WHEREAS, the applicant states that the building was renovated and three retail spaces were created pursuant to an Alteration Type 2 application; during a subsequent review, DOB determined that there had been a discontinuance of the former non-conforming use which precluded the applicant from occupying the building with the proposed use; and

WHEREAS, the applicant now proposes to legalize the use of the subject building to commercial use (Use Group 6); and

WHEREAS, because the commercial use is not permitted in the subject zoning district, the applicant seeks a use variance to permit the proposed 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 use of the site for non-residential use; (2) the obsolescence of the subject building for conforming use; (3) the small, narrow lot configuration that limits the size and layout of any permitted residential development; and (4) the cost of demolishing the existing building and excavating the site; and

WHEREAS, as to the history of use and the existing building, the applicant states that the building was designed for manufacturing uses and operated as a meat processing plant from approximately 1931 until the late 1990s; and

WHEREAS, the applicant states that the building is not suited for residential use and any renovation of the building to accommodate such a use is impractical and cost-prohibitive; and

WHEREAS, the applicant contends that the building is also not well-suited for as-of-right community facility uses due to its small size and narrow floor plan and that the retrofit required for the building to meet the requirements of the 2008 Fire Code for community facility uses further burdens any use of the building for as-of-right use; and

WHEREAS, the applicant submitted a letter from a contractor which estimates the cost for the installation of an interior fire alarm system and automatic wet sprinkler system, both of which are required for community facility use, will be approximately $41,000; and

WHEREAS, as to lot configuration, the applicant states that the lot is small and narrow with a width of 25 feet, a depth of only 91 feet, and a lot area totaling 2,328 sq. ft.; and

WHEREAS, the applicant notes that the R7-1 zoning district lot coverage restrictions combined with the site's narrow lot width results in a floor plate that is only able to accommodate two small residential apartments per floor; and

WHEREAS, the applicant states that the as-of-right building's interior circulation space includes an entrance lobby, stairwell, and common hallways that represent a significant amount of non-rentable floor area given the small size of the building; and

WHEREAS, the applicant asserts that the development potential of the site is also limited by the R7-1 zoning district

parking regulations, which requires parking spaces for 30 percent of all dwelling units; because the site can only accommodate a maximum of two parking spaces on-site, only eight dwelling units can be accommodated; and

WHEREAS, the applicant asserts that the rental values of the building's apartment units are unable to offset the development costs associated with the project; and

WHEREAS, as to premium demolition costs, the applicant asserts that the surrounding built conditions are highly sensitive due to age and construction compounded by the existing building's full lot coverage condition; specifically, its western wall abuts the eastern wall of the two-story frame residential home to the west (1005 Home Street), which is a two-family home originally built as long ago as 1901 with unknown foundation depth and conditions, and its northern wall abuts the garage located on the property to the north along Bryant Avenue (1209 Bryant Avenue); and

WHEREAS, the applicant asserts that the presence of older buildings on the lot line will significantly increase the cost associated with demolishing the existing one-story and cellar building and excavating the entire site to prepare it for as-of-right development while also requiring underpinning and shoring; and

WHEREAS, as to the uniqueness of the conditions, the applicant performed an analysis to determine whether there are other similarly-situated properties that are underbuilt (less than 50 percent of permitted FAR) and have a narrow lot width within a 600-ft. radius of the site; and

WHEREAS, the applicant states that the results of this study show that the site is one of only six similarly situated properties in the study area (narrow, underbuilt and not part of a mass subdivision development) that have been developed since 1930, which amounts to 2.5 percent of all properties within the study area; and

WHEREAS, additionally, the site is one of only two of these similarly situated properties that are occupied by a non-conforming building; and

WHEREAS, the Board is not persuaded by the assertions that the demolition costs, which are reasonably common in New York City, constitute a unique conditions that create practical difficulty or unnecessary hardship; and

WHEREAS, however, based upon the above, the Board finds that the history of the site, and the characteristics of the 1931 building and its use as well as the lot's configuration are unique condition which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS specifically, the Board notes that the building was constructed approximately 80 years ago for a legal Use Group 18 use which would now be non-conforming, and that its conversion to a conforming use either residential or community facility would require significant retrofitting costs that create a hardship; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a conforming scenario of a four-story multi-family residential building; (2) a conversion of the existing building to community facility use; (3) a lesser variance residential scenario with a waiver for parking; and (4) the proposed legalization of the use of the existing building for commercial use; and

WHEREAS, the study concluded that the conforming scenarios would not result in a reasonable return, but that the proposed building 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 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; and

WHEREAS, the applicant represents that the surrounding area is predominantly occupied by a mix of residential and community facility uses; however, there are six non-conforming commercial uses located within a two-block radius of the site; and

WHEREAS, the applicant states that ZR § 52-332 would allow for the continuation of a non-conforming use at the site, except that the Use Group 18 meat processing use discontinued for a period greater than two years and the rights to the non-conforming use no longer exist, pursuant to ZR § 52-61; and

WHEREAS, the applicant represents that the former meat processing business occupied the building from approximately 1931 until sometime in the late 1990s and that commercial uses have occupied the site since 2007; and

WHEREAS, the applicant asserts that the commercial uses are significantly more compatible with the surrounding area than the meat processing business; and

WHEREAS, the applicant asserts that the use of the existing building for commercial uses will not result in noise levels that will adversely affect the adjacent residential uses in part because the existing building is constructed of 12-in. masonry block and has an interior wall consisting of a stud and drywall assembly, both of which serve to prevent noise transmission; and

WHEREAS, further, the applicant notes that the building's uses include a deli/convenience store and beauty salon, neither of which generates any significant amount of noise and the building does not have any rooftop HVAC units that generate unwanted noise; and

WHEREAS, the applicant proposes the following hours of operation: (1) for the deli/store – 7:00 a.m. to 10:00 p.m., seven days a week and (2) for the beauty salon – 10:00 a.m. to 9:00 p.m., Monday through Saturday and 10:00 a.m. to 5:00 p.m., Sunday; and

WHEREAS, at hearing, a neighbor provided testimony raising concerns about the amount of visitors generated by the uses at the site; and

WHEREAS, in response, the applicant states that due to the small size of the businesses, traffic is not significant and only the deli/store has one small truck delivery per day, while

the beauty salon owner picks up all her own products; and

WHEREAS, the applicant concedes that the shipping business that formerly occupied the site generated considerably more traffic but that that has now vacated the third storefront; 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 unique physical 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. 12BSA051X dated May 17, 2011; 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 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 R7-1 zoning district, the legalization of the use of an existing one-story building for Use Group 6 retail, which does not conform to district use regulations, 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 January 7, 2013" – (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a total floor area of 2,328 sq. ft. (1.0 FAR); and a maximum of three commercial businesses, as indicated on the Board-approved plans;

THAT the maximum hours of operation will be 7:00 a.m. to 10:00 p.m.;

THAT signage on the site 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) 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 15, 2013.

30-12-BZ
CEQR #12-BSA-076Q

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 §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

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 Montanez 5

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 24, 2012, acting on Department of Buildings Application No. 420501095, reads in pertinent part:

Board of Standards and Appeals required for rooftop parking in C2-2 as per ZR § 73-49; and

WHEREAS, this is an application under ZR §§ 73-49 and 73-03 to allow rooftop parking above the first floor of an existing one-story commercial building located in a C2-2 (R6) zoning district, contrary to ZR § 36-11; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in the *City Record*, with continued hearings on August 21, 2012, October 23, 2012, and December 11, 2012, and then to decision on January 15, 2013; and

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

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

WHEREAS, Queens Borough President Helen Marshall recommends approval of the application; and

WHEREAS, the Board notes that the applicant has provided a Memorandum of Understanding with the adjacent building at 142-05 Roosevelt Avenue (the "Residential Building") reflecting conditions the parties agreed to as evidence of the Residential Building's conditional support of the proposal; and

WHEREAS, the subject site is located on the northwest corner of Roosevelt Avenue and Avenue B, within a C2-2 (R6) zoning district; and

WHEREAS, the site is occupied by a one-story commercial building occupied by a grocery store and a pharmacy; and

WHEREAS, the applicant proposes accessory rooftop parking for 49 parking spaces for grocery store customers and would relocate the required parking from the current location at the cellar and sub-cellar of the adjacent six-story Residential Building; and

WHEREAS, the applicant represents that 41 parking spaces are the minimum required for the commercial use of the building; and

WHEREAS, in order to meet its needs, the applicant seeks a special permit pursuant to ZR § 73-49, to permit rooftop parking at the site; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building in a C2-2 zoning district if the Board finds that the 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

WHEREAS, the applicant notes that the adjacent uses include the Residential Building, which is six stories and separated from the subject site by an alleyway with a width of 25 feet; the 12-story nursing home at 38-20 Bowne Street (the "Nursing Home"), approximately 34 feet from the site; and several multi-story mixed-use commercial/residential buildings approximately 70 feet from the site; and

WHEREAS, further, the applicant asserts that it proposes conditions which fit into the special permit provision that the Board "may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for setback of roof parking areas from lot lines or for shielding floodlights;" and

WHEREAS, the applicant states that the availability of additional off-street parking for grocery store customers will be advantageous to the community; and

WHEREAS, the applicant performed a noise study and a traffic study to support its claim that (1) any potential sound from cars on the roof will not be noticeable to surrounding residents due to the fact that the site is within a flight path to LaGuardia Airport and (2) there will be no significant adverse impacts related to street conditions, transportation, roadway conditions, or parking; and

WHEREAS, the applicant identifies the primary concerns of the Residential Building, the Nursing Home, and the Community Board as being related to (1) security, (2) traffic, (3) hours of operation, (4) lighting, (5) aesthetics, and (6) odors; and

WHEREAS, the applicant states that it has entered into a Memorandum of Understanding with the Residential Building regarding mitigation conditions; and

WHEREAS, the applicant proposes conditions for the parking facility to address: (1) hours of operation; (2) entrance and egress; (3) lighting; (4) noise and light buffering; and (5) odor diffusion; and

WHEREAS, additionally the applicant proposes safety measures through (1) signage; (2) roll down gates; (3) security cameras; and (4) monitoring personnel; and

WHEREAS, the applicant notes that its proposed conditions are intended to safeguard the community and have been negotiated with its neighbors and the Community Board; and

WHEREAS, in support of its assertion that the special permit is appropriate at the subject site and that it meets the required findings, the applicant cites to the Board's prior decision under BSA Cal. No. 319-06-BZ, which also involved rooftop parking adjacent to residential uses; and

WHEREAS, at hearing, the Board raised concerns about the appropriateness of the proposed rooftop parking facility at the subject site with adjacency to a significant number of residential units; and

WHEREAS, specifically, the Board notes that the potential impacts of rooftop parking are different from surface (at-grade) parking lots, and that, as a result, the Zoning Resolution requires the Board's special permit for approval of rooftop accessory parking; and

WHEREAS, in order to approve such special permit, the Board must find that the rooftop parking is located in such a manner that it does not change the essential character of the neighborhood, nor impair future use of the surrounding properties; and

WHEREAS, the Board must also find under ZR § 73-03 (general special permit findings) that the hazards or disadvantages to the community at large of such special permit at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

WHEREAS, based on the record, the Board believes that it cannot make such findings, and several factors regarding this application and the surrounding context render the proposed rooftop parking inappropriate; and

WHEREAS, specifically the factors that contribute to the Board's conclusion include: (1) the location of the rooftop parking facility; (2) the nature and intensity of the use; (3) the nature of and proximity to surrounding uses; (4) limitations related to the proposed safeguards; and (5) Board precedent; and

WHEREAS, as to the first factor, the Board notes that the proposed rooftop parking is located in a C2-2 (R6) zoning

district, immediately adjacent to an R6 district to the north and across the street from an R6 district to the east, and that the area is a predominantly residential neighborhood with local retail; and

WHEREAS, the Board notes that the only open parking facility which is located above grade in the general vicinity of the site is a municipal parking garage, which is located approximately 700'-0" to the west; and

WHEREAS, the Board notes that the municipal parking garage occupies nearly an entire block, is surrounded by streets on three and one-half sides, and is opposite to a mix of uses, including commercial and community facility buildings; and

WHEREAS, further, the Board notes that all other parking facilities in the blocks surrounding the site are surface parking lots, and many of them are accessory to residential and community facility buildings, which typically do not draw a significant number of vehicles and in and out trips; and

WHEREAS, as to the second factor, the Board notes that the proposed rooftop parking would be accessory to an existing grocery store, a use that draws vehicle trips throughout the day, including (according to the applicant's traffic consultant) an estimated 22 vehicles during the morning peak hour, 46 during the midday peak hour, 57 during the evening peak, and 78 during the weekend peak; further, the grocery store is open until 10:30 p.m. and likely attracts increased activity during evening hours when residents of nearby buildings have returned home; and

WHEREAS, as to the third factor, the Board notes that the proposed parking would be unenclosed and located on top of the grocery store, on the equivalent of a second floor; and

WHEREAS, the Board notes that the uses immediately adjacent to the grocery store are the six-story Residential Building to the west and the 12-story Nursing Home to the north, and the uses to the east and south, on the opposite sides of Bowne Street and Roosevelt Avenue, are a church, a seven-story apartment building and a six-story apartment building; and

WHEREAS, further, the Board notes that residential buildings adjacent to and across the street from the grocery store all have rows of windows that would face directly onto the rooftop parking, and the Board believes that the number of residential units that would be impacted by noise, lighting, and security issues related to the proposed rooftop parking is significant; and

WHEREAS, the Board is especially troubled by the proximity of the six-story Residential Building to the west, which has more than 66 windows facing directly onto the grocery store's roof and where use of the roof for parking would diminish the privacy and general quality of life for the residents of these units; and

WHEREAS, as to the fourth factor, the Board notes that the applicant has recommended sound attenuation measures, including a sound barrier wall with a height of 4'-6" along the north and west sides to screen sound and light, signs to patrons to be respectful to adjacent residents, lower lighting to be placed in the middle of the parking area, security cameras, and the closing and securing of the roof parking at 9:00 p.m.; and

WHEREAS, however, the Board concludes that such measures fail to fully address the potential impacts on residential units, specifically, the impact of sound and light on the adjacent residential windows located above the sound barrier, and the general ineffectiveness of signs; and

WHEREAS, the Board also notes that any relocation of rooftop equipment (including mechanicals) away from the adjacent apartment building, as stated in the Memorandum of Understanding, would then have an impact on the residential building to the south; and

WHEREAS, finally, the Board has reviewed its history of special permit approvals in the past decade, and none of the grants presented similar factors, primarily the extent of surrounding residential uses, and the nature of such rooftop parking; and

WHEREAS, the Board has granted nine rooftop parking special permits since 1998, which can all be distinguished from the subject facts; most of the sites were either in manufacturing districts or concerned rooftop parking associated with colleges or hospitals within a campus setting; and

WHEREAS the applicant has argued that the Board's grant under BSA Cal. No. 316-06-BZ is similar, and that the applicant is providing similar measures as in that case (including sound attenuating and screening wall and limiting the hours); and

WHEREAS, the Board disagrees with the applicant that BSA Cal. No. 316-06-BZ is similar to the subject rooftop parking; in that case, the roof top parking was for automotive storage space for an automotive service facility in an M1-1 zoning district with use and access restricted to employees of the service facility and did not anticipate constant activity of cars entering and existing the rooftop parking; and

WHEREAS, further, the Board notes that the site was in a manufacturing district and bordered a few semi-detached homes to the rear, but the other adjacent buildings to the sides were occupied by industrial use; additionally, the homes were a total of ten and the roof parking could not be viewed from the adjacent residential windows and the hours were limited to 7:00 p.m., Monday through Friday and closed on weekends; and

WHEREAS, the Board concludes that unlike any of the other special permits, the impacts associated with the proposed rooftop parking are much more significant and have the potential to affect many more residential units; and

WHEREAS, finally, the Board finds that the applicant has failed to establish that the advantages to the community off set the disadvantages to the surrounding neighborhood; the Board notes that the grocery store already provides required parking to its patrons on the subject zoning lot and, thus, the applicant's assertion that the rooftop parking would be a benefit to its patrons and surrounding community by providing parking and reducing congestion on the streets, is unavailing: and

WHEREAS, the Board finds that the applicant's assertions about the grocery store's benefits to the community

are misplaced as the Board's rejection of the rooftop parking facility is not a rejection of the existing as-of-right grocery store; and

WHEREAS, as to the community's involvement, the Board notes that the Community Board's conditions do not relate to the actual rooftop conditions and that the Board has the authority to determine that the conditions set forth in the Memorandum of Understanding do not mitigate the impacts of the parking facility to the extent that the special permit findings are satisfied; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-49 have not been met; and

WHEREAS, the Board does not find 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 has also determined that the evidence in the record fails to support the findings required to be made under ZR § 73-03.

Therefore it is Resolved that the objection of the Borough Commissioner, dated January 24, 2012, acting on Department of Buildings Application No. 420501095, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, January 15, 2013.

244-12-BZ
CEQR #13-BSA-016M
APPLICANT – Watchel, Masyr & Missry LLP by Ellen Hay for EQR-600 Washington LLC, owner; Gotham Gym 1 LLC, lessee.
SUBJECT – Application August 8, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Gotham Gym*). M1-5 zoning district.
Special Permit (§73-36) to permit a physical culture
PREMISES AFFECTED – 600 Washington Street, west side of Washington Street between Morton and Leroy Streets, Block 602, Lot 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 15, 2013, acting on Department of Buildings Application No. 120918436, reads in pertinent part:

> Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 42-10 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 an M1-5 zoning district, the legalization of a physical culture establishment (PCE) on the first floor of a mixed-use commercial/residential building contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 15, 2013; 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, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Washington Street between Leroy and Morton Streets within an M1-5 zoning district; and

WHEREAS, the site was the subject of a prior variance pursuant to BSA Cal. No. 287-00-BZ, which allowed for the construction of a six-, seven-, and 14-story mixed-use commercial/ residential building contrary to underlying use regulations; and

WHEREAS, the PCE will occupy approximately 3,925 sq. ft. of floor area on a portion of the first floor; and

WHEREAS, the PCE will be operated as Gotham Gym; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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 applicant notes that the PCE began operating at the site in February 2011 and that there have not been any complaints about noise; and

WHEREAS, the applicant asserts that the building is constructed of steel and concrete with concrete floors with a thickness of seven inches, and double pane windows, which satisfies the DEP noise abatement levels; and

WHEREAS, the applicant proposes the following hours of operation: Monday through Friday, 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, 6:00 a.m. to 8:00 p.m.; 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 Board notes that the term of the special permit will be reduced for the period from the PCE's opening in February 2011 to the date of this grant; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.3 and 617.5; and

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 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, the legalization of a physical culture establishment (PCE) the first floor of a mixed-use commercial/residential building contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 3, 2013" - Four (4) sheets and "Received November 20, 2012" - One (1) sheet and *on further condition*:

THAT the term of this grant will expire on February 1, 2021;

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 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

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, January 15, 2013.

249-12-BZ
CEQR #13-BSA-017K

APPLICANT – Lewis E. Garfinkel, for Solomon Friedman, owner.

SUBJECT – Application August 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a); side yards (§23-461(a)) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1320 East 27th Street, west side of East 27th Street, 140' south of Avenue M, 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 Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 9, 2012, acting on Department of Buildings Application No. 320518828, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150%
3. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 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 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, 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 November 20, 2012, after due notice by publication in *The City Record*, with a continued hearing on December 4, 2012, and then to decision on January 15, 2013; 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, certain community members provided written testimony in opposition to the proposal based on general concerns including incompatibility with

neighborhood character; and

WHEREAS, the subject site is located on the west side of East 27th Street, 140 feet south of Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,402 sq. ft. (0.60 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 2,402 sq. ft. (0.60 FAR) to 4,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 58 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 3'-11" and to provide a side yard along the southern lot line with a width of 9'-9" (two side yards with minimum widths of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 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, 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, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 28, 2012"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,000 sq. ft. (1.0 FAR); a minimum open space ratio of 58 percent; a side yard along the southern lot line with a minimum width of 9'-9" and a side yard along the northern lot line with a width of 3'-11"; and a rear yard with a minimum 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, January 15, 2013.

260-12-BZ
CEQR #13-BSA-026Q
APPLICANT – John M. Marmora, Esq., c/o K & L Gates LLP, for McDonald's Corporation, owner.
SUBJECT – Application August 30, 2012 – Special Permit (§73-243) to permit an accessory drive-through facility to an eating and drinking establishment (McDonald's) within the portion of the lot located in a C1-3/R5D zoning district contrary to §§32-15 & 32-32 as well as a Special Permit (§73-52) to extend the commercial use by 25' into the R3A portion of the lot contrary to § 22-10.
PREMISES AFFECTED – 114-01 Sutphin Boulevard, north side of Sutphin Boulevard between Linden Boulevard and 114th Road, Block 12184, Lot 7, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated August 6, 2012, acting on Department of Buildings Application No. 420603644, reads:

> Accessory parking for proposed eating and drinking establishment (Use Group 6A) is not permitted in R3A zoned lot portion; contrary to ZR 22-10.

Proposed eating and drinking establishment with accessory drive-through facility in the C1-3/R5D lot portion requires BSA special permit pursuant to ZR 73-243; contrary to ZR 32-15, and ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-243, 73-52, and 73-03, to permit, on a site partially within a C1-3 (R5D) zoning district and partially within a R3A 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), and the extension of the C1-3 (R5D) zoning district regulations 25 feet into the R3A zoning district, contrary to ZR §§ 22-10, 32-15, and 32-31; and

WHEREAS, a public hearing was held on this application on November 27, 2012, and then to decision on January 15, 2013; 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 12, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Sutphin Boulevard and Linden Boulevard; and

WHEREAS, the site is divided by a zoning district boundary line, with the majority of the site located within a C1-3 (R5D) zoning district, and a narrow strip along the eastern side of the site located within an R3A zoning district; and

WHEREAS, the site has a total lot area of 29,430 sq. ft. and is occupied by a McDonald's restaurant with an accessory drive-thru; and

WHEREAS, the applicant proposes to demolish the existing restaurant and construct a new 3,911 sq. ft. McDonald's restaurant with an accessory tandem drive-thru; and

WHEREAS, 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 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 notes that the existing restaurant has a drive-thru, and therefore the proposed drive-thru does not function as a new facility but rather as a substantial improvement of the existing facility; and

WHEREAS, the applicant represents that the reorientation of the drive-thru will likely improve circulation by relocating the primary access to the Sutphin Boulevard entrance, while under the existing arrangement the primary access for the drive-thru is from Linden Boulevard, which is more residential in character than Sutphin Boulevard; and

WHEREAS, the applicant states that the curb cuts utilized for the drive-thru customers are located 122 feet and 139 feet, respectively, from the intersection of Sutphin Boulevard and Linden Boulevard, which is substantially more than the required 50 feet; and

WHEREAS, the applicant represents that the facility fully complies with the accessory off-street parking regulations for the C1-3 (R5D) zoning district; and

WHEREAS, in support of this representation, the applicant submitted a proposed site plan providing 14 accessory off-street parking spaces, which satisfies the requirement of ten parking spaces pursuant to 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 the motor vehicle; and

WHEREAS, the applicant states that Sutphin Boulevard contains a mix of uses in the area which stretches from Jamaica Station to Rockaway Boulevard, however, the area surrounding the subject site is characterized by auto-oriented commercial uses; and

WHEREAS, the applicant further states that there are several uses to the north of the site which actually contain curb cuts and parking areas in the front yards (e.g., Family Dollar, Port Royal Restaurant, Western Union, and a nail salon), and a health services facility with an 18-space parking area is located to the south of the site along Sutphin Boulevard; therefore, the applicant represents that the character of the Sutphin Boulevard frontage in the vicinity of the site reflects substantial orientation to the motor vehicle; 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 a drive-thru facility has been in operation on the site for at least the past four decades, and the proposed new drive-thru facility will substantially improve current conditions; and

WHEREAS, specifically, the applicant states that the new facility will mitigate the possible visual impacts of the drive-thru with a fence, and the design and orientation of the drive-thru menu boards and sound system are state-of-the-art

and intended to reduce the acoustical/noise impacts on surrounding areas; and

WHEREAS, the applicant represents that the decibel levels for the proposed drive-thru, as measured from the nearest house approximately 90 feet from the drive-thru, will be approximately 46 dBA without activating "automatic voice control," which adjusts the outbound volume based on the outdoor ambient noise level, and 22 dBA with automatic voice control active; and

WHEREAS, the applicant further represents that the proposed drive-thru will lessen the impacts on surrounding residences by relocating the primary entrance to the drive-thru from the more residential Linden Boulevard to the more commercial Sutphin Boulevard; and

WHEREAS, the applicant represents that there will be adequate buffering between the drive-thru facility and adjacent residential uses; and

WHEREAS, the applicant states that there will be a fence with a height of six feet and landscaping along the lot lines adjacent to residential uses, which will provide a sufficient buffer to address possible visual impacts associated with the drive-thru facility; and

WHEREAS, the applicant further states that the open areas adjacent to residential uses exceed the minimum open area requirements of ZR § 33-392; and

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

WHEREAS, the applicant also requests a special permit pursuant to ZR § 73-52 to extend the C1-3 (R5D) zoning district regulations 25 feet into the portion of the zoning lot located within an R3A zoning district; and

WHEREAS, the applicant states that the majority of the zoning lot is located within the C1-3 (R5D) zoning district, but that a narrow strip along the eastern side of the zoning lot is within an R3A zoning district; and

WHEREAS, the portion of the site that is within the C1-3 (R5D) zoning district occupies approximately 25,422 sq. ft. (86 percent) of the zoning lot, and the portion of the site that is within the R3A zoning district occupies approximately 4,008 sq. ft. (14 percent) of the zoning lot, and ranges in width from approximately 23'-6" to 25'-2"; and

WHEREAS, the C1-3 (R5D) zoning district permits the proposed accessory drive-thru facility pursuant to ZR § 73-243; the R3A district permits only residential uses; and

WHEREAS, the applicant notes that if the maximum width of the R3A portion of the lot was less than 25 feet, the proposed extension of the C1-3 (R5D) zoning district would be permitted as-of-right pursuant to ZR § 77-11; and

WHEREAS, the applicant represents that by allowing the C1-3 (R5D) use regulations to apply to 25 feet of the total width of the R3A portion of the lot, the proposed accessory drive-thru facility use will be contained entirely within the portion of the lot subject to C1-3 (R5D) regulations; and

WHEREAS, however, an approximately two-inch sliver over a portion of the lot will remain solely within the R3A zoning district, even after the boundary line is moved 25 feet, and may only be used for residential uses; 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: (a) that, 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 (b) that 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 single ownership requirement, the applicant submitted deeds establishing that the subject property has existed in single ownership since prior to December 15, 1961; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence 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 threshold 50 percent requirement, 25,422 sq. ft. (86 percent) of the site's total lot area of 29,430 sq. ft. is located within the C1-3 (R5D) zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the finding under ZR § 73-52(a), the applicant represents that it would not be economically feasible to use or develop the R3A portion of the zoning lot for a permitted use; and

WHEREAS, the applicant states that the R3A portion of the lot is a very narrow and relatively small area located between a commercial-zoned tract and Augusta Court, a dead-end street; and

WHEREAS, the applicant represents that when viewed as a potential development parcel, the R3A portion of the site has no utility for residential uses under the R3A district requirements due to its size and shape; and

WHEREAS, specifically, the applicant states that the R3A portion of the site would (1) be deficient with respect to lot width, because the minimum width of the R3A area is approximately 23'-6" (a minimum lot width of 25'-0" is required), (2) constitute a corner lot which requires 10'-0" front yards along Linden Boulevard and August Court, resulting in a developable width of approximately 13 feet, and (3) need to provide at least one off-street parking space in the side or rear yard, which would be impractical given the site constraints; and

WHEREAS, as to the finding under ZR §73-52(b), the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, as noted above, the portion of the Sutphin Boulevard corridor which includes the subject site has an auto-oriented commercial character, and the R3A portion of the site has been utilized as a parking area for the existing

McDonald's restaurant for many years; and

WHEREAS, the applicant represents that the proposed project will substantially improve upon the existing conditions by providing a fence and landscaped area to help screen the restaurant and drive-thru from the residences located across Augusta Court; 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, 73-52, 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. 13BSA026Q dated August 30, 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 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, 73-52, and 73-03 to permit, on a site partially within a C1-3 (R5D) zoning district and partially within an R3A 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), and the extension of the C1-3 (R5D) zoning district regulations 25 feet into the R3A zoning district, contrary to ZR §§ 22-10, 32-15, and 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 January 11, 2013"- (7) sheets; and *on further condition*:

THAT the term of this grant will expire on January 15, 2018;

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 the above conditions shall appear on the certificate of occupancy;

THAT all signage shall conform to C1 zoning 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) only;

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 plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, January 15, 2013.

278-12-BZ
CEQR #13-BSA-033K

APPLICANT – John M. Marmora, Esq. for Robert J. Panzarella, BSB Real Estate Holdings LLC. J & J Real Estate Holdings LLC., owner, McDonald's USA, LLC, lessee.

SUBJECT – Application September 18, 2012 – Special Permit (§73-52) to extend by 25'-0" a commercial use into a residential zoning district to permit the development of a proposed eating and drinking establishment *(McDonald's*) with accessory drive thru. C8-2 and R5 zoning district.

PREMISES AFFECTED – 3143 Atlantic Avenue, northwest corner of Atlantic Avenue between Hale Avenue and Norwood Avenue. Block 3960, Lot 58. 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, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated August 22, 2012, acting on Department of Buildings Application No. 320375287, reads in pertinent part:

Parking spaces and portion of drive-through

facility, both accessory to the proposed eating and drinking establishment (Use Group 6A), are not permitted in R5 zoned lot portion; contrary to ZR § 22-10; and

WHEREAS, this is an application under ZR §§ 73-52 and 73-03, to permit, on a site partially within a C8-2 zoning district and partially within an R5 zoning district, the extension of the C8-2 zoning district regulations 25 feet into the R5 zoning district, to allow for vehicular maneuvering associated with the proposed accessory drive-thru facility located in the C8-2 portion of the site, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on November 27, 2012 after due notice by publication in *The City Record*, and then to decision on January 15, 2013; and

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

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located at the southwest corner of Atlantic Avenue and Norwood Avenue, with approximately 156.82 feet of frontage on Atlantic Avenue, 130.33 feet of frontage on Norwood Avenue, and a total lot area of 22,138 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant one-story building formerly utilized as a KFC restaurant with an accessory drive-thru, which is proposed to be demolished; and

WHEREAS, the applicant proposes to construct a new one-story building with a floor area of 3,534 sq. ft., to be occupied by a McDonald's restaurant with an accessory drive-thru facility and nine parking spaces; and

WHEREAS, the applicant requests a special permit pursuant to ZR § 73-52 to extend the C8-2 zoning district regulations 25 feet into the portion of the zoning lot located within an R5 district; and

WHEREAS, the applicant states that the extension of the C8-2 district would allow for the usage of the R5 portion of the lot for vehicular maneuvering connected with the proposed accessory drive-thru (i.e., the drive-thru lane); and

WHEREAS, the applicant further states that the remainder of the R5 portion of the lot will remain entirely open and landscaped; and

WHEREAS, the applicant notes that the portion of the site that is within the C8-2 zoning district occupies 15,626 sq. ft. (71 percent) of the zoning lot, and the portion of the site that is within the R5 zoning district occupies 6,512 sq. ft. (29 percent) of the zoning lot; and

WHEREAS, the R5 portion fronts on Norwood Avenue and occupies an irregularly-shaped portion of the site, located to the north of the C8-2 portion of the site; and

WHEREAS, the C8-2 district permits the Use Group 6 eating and drinking establishment with accessory drive-thru facility; the R5 district permits only residential or community facility uses; 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: (a) that, 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 (b) that 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 single ownership requirement, the applicant submitted deeds and a Sanborn Map establishing that the subject property has existed in single ownership since prior to December 15, 1961; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence 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 threshold 50 percent requirement, 15,626 sq. ft. (71 percent) of the site's total lot area of 22,138 sq. ft. is located within the C8-2 zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the finding under ZR § 73-52(a), the applicant represents that it would not be economically feasible to use or develop the R5 portion of the zoning lot for a permitted use; and

WHEREAS, specifically, the applicant states that the R5 portion of the site is burdened by a trapezoid shape with only 28 feet of frontage along Norwood Avenue, while a minimum lot width of 40 feet is required for a detached home in an R5 district; and

WHEREAS, the applicant further states that there is no potential to create a regular lot by expanding into the C8-2 portion of the site because that zoning district does not permit any residential uses; and

WHEREAS, the applicant provided a drawing illustrating the development potential for a complying building in the R5 portion of the lot with identical dimensions to the adjacent home, which reflects that the home would have to be set back to the very rear portion of the property in order to comply with the side yard requirements, which would result in a non-complying rear yard; and

WHEREAS, the applicant states that in addition to the inability to meet the rear yard requirement, the home would also have to be set back approximately 87 feet from the street, which would result in the front façade of the home nearly aligning with the rear façade of the adjacent home; and

WHEREAS, the applicant represents that the result would be a highly impractical and poorly planned home that would create a major gap in the existing pattern of residential development along Norwood Avenue; and

WHEREAS, as to the finding under ZR §73-52(b), the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, the applicant states that Atlantic Avenue is an auto-oriented corridor with a commercial character; and

WHEREAS, the applicant notes that there are a number of gas stations and fast food restaurants in the immediate vicinity of the site, and that the property has been utilized as a KFC restaurant with a drive-thru facility for many years; thus, the proposed restaurant with accessory drive-thru use would be consistent with the character of the surrounding area; and

WHEREAS, the applicant represents that the extension of the C8-2 district facilitates a substantial buffer area between the restaurant and drive-thru and the surrounding residences which would not otherwise exist; and

WHEREAS, specifically, the applicant states that no structures will be developed within the 25-ft. extension and the only activity that will occur is vehicular circulation related to the drive-thru; and

WHEREAS, the applicant further states that the remainder of the R5 portion of the lot will be left open and landscaped and the design and orientation of the drive-thru menu boards and sound system are state-of-the-art and intended to reduce the acoustical/noise impacts on surrounding areas; and

WHEREAS, the applicant represents that the decibel levels for the proposed drive-thru, as measured from the nearest residential property, will be approximately 50 dBA without activating "automatic voice control," which adjusts the outbound volume based on the outdoor ambient noise level, and 30 dBA with automatic voice control active; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C8-2 zoning district portion of the lot into the R5 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 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 §§ 73-52 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.13BSA033K, dated September 18, 2012; 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 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, on a site partially within a C8-2 zoning district and partially within an R5 zoning district, the extension of the C8-2 zoning district regulations 25 feet into the R5 zoning district, to allow for vehicular maneuvering associated with the proposed accessory drive-thru facility located in the C8-2 portion of the site, contrary to ZR § 22-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 19, 2012" – (7) sheets; and *on further condition*:

THAT landscaping and trees will be planted in accordance with 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,

January 15, 2013.

283-12-BZ
CEQR #13-BSA-038M
APPLICANT – Sheldon Lobel, P.C., for 440 Broadway Realty Associates, LLC, owner.
SUBJECT – Application September 24, 2012 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar of the existing building, contrary to Section 42-14D(2)(b). M1-5B zoning district.
PREMISES AFFECTED – 440 Broadway, between Howard Street and Grand Street, Block 232, Lot 3, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 23, 2012, acting on Department of Buildings Application No. 121324655, reads in pertinent part:

> Proposed retail (Use Group 6) below the floor level of the second story is not permitted; contrary to ZR 42-14(D)(2)(b); and

WHEREAS, this is an application under ZR § 72-21, to permit in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing two-story building to a commercial retail use (UG 6) with accessory retail use in the cellar, contrary to ZR § 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on December 11, 2012, after due notice by publication in the *City Record*, and then to decision on January 15, 2013; 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 approval of this application, with the condition that eating and drinking establishments not be permitted; and

WHEREAS, the subject site is located on the east side of Broadway, between Grand Street and Howard Street, in an M1-5B zoning district within the SoHo-Cast Iron Historic District; and

WHEREAS, the site has 30'-5" feet of frontage on Broadway, a depth of 98'-0", and a lot area of 2,989 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story commercial building with a floor area of 5,771 sq. ft. (1.93 FAR); and

WHEREAS, the applicant proposes to legalize the Use Group 6 retail store on the first floor, with accessory retail use in the cellar; and

WHEREAS, the applicant states that the first floor will operate as the main retail space, the second floor will provide additional retail space, and the cellar will provide additional retail space and an accessory storage area; and

WHEREAS, because Use Group 6 retail is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance to permit the proposed legalization of the first floor and cellar level; and

WHEREAS, the applicant states that 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; and (2) the existing building is significantly underbuilt; and

WHEREAS, as to the obsolescence of the building, the applicant states that it was constructed more than 125 years ago, lacks a loading dock or the space to install a loading dock, and has limited space to install any equipment to accommodate light manufacturing uses due to a line of columns running the length of the building from front to back; and

WHEREAS, the applicant states that the building also has a small floor plate, with only approximately 2,605 sq. ft. of usable floor area at the ground floor, which is not conducive to a conforming manufacturing use; and

WHEREAS, the applicant represents that the small floor plate, along with the presence of columns throughout the building and the absence of a loading dock create inefficiencies in operating the building for a conforming use; and

WHEREAS, further, the applicant states that the building is significantly underbuilt, with only two stories above ground and an FAR of 1.93; and

WHEREAS, the applicant states that the small building presents difficulties to the owner, as there are only two floors to generate income for the site, and the building is dwarfed by much larger buildings in the immediate area, including a nine-story building adjacent to the south of the site; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that there is only one other building on the subject block which is two stories or less, at 454 Broadway; and

WHEREAS, the applicant provided a 1,000-ft. radius study which indicated that of the 267 buildings located within the study area, only 16 maintain an FAR less than 1.93, and only 20 are two stories or less, placing the subject building in the lowest six percent in terms of FAR and the lowest seven percent in terms of building height; and

WHEREAS, the applicant notes that of the other small buildings in each category, only three are occupied with conforming uses on the ground floor and each of these buildings is located well beyond a 400-ft. radius of the site; and

WHEREAS, the applicant represents that while the building may enlarge as-of-right, an enlargement above the existing building would be structurally infeasible; and

WHEREAS, the applicant represents that, even if an enlargement was structurally feasible, it would be unlikely that LPC would approve an enlargement due to the site's location in the SoHo-Cast Iron Historic District; and

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

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) conforming use at the first floor and cellar; and (2) the proposed ground floor and cellar retail use; and

WHEREAS, the study concluded that the conforming scenario would not result in a reasonable return, but that the proposal would realize 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 compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity contain ground floor retail uses, particularly along Broadway; and

WHEREAS, the applicant cites to the Landmark Preservation Commission's ("LPC") 1973 designation report for the SoHo-Cast Iron Historic District, which states that "Broadway was primarily a residential street until the late 1820s and early 1830s…Rapid commercial development soon followed and continued into the early 20th century. Today the street still retains a commercial character;" and

WHEREAS, the applicant states that the commercial character recognized by LPC in 1973 is still prevalent today; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, approving the proposal on November 28, 2012; and

WHEREAS, in response to questions raised by the Board regarding whether the existing facade and signage had been approved by LPC, the applicant also submitted a Notice of Compliance from LPC dated November 28, 2012, stating that the work completed at the site, "including the installation of new storefront infill, has been completed in compliance with Certificate of Appropriateness…"; 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

WHEREAS, the applicant notes that there is no proposed increase in the bulk of the building; and

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

WHEREAS, the project is classified as a Type I 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. 13BSA038M, dated October 3, 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, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing two-story building to a commercial retail use (UG 6) with accessory retail use in the cellar, contrary to ZR § 42-14(d)(2)(b); *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 11, 2013"–(8) sheets; and *on further condition*:

THAT no eating and drinking establishment will be permitted on the site;

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 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, January 15, 2013.

16-12-BZ

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 – Laid over to February 12, 2013, at 1:30 P.M., for continued hearing.

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

APPEARANCES –

For Applicant: Raymond Levin.

ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for deferred decision.

56-12-BZ

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to February 12, 2013, at 1:30 P.M., for adjourned hearing.

57-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mykola Volynsky, owner.

SUBJECT – Application March 13, 2012 – 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 (§23-461); less than the required rear yard (§23-37). R4 zoning district.

PREMISES AFFECTED – 2670 East 12th Street, between Shore Parkway and Gilmore Court, Block 7455, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for continued hearing.

67-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 1442 First Avenue, LLC, owner.

SUBJECT – Application March 21, 2012 – Variance (§72-21) to allow for the extension of an eating and drinking establishment to the second floor, contrary to use regulations (§32-421). C1-9 zoning district.

PREMISES AFFECTED – 1442 First Avenue, southeast corner of the intersection formed by 1st Avenue and East 75th Street, Block 1469, Lot 46, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to February 12, 2013, at 1:30 P.M., for adjourned hearing.

75-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.

SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of retail use (UG 6) on the first floor and expand the use into the cellar and sub-cellar, contrary to use regulations (§42-14 (D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, 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 12, 2013, at 1:30 P.M., for decision, hearing closed.

195-12-BZ
APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.
SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.
PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.
COMMUNITY BOARD #10Q
ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for adjourned hearing.

242-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship, contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.
PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, Borough of Brooklyn.
COMMUNITY BOARD #12BK
ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for continued hearing.

257-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Birta Hanono and Elie Hanono, owners.
SUBJECT – Application August 29, 2012 – 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 yard (§23-461) and less than the required rear yard (§23-47). R4 (OP) zoning district.
PREMISES AFFECTED – 2359 East 5th Street, east side of East 5th Street between Avenue W and Angela Drive, Block 7181, Lot 44, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for continued hearing.

275-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Fayge Hirsch and Abraham Hirsch, owners.
SUBJECT – Application September 6, 2012 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141), and side yard (§23-461) regulations. R2 zoning district.
PREMISES AFFECTED – 2122 Avenue N, southwest corner of Avenue N and East 22nd Street, Block 7675, Lot 61, 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 5, 2013, at 1:30 P.M., for decision, hearing closed.

285-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Pigranel Management Corp., owner; Narita Bodywork, Inc., lessee.
SUBJECT – Application October 3, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Narita Bodyworks*) on the 4th floor of existing building. M1-6 zoning district.
PREMISES AFFECTED – 54 West 39th Street, south side of West 39th Street, between Fifth Avenue and Avenue of the Americas, Block 840, Lot 78, Borough of Manhattan.
COMMUNITY BOARD #5M
ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for continued hearing.

291-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP for 301-303 West 125, LLC, owner; Blink 125th Street Inc., lessee.
SUBJECT – Application October 9, 2012 – Special permit (§73-36) to allow a physical culture establishment (*Blink*) within proposed commercial building. C4-4D zoning district.
PREMISES AFFECTED – 301 West 125th Street, northwest corner of intersection of West 125th Street and Frederick Douglas Boulevard, Block 1952, Lot 29, 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 12, 2013, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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9-13-BZ
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11-13-BZ
144-148 West 90th Street, south side of West 90th Street, 135' east from the corner formed by the intersection of the southerly side of West 90th Street and the easterly side of Amsterdam Avenue., Block 1220, Lot(s) 7506, Borough of **Manhattan, Community Board: 7**. Variance (§72-21) to permit the construction of a connecting bridge at the fourth story level to connect the school's building located at 175 West 89th Street (South Building) to the building located on the Site (North Building) to serve the school's educational mission and provide for more efficient operations. The proposed project will result in development of an additional 213sf of community facility floor area on the site, all of which will be located within the bridge. R7-2 zoning district.

12-13-BZ
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14-13-BZ
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50-13-BZ
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DOCKETS

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 12, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 12, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

APPEALS CALENDAR

10-10-A
APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.
SUBJECT – Application September 5, 2012 – Application to reopen pursuant to a court remand (*Appellate Division*) for a determination of whether the Department of Buildings issued a permit in error based on alleged misrepresentations made by the owner during the permit application process.
PREMISES AFFECTED – 1882 East 12th Street, west side of East 12th Street approx. 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.
COMMUNITY BOARD #15BK

FEBRUARY 12, 2013, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 12, 2013, at 1:30 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

149-12-BZ
APPLICANT – Alexander Levkovich, for Arkadiv Khavkovich, owner.
SUBJECT – Application May 9, 2012 – Special Permit (§73-622) for the enlargement an existing single family home contrary to floor area and lot coverage (§23-141(b)) and less than the required rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED – 154 Girard Street, between Hampton Avenue and Oriental Boulevard, Block 8749, Lot 265, Borough of Brooklyn.
COMMUNITY BOARD #15BK

153-12-BZ
APPLICANT – Harold Weinberg, for Ralph Bajone, owner.
SUBJECT – Application May 10, 2012 – Special Permit (§73-36) to legalize the space for a physical culture establishment (*Fight Factory Gym*). M1-1 in OP zoning district.
PREMISES AFFECTED – 23/34 Cobek Court, south side, 182.0' west of Shell Road, between Shell Road and West 3rd Street, Block 7212, Lot 59, Borough of Brooklyn.
COMMUNITY BOARD #13BK

199-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.
SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self storage facility that exceeds the maximum permitted floor area regulations. C8-1 and R6 zoning districts.
PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #4BK

306-12-BZ
APPLICANT – Eric Palatnik, P.C., for Vincent Passarelli, owner; 2 Roars Restored Inc aka La Vida Massage, lessee.
SUBJECT – Application November 5, 2012 – Special permit (§73-36) to allow the proposed physical culture establishment (*La Vida Massage*) in an M1-1 zoning district.
PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets Tyrellan Avenue and W Shore Expressway, Block 7511, Lot 1, Borough of Staten Island.
COMMUNITY BOARD #3SI

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JANUARY 29, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

548-69-BZ
APPLICANT – Eric Palatnik, P.C., for BP North America, owner.
SUBJECT – Application March 27, 2012 – Extension of Term for a previously granted variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district
PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107th Street, Block 1694, Lot 1, Borough of Queens.
COMMUNITY BOARD #3Q
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 5
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 prior grant for an automotive service station, which expired on May 25, 2011; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, with continued hearings on September 25, 2013, October 30, 2012 and January 8, 2013, and then to decision on January 29, 2013; and

WHEREAS, Community Board 3, Queens, recommends approval of this application with the following conditions: (1) the surface mounted refueling caps on the underground gasoline storage tanks be lowered to minimize scraping to the underside of cars and possible tripping hazards; and (2) curb cuts and sidewalk flags at 108th Street be repaired and resurfaced; 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 an irregularly-shaped corner through lot bounded by 107th Street to the west, Astoria Boulevard to the north, and 108th Street to the east, within an R3-2 zoning district; and

WHEREAS, the site is occupied by a one-story automotive service station with an accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 25, 1971 when, under the subject calendar number, the Board granted a variance to permit the construction of an automotive service station with accessory signs restricted to the pumping of gasoline, which omitted automotive service and repair, for a term of ten years; and

WHEREAS, subsequently, the term was extended and the grant amended by the Board at various times; and

WHEREAS, most recently, on August 12, 2003, the Board granted a ten-year extension of term and an amendment to legalize a change of use from an accessory storage building to an accessory convenience store, to expire on May 25, 2011; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping on the site, replace the slatted fencing, clean the dumpster area, remove the ice box, and relocate the shed so it is not visible; and

WHEREAS, in response, the applicant submitted photographs reflecting that landscaping has been planted on the site, the fence has been repaired, the dumpster area has been cleaned, and the ice box has been removed; and

WHEREAS, as to the Board's request to relocate the shed from the northeast corner of the site, the applicant states that the 10'-0" by 10'-0" shed is currently located in the most concealed position possible and it cannot be placed behind the convenience store, as requested, because there is only 8'-0" separating it from the fencing along the rear lot line; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted a letter from the project manager stating that (1) it is essential that the gas tanks remain elevated in order to prevent water from seeping into the tank manways, and (2) the change in grade at the 108th Street exit is necessary for on-site draining and that it acts as traffic control (like a speed bump) to ensure drivers do not "shoot out" of the site which could be potentially dangerous due to the close proximity of the curb cut to the intersection; and

WHEREAS, the Board accepts the applicant's explanations in response to the conditions proposed by the Community Board, and agrees that the shed on the site is not significantly visible from the street due to the topography on that portion of the site; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds that the requested extension of term is appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on May 25, 1971, as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on May 25, 2021; *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 18, 2013"–

(3) sheets, and *on further condition*:

THAT the term of this grant will be for ten years from the expiration of the prior grant, to expire on May 25, 2021;

THAT landscaping will be maintained in accordance with the BSA-approved plans;

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

THAT signage will comply with C1 district regulations;

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) 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. 401636510)

Adopted by the Board of Standards and Appeals, January 29, 2013.

136-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Fulton View Realty, LLC, lessee.

SUBJECT – Application August 24, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the residential conversion and one-story enlargement of three, four-story buildings. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Water Street and Front Street, Block 35, Lot 7, 8 & 9, 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 Montanez 5

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 of a previously granted variance to permit the residential conversion and one-story enlargement of three existing four-story buildings, which expired on May 8, 2011; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in *The City Record*, and then to decision on January 29, 2013; and

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

WHEREAS, the subject 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, on May 8, 2007, under the subject calendar number, the Board granted a variance to permit the proposed residential conversion and one-story enlargement of three adjacent four-story buildings, with ground floor retail and 15 dwelling units, contrary to ZR §§ 42-10, 43-12, 43-26, and 54-31; and

WHEREAS, substantial construction was to be completed by May 8, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant represents that the owner is now prepared to proceed with 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 May 8, 2007, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on January 29, 2017; *on condition*:

THAT substantial construction will be completed by January 29, 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) 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. 301564162)

Adopted by the Board of Standards and Appeals, January 29, 2013.

208-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt, owner.
SUBJECT – Application October 25, 2012 – Extension of Time to Complete Construction of an approved special permit (§73-622) to permit the enlargement of an existing single family residence which expired on October 28, 2012. R2 zoning district.
PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22nd Street, Block 7639, Lot 1 &3(tent.1), 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted special permit for the enlargement of a single-family home, which expired on October 28, 2012; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in *The City Record*, and then to decision on January 29, 2013; 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 at the northwest corner of the intersection of Avenue M and East 22nd Street, within an R2 zoning district; and

WHEREAS, on October 28, 2012, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-622 to allow the enlargement of a single-family home, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, substantial construction was to be completed by October 28, 2012, in accordance with ZR § 73-70; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to 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 October 28, 2008, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on January 29, 2017; *on condition*:

THAT substantial construction will be completed by January 29, 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) 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. 310165335)

Adopted by the Board of Standards and Appeals, January 29, 2013.

135-46-BZ
APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.
SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment (§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.
PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8555, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #18BK
ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for continued hearing.

130-88-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application August 13, 2012 – Extension of Term of approved Special Permit (§73-211) for the continued operation of UG 16B gasoline service station (*Gulf*) which expired on January 24, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on October 12, 2003; Waiver of the Rules. C2-2/R4 zoning district.
PREMISES AFFECTED – 1007 Brooklyn Avenue, aka 3602 Snyder Avenue, southeast corner of the intersection formed by Snyder and Brooklyn Avenues, Block 4907, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #17BK
ACTION OF THE BOARD – Laid over to March 5, 2013, at 10 A.M., for continued hearing.

103-91-BZ
APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.
SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.
PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.
COMMUNITY BOARD #13Q
ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for continued hearing.

20-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich LLC, owners.
SUBJECT – Application January 3, 2013 – Extension of Time to Complete Construction of approved Special Permit (§75-53) for the vertical enlargement to an existing warehouse (UG17) which expired on January 13, 2013. C6-2A zoning district.
PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street between Greenwich Street and Collister Street, Block 214, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #1M
ACTION OF THE BOARD – Laid over to February 5, 2013, at 10 A.M., for postponed hearing.

APPEALS CALENDAR

45-03-A thru 62-03-A & 64-03-A
APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.
SUBJECT – Application October 3, 2011 – Proposed construction of a single-family dwelling which is not fronting on a legally mapped street and is located within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R3-1 zoning district.
PREMISES AFFECTED – Hall Avenue, north side of Hall Avenue, 542.56' west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lot 60, 80, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Staten Island Commissioner Borough Commissioner, dated September 9, 2011, acting on Department of Buildings Application Nos. 520066945, 520066963,5200666954,520067025,520067105, 520067098, 520067089, 520067070, 520067061, 520067052, 520067043, 520067034, 520067258, 520067267, 520067276, 520067285, 520067588, 520067294, and 520067301, reads in pertinent part:

1. The streets giving access to proposed new 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 501.3.1 of the New York City Building Code.
2. Proposed development including site appurtenances is located in the bed of streets duly placed on the official map of the City of New York therefore:
   a. No permit can be issued pursuant to Article 3, Section 35 of the General City Law.

Therefore refer to the Board of Standards and Appeals for further review; and

WHEREAS, this is an application to amend previously approved General City Law ("GCL") §§ 35 and 36 applications which allowed for construction in the bed of a mapped street; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, and then to decision January 29, 2013; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; 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 north side of Hall Avenue, between WIllowbrook Road and Hawthorne Avenue, within an R3-1 zoning district; and

WHEREAS, on May 11, 2004, the Board granted an application under GCL §§ 35 and 36 to permit the construction of 20 three-story one-family semi-detached homes in the bed of a mapped street, Hall Avenue; and

WHEREAS, the applicant states that the approved homes have not been constructed and subsequent to the Board's grant the proposal has been revised; and

WHEREAS, on August 14, 2009, the Board issued a letter of substantial compliance approving (1) the modification of the site plan to reflect the construction of one two-family home on tax lots 60 and 61 instead of two semi-detached single-family homes as previously approved, (2) the merger of tax lots 60 and 61 into one tax lot (tax lot 60) on which the two-family home would be built, and (3) the subdivision of the

single zoning lot that was approved for the entire project (Lot 80) into 19 individual zoning lots; and

WHEREAS, the applicant now seeks to construct 18 one-family, three-story semi-detached homes and one two-family, three-story, detached home located in the bed of Hall Avenue; and

WHEREAS, on August 24, 2010, the Fire Department approved a site plan for access on locations of hydrants; and

WHEREAS, by letter dated November 23, 2011, the Department of Environmental Protection ("DEP") states that (1) there are no existing City sewers or existing City water mains at the site, (2) Amended Drainage Plan No. D-9 (R-16), dated April 10, 1979, calls for two future ten-inch diameter sanitary sewers and a 13'-6" by 5'-6" storm sewer in Hall Avenue between Hawthorne Avenue and Willowbrook Road, and (3) the applicant submitted a drawing showing a 30'-0" wide sewer easement on the south side of Hall Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing the sewer corridor in the bed of Hall Avenue for the installation, maintenance, and/or reconstruction of the future 13'-6" by 5' 6" storm sewer and two ten-inch diameter sanitary sewers; and

WHEREAS, in response to DEP's request the applicant submitted a drawing showing a 30'-0" wide sewer easement along the northerly portion of the development for the installation, maintenance and or reconstruction of the future 13'-6" by 5'-6" storm sewer, and a 38'-0" wide easement on the south side of Hall Avenue, which will be available for the installation, maintenance, and/or reconstruction of the two future ten-inch diameter sanitary sewers and other utilities; and

WHEREAS, by letter dated January 6, 2012, DEP states that, based on the drawing submitted by the applicant, it has no objection to the proposed application; and

WHEREAS, by letter dated December 6, 2011, the Department of Transportation ("DOT") requested that the applicant provide the following information: (1) a title search to determine the ownership of Darcy Lane, a record street; (2) a site plan clearly displaying the mapped street right-of-way and the property lines of the applicant's property (Block 2090, Lot 110 & Block 2091, Lot 11), and of the northern boundary of Block 2040, Lot 1; and (3) a traffic study; and

WHEREAS, by letter dated February 1, 2012, DOT states that at the applicant's request it has reconsidered the request for a traffic study and instead will accept a site plan that clearly displays curb cut locations and dimensions, and roadway and sidewalk widths; and

WHEREAS, by letter dated July 25, 2012, DOT states that the Law Department has reviewed the title search provided by the applicant and determined that the northern half of Darcy Lane is owned by the City, however the southern half of Darcy Lane is under the jurisdiction of the Dormitory Authority of the State of New York; therefore, DOT requests that the applicant revise the application, plans, and related document accordingly and submit for further review; and

WHEREAS, in response to DOT's request the applicant submitted revised plans which include a survey of Hall Avenue, an approved Builder's Pavement Plan, and a map of the property, and which show the correct location of Darcy Lane as it relates to the subject site and the adjacent lot (the College of Staten Island); and

WHEREAS, by letter dated January 9, 2013 DOT states that the revised plan submitted by the applicant reflects that the southern half of Darcy Lane is within Block 2040 Lot 1 under the jurisdiction of the Dormitory Authority of the State of New York, and the improvement of Hall Avenue and a portion of Darcy Lane at this location, which would involve the taking of a portion of the applicant's property (Block 2091, lot 11 and Block 2090, lot 110) 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 September 9, 2011, acting on Department of Buildings Application Nos. 520066945, 520066963, 5200666954, 520067025, 520067105, 520067098, 520067089, 520067070, 520067061, 520067052, 520067043, 520067034, 520067258, 520067267, 520067276, 520067285, 520067588, 520067294, 520067301, is modified by the power vested in the Board by Sections 35 and 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 January 24, 2013" (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) only;

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

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 29, 2013

117-12-A, 118-12-A, 125-12-A, 126-12-A, 128-12-A, 129-12-A, 131-12-A, 132-12-A, 133-12-A, 182-12-A, 186-12-A, 187-12-A, 188-12-A

APPLICANT –

Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee

Davidoff Hutcher & Citron LLP, for Lamar Advertising, lessee.

Herrick Feinstein, LLP for Clear Channel Outdoor, Inc.

OWNER OF PREMISES – MTA

SUBJECT – Application April 25, 2012 and June 11, 2012 – Appeal challenging Department of Buildings' determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED –

QUEENS:

Van Wyck Expressway and Atlantic Avenue (Block 9989, Lot 70);

Brooklyn Queens Expressway and Queens Boulevard (Block 1343, Lots 129 and 139);

Long Island Expressway/east of 25th Street (Block 110, Lot 1);

Queens Boulevard and 74th Street (Block 2448, Lot 213);

Van Wyck Expressway/north of Roosevelt Avenue (Block 1833, Lot 230);

Woodhaven Boulevard/north of Elliot Avenue (Block 3101, Lot 9)

BRONX:

Major Deegan Expressway (Block 2539, Lot 506 and Block 2541, Lot 8900)

Major Deegan Expressway and 161st Street, (Block 2493, Lot 1)

COMMUNITY BOARD #1/2/4/6/12Q and 4BX

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins and Commissioner Ottley-Brown.....2

Negative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez 3

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a total of 13 Notice of Sign Registration Rejection letters from the Queens and Bronx Borough Commissioners of the Department of Buildings ("DOB"), dated March 26, 2012 and May 10, 2012, denying registration for signs at the subject sites (the "Final Determination"), which read, in pertinent part:

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and, as such, the sign is rejected from registration.
>
> This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on October 17, 2012, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2012, and then to decision on January 29, 2013; and

WHEREAS, the subject appeal concerns 13 signs located on numerous sites in the Bronx and Queens within C2, C2-3, C4-4, M1-1, M3-1, M3-2, R3A, R4, R4-1, R5B, R7A, and R7X zoning districts (the "Signs"); and

WHEREAS, the sites are all occupied by advertising signs on Metropolitan Transportation Authority (MTA) property; and

WHEREAS, this appeal is part of a larger body of appeals brought by CBS, Lamar Advertising and Clear Channel, all outdoor advertising sign companies that are subject to registration requirements under Local Law 51 of 2005; and

WHEREAS, the Board notes that under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs as a means for DOB to enforce 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 (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 one-half acre (5,000 m) or more; and

WHEREAS, pursuant to the requirements of Article 502 and Rule 49 with respect to signs within 900 feet of arterial highways, each of the Appellants submitted an inventory of outdoor signs under its control and completed a Sign Registration Application for each sign and an OAC3 Outdoor Advertising Company Sign Profile; and

WHEREAS, DOB, by letters, dated March 26, 2012 and May 10, 2012, issued the determination related to 13 signs on MTA property within CBS, Lamar Advertising, and Clear Channel's inventory, which form the basis of the appeal; and

WHEREAS, at the consent of the three Appellants – one representing signs operated by CBS, one representing signs operated by Clear Channel, and one representing signs operated by Lamar Advertising, the Board heard and reviewed a total of 38 appeal applications (for 38 permits and 38 rejection letters) on the same hearing calendar; on January 29, 2013, the Board rendered a decision related to the applicability of the Zoning Resolution on Amtrak properties (BSA Cal. Nos. 130-12-A and 171-12-A through 179-12-A), CSX properties (BSA Cal. Nos. 119-12-A through 124-12-A, 127-12-A, 134-12-A, 135-12-A, 180-12-A, 273-12-A, and 274-12-A), and property formerly

controlled by the Department of Ports and Trade (BSA Cal. Nos. 183-12-A through 185-12-A); and

WHEREAS, the companion decisions cover the 25 applications not addressed in this resolution, which is solely for the 13 MTA signs; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that DOB's enforcement against the Signs is preempted by (1) the clear language of the MTA enabling statute; (2) New York State case law that addresses commercial enterprises on government property; and (3) the fact that the New York City Transit Authority (NYCTA) has the explicit right to signage that is inconsistent with zoning; and

A. Signs on MTA Properties are Exempt from Signage Regulations

1. A Plain Reading of the Public Authorities Law (PAL) § 1266(8) Sets Forth the Exemption

WHEREAS, the Appellant asserts that as a public benefit corporation created under State law, the MTA has a statutory exemption from local regulation, which is set forth at Public Authorities Law (PAL) § 1266(8) (*Metropolitan Commuter Transportation Authority/Special Powers of the Authority*); and

WHEREAS, the Appellant cites to PAL § 1266(8):

> The authority may do all things it deems necessary, convenient or desirable to manage, control and direct the maintenance and operation of transportation facilities, equipment or real property operated by or under contract, lease or other arrangement with the authority and its subsidiaries, and New York city transit authority and its subsidiaries; and

WHEREAS, the Appellant asserts that the enabling statute grants it broad special powers to effectuate its goals and to "do all the things necessary, convenient or desirable to carry out its purposes;" and

WHEREAS, further, PAL § 1266(8) provides that:

> local laws, resolutions, ordinances, rules and regulations of a municipality . . . conflicting with this title or any rule or regulation of the authority … shall not be applicable to the activities or operations of the authority … or the facilities of the authority and its subsidiaries … except such facilities that are devoted to purposes other than transportation or transit purposes; and

WHEREAS, the Appellant asserts that PAL § 1266(8) expressly preempts the City's signage regulations because the signs serve a transportation purpose under the plain statutory terms; and

WHEREAS, the Appellant contends that the MTA enabling statute states that local regulations are not applicable to MTA if it conflicts with the MTA's enabling statute, except those that are not devoted to transportation or transit purposes; and

WHEREAS, the Appellant asserts that the Zoning Resolution is a local regulation that conflicts with the MTA's enabling statute and therefore, is inapplicable to MTA unless the facilities owned, used, or leased by MTA are not for transportation or transit purposes; and

WHEREAS, the Appellant asserts that the Signs, by generating significant revenues for MTA, serve a transportation purpose; and

WHEREAS, in support of its assertion that "transportation or transit purposes" should be interpreted broadly, the Appellant cites to PAL § 1261(13)'s definition of railroad facilities, which reads in pertinent part:

> buildings, structures, and areas notwithstanding that portions thereof may not be devoted to any railroad purpose other than the production of revenues available for the costs and expenses of all or any facilities of the authority; and

WHEREAS, the Appellant states that "transportation purpose" is as broad as "railroad facilities" and this includes portions of railroad facilities, like signs, devoted only to revenue, because the same word or phrase used in different parts of a statute will be presumed to be used in the same sense throughout, and the same meaning will be attached to similar expressions in the same or a related statute, except if the statute provides otherwise (N.Y.Stat. Law 236 (McKinney 1971)); and

WHEREAS, the Appellant asserts that MTA's purpose includes the continuance, development and improvement of commuter transportation, and the legislature expressly declared that such purpose is for the benefit of all people of the State and that MTA is performing an essential governmental function (see PAL § 1264); the Appellant asserts that the goals and purposes of MTA are clear that any attempt to regulate Signs on MTA properties by the City would directly contravene MTA's on-going effort to provide an essential governmental function and fulfill the legislature's purpose and goals given to MTA; and

WHEREAS, the Appellant states that even if incidental uses, like the Signs, must provide a public benefit, the Board must still find the Signs to be exempt since the Signs provide a public benefit and serve a public purpose similar to how other commercial establishments in guiding case law were found to have some benefit as they are used in part by commuters and employees of the public authorities; and

WHEREAS, the Appellant asserts that the Signs provide a public benefit in that they make available to the commuters and the general public valuable information about products so that commuters and the public can make informed decisions about the marketplace; and

WHEREAS, further, the Appellant asserts that the Signs' service is akin to and greater than the benefits conferred by the restaurants and other commercial enterprises on governmental authorities' property recognized by New York State courts; and

2. The Signs are Exempt Pursuant to the Holdings of New York State Courts

WHEREAS, the Appellant cites to two primary cases to support its claim that the MTA is exempt from sign

regulations: MTA v. City of New York, 70 A.D.2d 551 (1st Dept 1979) ("Grand Central") and Penny Port v. NYC Dept of Health, 276 A.D.2d 1014, (1st Dept 2000); and

WHEREAS, the Appellant asserts that the fact that MTA properties are exempt from local law and regulation is a long-standing, well-established proposition of law, held most prominently in Grand Central in which the Appellate Division held that the commercial enterprises at Grand Central Station (*e.g*., food stores and drug stores) were "incidental to transportation upon railroad facilities," and therefore exempt from local taxes, pursuant to PAL § 1275 (*Exemptions from Taxation)*; and

WHEREAS, the Appellant asserts that the meaning given "transportation purpose" in Grand Central applies to PAL § 1266(8) (*Special Powers of the Authority)*, which preempts the City's laws, rules and regulations that conflict with MTA's enabling statute to the extent that it serves a transportation purpose; and

WHEREAS, the Appellant looks to Penny Port, in which the court determined that the City could not enforce its anti-smoking law against a restaurant in Grand Central Station because the restaurant within the station serves a transportation purpose as contemplated by PAL § 1266(8); and

WHEREAS, the Appellant states that Grand Central and Penny Port held that commercial enterprises create revenue for the MTA and are incidental to transportation facilities and that Grand Central and Penny Port are consistent with the "railroad facilities" definition at PAL § 1261(13), which recognizes that buildings, structures and areas, even if they are not devoted to any railroad purpose other than the production of revenue, are railroad facilities and serve a transportation purpose; and

WHEREAS, the Appellant likens the commercial enterprises at Grand Central Station to the Signs on MTA properties, because they are "incidental to transportation upon railroad facilities," and serve a transportation purpose in that revenues generated from the Signs support MTA's operation and finds that there is no distinction between the Signs and the commercial enterprises in the station just because they are in the station; and

WHEREAS, the Appellant asserts that the signs and the railroad tracks and related facilities form a single transportation facility with the income derived from the Signs applied toward defraying the costs and expenses of the entire facility; and

WHEREAS, in support of its position about sites with co-existing government and revenue-generating purposes, the Appellant cites to (1) Bush Terminal v. City of New York, 282 N.Y. 306 (1st Dept 1940) in which the court found that a commercial tower above a terminal base was exempt since the use of that building was "purely incidental to the purpose of the Port Authority to operate a terminal facility;" (2) NYC Transit Authority v. NYC Department of Finance, NYLJ 18, August 7, 2002 in which the court found that "agencies or public authorities do not lose their tax exemption simply because they derived incidental revenue in connection with their use of the property"; and (3) Hotel Dorset v. Trust for Cultural Resources of the City of New York, 46 N.Y.2d 358, 371 (1978) citing Bush Terminal stated that "property held by a State agency primarily for a public use does not lose immunity because the State agency incidentally derives income from the property" and further that the term incidental "does not mean that the public use must . . . outweigh the private use to which the facility is put;" and

WHEREAS, the Appellant asserts that in cases where preemption was found, the commercial enterprise or establishment was deemed incidental to transportation or other governmental purposes (a restaurant inside Grand Central Station, other commercial establishments within Grand Central Station, office and retail tenants in a headquarters building for certain public authorities); and

WHEREAS, the Appellant contrasts its guiding case law with that introduced by DOB; and

WHEREAS, specifically, the Appellant asserts that DOB ignores decades of law and relies on outmoded authority, namely People v. Witherspoon, 52 Misc.2d 320 (N.Y.Dist.Ct. 1966); a 1982 Attorney General's Opinion (1982 N.Y. Op. Atty. Gen. (Inf.) 107, 1982 WL 178319) (the "1982 Attorney General Opinion); and a 1979 N.Y.S. Comptroller Opinion (the "1979 Comptroller Opinion"); and

WHEREAS, as to Witherspoon, the Appellant asserts that it is not binding on the Board as it has effectively been overruled by Grand Central and Matter of County of Monroe, 72 N.Y.2d 338, 341 and 345 (1988) in which the court applied a balancing of public interests test and found that, under the balancing test, an airport terminal, parking facilities, and freight facility at an airport were immune from local land use regulations because they were incidental to an airport operation; and

WHEREAS, further, the Appellant asserts that the governmental/proprietary function test employed in Witherspoon to establish whether laws could be enforced against signs on MTA property is no longer applicable and that the court today would not reach the same conclusion as it did in Witherspoon that the signs served a proprietary rather than a governmental purpose and may be regulated; and

WHEREAS, the Appellant asserts that subsequent Attorney General and court opinions rely on the "balancing of public interests test for analyzing which governmental interest should prevail when there is a conflict" and that a 1996 Attorney General's Opinion (N.Y. Op. Atty Gen. 1120, (1996 WL 785984)) (adopting Monroe) labeled the governmental/proprietary function test "outmoded and difficult to apply;" and

WHEREAS, accordingly, the Appellant asserts that the Board can find no valid support in Witherspoon's ultimate ruling even if the issue is directly analogous to the facts in this appeal, as DOB contends; and

WHEREAS, the Appellant asserts that the 1982 Attorney General Opinion and the 1979 Comptroller Opinion are similarly superseded; and

WHEREAS, the Appellant asserts that Grand Central is the only currently valid case regarding preemption in this context; and

WHEREAS, the Appellant asserts that neither Witherspoon's test nor the Monroe balancing test apply since the MTA is specifically exempted from zoning and the Monroe test is only triggered "in the absence of an expression of contrary legislative intent;" and

WHEREAS, the Appellant concludes that, in the alternate, if the test were applied, each Monroe factor favors continuation of the status quo and a determination that local laws and regulations should not be permitted to infringe on the statutory authority and mandate of the MTA; and

WHEREAS, the Appellant asserts that the Penny Port decision, after Monroe, does not mention Monroe because Penny Port found express preemption under MTA's enabling statute and therefore never got to the Monroe balancing test because that is the only way to reconcile Monroe; and

3. MTA has All of the Powers of the NYCTA, including the Power to Erect Advertising Signs

WHEREAS, the Appellant contends that the MTA, as the controlling entity of NYCTA, has very broad authority, greater than that granted to NYCTA, and therefore should, like the NYCTA, be exempt from the City's signage regulations; and

WHEREAS, the Appellant cites to NYCTA's rights to advertising signs as set forth at PAL § 1204(13a) (*General Powers of the NYCTA)*:

> Notwithstanding the provisions of section fourteen hundred twenty-three of the penal law or the provisions of any general, special or local law, code, or ordinance, rule or regulation to the contrary the authority may erect signs or other printed, painted or advertising matter on any property, including elevated structures, leased or operated by it or otherwise under its jurisdiction and control may rent, lease or otherwise sell the right to do so to any person, private or public; and

WHEREAS, the Appellant asserts that NYCTA's right to install advertising signs was added to its enabling statute at the request of the NYCTA, which, in 1959, was concerned that an interpretation of the State Penal Law would prohibit the use of its property for revenue-generating advertising signs; and

WHEREAS, the Appellant asserts that the legislative history provides evidence that this authority was added to clarify that NYCTA can have advertising signs on its property, not to grant to NYCTA a new right regarding advertising signs; and

WHEREAS, the Appellant states that given that MTA (i) was established to, inter alia, strengthen the financial condition of companies providing rail commuter transportation services, (ii) is an umbrella and parent organization that controls various rail transportation authorities, including NYCTA, a subsidiary of MTA and (iii) has broader authority than NYCTA, it is clear that the legislature's intent was to confer, and it is implausible to think that the legislature would not have conferred, upon MTA the right to advertising signs on its properties, the same right that it gave to NYCTA, an entity under the control of, and with less power and authority than, MTA; and

WHEREAS, the Appellant states that further support that MTA has broader authority than NYCTA is that NYCTA can perform only those functions that are "necessary or convenient" (PAL § 1204(14)); to carry out its purpose, while MTA can "do all things necessary, convenient *or desirable* to carry out its purpose" (PAL § 1266(8)); and

WHEREAS, the Appellant states that the reason why a specific provision relating to advertising signs is not found in MTA's enabling statute is because, by 1965, when MTA was created, it was established and commonly understood, that railroad properties can be used for advertising signs, exempt from local regulations; and

WHEREAS, the Appellant states that the City conceded in the Clear Channel litigation that it has no jurisdiction over signs on NYCTA properties; and

WHEREAS, finally, the Appellant states that DOB's position that it can regulate signs on MTA property, but not on NYCTA property, is irrational since, if MTA is deemed to not have the authority to erect advertising signs on its properties, which would be incorrect, MTA can, as the controlling authority of NYCTA, easily legalize all such signs on its properties through leases or other similar arrangements with NYCTA; and

B. Supplemental Arguments in Opposition to DOB's Enforcement

1. The Zoning Resolution Does Not Govern the Use or Development of Railroad Properties

WHEREAS, the Appellant asserts that the City lacks jurisdiction over all railroad properties; and

WHEREAS, the Appellant asserts that the City has stated that the Zoning Resolution "does not govern the use or development of the City's streets and sidewalks," and therefore, signage on or over streets are deemed exempt; the Appellant asserts that railroads are similar to streets in that they serve a similar purpose – the movement of people and goods; and

WHEREAS, the Appellant states that the Zoning Resolution recognizes the similarity between streets and railroad property, as evidenced in the Zoning Resolution's definition of "block," which is defined as a "tract of land bounded by streets, public parks, railroad rights-of-way …"; and

WHEREAS, the Appellant states that additionally, under the New York City Charter § 643(7), DOB lacks jurisdiction over "bridges, tunnels or subways or structures appurtenant thereto;" and

WHEREAS, the Appellant states that since railroads are functionally equivalent to subways and at least some of the Signs are located on railroad overpasses, a type of a

bridge, under the City Charter, DOB's jurisdiction does not extend to railroad properties and to structures appurtenant to railroad properties, such as the Signs; and

WHEREAS, accordingly, the Appellant concludes that the Zoning Resolution and the City Charter preclude DOB from exercising jurisdiction over railroad properties; and

2. DOB's Determination was Arbitrary and Capricious

WHEREAS, the Appellant asserts that DOB's notices of enforcement reflect a sudden change in the agency's position which is presumed to be arbitrary and capricious; and

WHEREAS, the Appellant asserts that for more than 30 years, DOB has taken the position that the City's signage laws and regulations give it no jurisdiction over advertising signs on railroad rights of way and DOB's consistent interpretation of its authority under the zoning laws not to extend to railroad rights of way is well documented; and

WHEREAS, the Appellant states that under the unreasonable departure doctrine, sudden changes in a government agency's position are presumed to be unlawful, which follows "from the policy considerations embodied in administrative law" by which sudden and unexplained changes in an agency's interpretation of laws it is charged with administering are presumed to be arbitrary and capricious; and

WHEREAS, the Appellant states that in Matter of Charles A. Field Delivery Services, 66 N.Y.2d 516, 518 (1985), the Court of Appeals reversed a decision of the Unemployment Insurance Appeal Board because of an unexplained inconsistency with prior decisions of the Board; and

WHEREAS, the Appellant also cites to Richardson v. N.Y. City Dep't of Soc. Svcs., 88 N.Y.2d 35, 40 (1996) in which the Court of Appeals rejected an agency's change in its interpretation of governing statute and implementing regulation as "arbitrary and capricious" where the new interpretation was "diametrically opposite" to the agency's longstanding interpretation of that same provision of law, and where the change was not supported by a "reasoned explanation on the part of the agency;" and

WHEREAS, the Appellant states that the principle underlying these decisions that an unexplained change in an agency's longstanding interpretation of law is presumed improper protects the reasonable expectations of regulated persons and institutions; and

3. DOB Engaged in a Rule Making without the Notice and Comment Procedures Required under the City Administrative Procedure Act (CAPA)

WHEREAS, the Appellant states that even if DOB's change in its interpretation of the signage regulations is found to be lawful, such change in interpretation would still be unlawful as it violates the CAPA; and

WHEREAS, specifically, the Appellant asserts that DOB's change in position regarding signs on railroad properties is tantamount to issuance of a new regulatory rule without the notice and comment procedures required under CAPA; and

WHEREAS, the Appellant states that such a change in regulatory requirements without following CAPA is unlawful; and

4. Many of the Signs are Legal Non-Conforming Uses

WHEREAS, the Appellant asserts that even if the Signs are not deemed to be exempt, many would qualify as legal non-conforming uses and, therefore, be permitted to continue; and

WHEREAS, the Appellant admits that it has not presented a case to establish that the signs are legal non-conforming uses, and that it no longer has much of the records and documentation that would establish many of the Signs as being legal non-conforming uses, but that many of the signs would be deemed legal pursuant to ZR §§ 52-11 and 52-61 related to the continuation of non-conforming uses; and

5. These Enforcement Actions Against the Signs Would Constitute a Regulatory Taking that Requires Just Compensation

WHEREAS, the Appellant asserts that DOB's actions would deprive the MTA of any viable use of its property interest and amount to a regulatory taking, which is a governmental regulation of the uses of a property to so excessive a degree that the regulation effectively amounts to a de facto exercise of the government's eminent domain power; and

WHEREAS, the Appellant states that if DOB is affirmed and the Appellant is compelled to remove the Signs, the Appellant will be entitled to just compensation in the amount of the fair market value of the Signs' location usages under state and federal laws; and

DOB'S POSITION

WHEREAS, DOB asserts that neither state statute nor case law preclude it from enforcing signage regulations against MTA based on the primary arguments that (1) the MTA enabling legislation has a limited meaning, which reflects that mere revenue generation is not a transportation purpose; (2) case law supports a narrower reading of the term "transportation purpose" than the one Appellant posits; and (3) the statute reflects that MTA and NYCTA have separate and unequal authority related to signage regulations; and

A. Signs on MTA Property are Subject to Signage Regulations

1. The Plain Meaning of PAL § 1266(8) Reflects that the City is not Preempted from Enforcing Signage Regulations

WHEREAS, DOB finds that PAL § 1266(8)'s meaning is clear and that "transportation purpose" is more limited than "railroad facilities" in Appellant's citation to PAL § 1261(13); and

WHEREAS, DOB states that the Appellant's claim that PAL § 1261(13) "recognizes that buildings, structures and areas, even if they are not devoted to any railroad

purpose other than the production of revenue, are railroad facilities and serve a transportation purpose" is erroneous; and

WHEREAS, DOB states that the Appellant conflates PAL § 1261(13)'s definition of "[r]ailroad facilities" with § 1266(8)'s statement that MTA's facilities will not be exempt from local regulation if they are "devoted to purposes other than *transportation or transit purposes*"; and

WHEREAS, DOB states that while revenue generation may constitute a "railroad purpose" under PAL § 1261(13)'s definition of "railroad facilities," this does not mean that it is a "transportation or transit purpose" under PAL § 1266(8); in this context (i.e., analysis of a railroad facility's actions), "transportation and transit purposes" is a subset of activities (i.e., those related to moving people from one place to another) that are performed by a railroad facility as part of a more general set of "railroad purpose[s]," which can include purposes not directly related to transportation, such as revenue raising for general operations; and

WHEREAS, DOB states that the legislature must have been aware of the difference in the terms used between PAL § 1261(13) and § 1266(8) because they are so close in the same statute; thus, it seems most reasonable that the legislature intended to use the term "transportation or transit purposes" in 1266(8) to distinguish the scope of local law exemption from the scope of the definition of "railroad facilities;" and

WHEREAS, DOB notes that case law provides that "[w]hen different terms are used in various parts of a statute or rule, it is reasonable to assume that a distinction between them is intended" (Albano v. Kirby, 36 N.Y.2d 526, (N.Y. 1975)); and

WHEREAS, DOB also notes that it is telling that Appellant's argument from PAL § 1261 did not inform the opinions of any of the authorities that have interpreted PAL § 1266(8) (e.g., Witherspoon, the 1982 Attorney General Opinion, and the 1979 Comptroller Opinion), including those that specifically considered the issue of local immunity for commercial advertising signs; and

2. The Principles Set forth in Case Law Support the City's Enforcement of Signage Regulations

WHEREAS, DOB cites to People v. Witherspoon, 52 Misc.2d 320 (N.Y.Dist.Ct. 1966), in which the court considered whether State immunity inured to the sublessee of land owned by the Metropolitan Commuter Transportation Authority (subsequently known as the MTA), which was being used for "commercial advertising signs" in violation of a local zoning ordinance (id., at 323); and

WHEREAS, DOB notes that in analyzing whether the Authority itself would be immune from a local regulation requiring permits for the signs in question, the Witherspoon court said it must look to the "function under study" to determine whether it was a governmental function, in which case "the immunity may be deemed to apply" or a proprietary function, in which case "the immunity may not apply" (id., at 321); and

WHEREAS, DOB notes that the court concluded:

> the use of the real property for the erection and maintenance of commercial advertising signs . . . has no direct bearing to the governmental function for which the . . . Authority was created. On the contrary, such use is merely *incidental* to the goal in chief – the continued operation of the formerly tottering railroads. To that extent the use of the land for that purpose is proprietary. The immunity, insofar as applicable, is a limited one. Witherspoon at 323 (holding that the Authority, and thus its sublessee, is subject to the signs regulation in the local zoning) (emphasis in original); and

WHEREAS, DOB finds that the issue and analysis of Witherspoon are directly analogous to the facts in this appeal, and so Witherspoon's ruling that MTA commercial signs are not eligible for local zoning exemption should apply to the Signs; and

WHEREAS, further, DOB cites to the 1982 Attorney General Opinion in which it considered whether "the Buildings Department of the City of New York may remove commercial billboards erected in violation of the City's zoning laws on ... property in the City owned by the [MTA]"; and

WHEREAS, in this opinion, the Attorney General wrote that Witherspoon is "precisely on point," and that it is:

> in accord with Public Authorities Law 1264 [which generally states that the purposes of MTA are to continue, develop and improve commuter transportation] *and 1266(8)*, which generally authorize local regulation of MTA property not used for transportation purposes, and [in accord] with the general rule in New York that a governmental body
>
> is entitled to immunity from local zoning regulations only where its use of the property in question is in furtherance of a governmental, rather than a proprietary function
>
> Id. at 3-4 (emphasis added); and

WHEREAS, DOB states that the Attorney General concluded that, "the construction and maintenance of commercial billboards on MTA property must be in compliance with the City's zoning ordinance" and "the City of New York may provide for the removal of commercial billboards erected in violation of its zoning law on property owned by MTA" (id.); and

WHEREAS, DOB states that the Appellant mistakenly argues that Witherspoon and the Attorney General's opinion are "erroneous or superseded" by Grand Central because Grand Central interpreted a different statute (i.e., PAL § 1275 rather than § 1266(8)), which applies to taxation rather than special powers of the authority, and which has different requirements for local law exemption; and

WHEREAS, DOB states that PAL § 1275 reads, in pertinent part, "property owned by the [MTA], property leased by the authority and used for transportation purposes,

and property used for transportation purposes by or for the benefit of the authority ... shall all be exempt from taxation....”; and

WHEREAS, DOB states that on its face, PAL § 1275 requires less of a connection between MTA-leased property and transportation purposes for tax exemption than § 1266(8) requires for local law exemption; by its terms, as long as a facility is used for transportation purposes, apparently, even incidentally, PAL § 1275 would exempt the property from taxation; and

WHEREAS, DOB states that in Grand Central, the Appellate Division upheld a lower court ruling that portions of Grand Central Station “used as food stores, drugstores, and other commercial enterprises, [] which cater to both commuters and passersby, are nonetheless used for transportation purposes,” and are thus exempt from tax regulation under PAL § 1275; the Appellate Division stated that “the commercial enterprises create revenue for the MTA and are incidental to transportation upon railroad facilities;” and

WHEREAS, DOB states that even if revenue generation by itself were considered incidental to transportation purposes and sufficient to qualify MTA for tax exemption under PAL § 1275, this tax exemption standard is different from PAL § 1266(8)’s exemption from local jurisdiction; PAL § 1266(8) excludes from local law exemption any facilities “devoted to purposes other than transportation or transit purposes;” and

WHEREAS, DOB states that assuming *arguendo*, that the Signs have an incidental transportation purpose, the Sign facilities, as commercial advertisements, are “devoted to purposes other than transportation or transit purposes” and are thus ineligible for exemption under 1266(8); and

WHEREAS, DOB asserts that the difference in scope between general local law exemption and tax exemption under PAL § 1275 was clearly considered by the Witherspoon court when it ruled that the signs were not eligible for general local zoning exemption, but that the fee charged for the required local signs permit “might be in contravention of *section 1275*” (52 Misc.2d at 596 (emphasis in original)); and

WHEREAS, DOB contends that it is also significant that the Grand Central court never said, as Appellant does, that the generation of revenue *itself* is a “transportation purpose” but rather, the fact that the stores at issue in Grand Central “cater to both commuters and passersby” was critical to the court’s ruling that the stores were “being used for transportation purposes” (70 A.D.2d at 613); and

WHEREAS, DOB notes that the Grand Central court even drew a distinction between mere revenue generation and activities catering to commuters when it said “the commercial enterprises create revenue for the MTA *and are incidental* to transportation upon railroad facilities” (emphasis added) (id. at 614) because the court did not say “the enterprises create revenue for the MTA *and are thus* incidental to transportation,” the court apparently believed that mere revenue generation – without a connection to the transportation station and passengers – would not even be “incidental to transportation;” and

WHEREAS, DOB asserts that the Signs at issue in this case have no connection to transportation purposes other than the revenue they generate for MTA; thus, the ruling of Grand Central, even if it were applicable to PAL § 1266(8), is not applicable to the facts at issue in this appeal, and it does not establish the Signs’ exemption from regulation under PAL § 1266(8); and

WHEREAS, DOB states that Witherspoon is the only case to consider the applicability of local zoning restrictions on MTA commercial advertising signs, and it even distinguished between general exemption and tax exemption under PAL § 1275, thus, Witherspoon is the best legal authority on this issue; and

WHEREAS, DOB disagrees with the Appellant’s position that since Monroe, courts no longer use the governmental versus proprietary interests test used by Witherspoon in determining a government’s obligation to comply with local regulations, therefore, Witherspoon “has effectively been overruled;” and

WHEREAS, DOB asserts that although courts since Monroe have used a different analysis to determine cases of local law application to government entities, Witherspoon’s holding, that MTA signs are subject to DOB’s jurisdiction has not been overruled; and

WHEREAS, DOB does not find any support for Appellant’s position that it is “illogical to conclude that a court would now reach the same conclusion as in Witherspoon that the MTA is subject to local zoning regulations” as it is not up to the Board to guess what a court would conclude when Witherspoon has already ruled on this issue and has not been overruled; and

WHEREAS, DOB states that case law (both older and newer), influential authorities, and common sense application of statutory language all support DOB’s jurisdiction over the MTA Signs; and

WHEREAS, DOB adds that other cases including NYC Transit Authority v. NYC Dep’t of Finance, NYLJ 18, August 7, 2002 (“NYC Transit Auth”) also dealt with statutes different from PAL 1266(8), with different exemption standards; and

WHEREAS, DOB states that despite Appellant’s discussion of how the Monroe court might analyze the facts in the appeals under a “balancing of public interests analysis,” court precedent more recent than Monroe has looked to the language of § 1266(8) to determine local law applicability; and

WHEREAS, specifically, in the case of Penny Port, decided 11 years after Monroe, the court did not use a balancing test to determine whether the steak house lessee of MTA was subject to City smoking regulations; rather, it looked to the language of § 1266(8) and ruled:

> there is no reason why the inquiry as to whether a restaurant or other commercial enterprise serves a purpose “incidental to transportation upon railroad facilities” should require an examination

into the nature of the exemption sought. The question can be answered solely by evaluating the establishment's integration into the railroad facility station and use by its passengers; and

WHEREAS, DOB states that the Appellant argues that the Penny Port court "did not apply the balancing test because it found express preemption in Section 1266(8);" however, this assertion is baseless because such reasoning was never stated in the Penny Port decision, neither did that court ever cite Monroe; and

WHEREAS, rather, DOB finds that following Penny Port's lead, the Board must look to PAL § 1266(8)'s terms and find that the Signs are "devoted to purposes other than transportation or transit purposes" and are thus subject to local regulation; DOB states that this interpretation of PAL § 1266(8) is supported by influential authorities; and

WHEREAS, DOB states that even if the Monroe balancing test were applied, DOB's authority to regulate the MTA Signs would be upheld; and

WHEREAS, DOB also finds that PAL § 1266(8) would be rendered meaningless if anything that generated revenue for MTA would be considered a transportation purpose, leaving MTA immune from any kind of revenue-generating activity no matter how unrelated to transportation purposes; and

WHEREAS, DOB rejects the Appellant's interpretation of § 1266(8) as broad by distinguishing NYC Transit Auth. in which the NYCTA and other authorities claimed that a building used by the authorities was completely exempt from taxation under PAL § 1275 even though 1.9 percent of the building's square footage was leased to "non-affiliated commercial enterprises;" and

WHEREAS, first, DOB notes as an initial matter, NYC Transit Auth., like Grand Central, does not involve PAL § 1266(8), and this statutory difference alone renders this case inapposite, just like Grand Central and, secondly, a critical requirement of the taxation exemption in NYC Transit Auth. is that "the major portion of the Building [must be] used by the Public Authorities themselves," which 98.1 percent of the building at issue in that case was; and

WHEREAS, DOB finds that, in contrast, the Signs are purely for commercial rather than transportation purposes and that NYC Transit Auth.'s decision was also influenced by the fact that "the subtenants provide services for the Authorities and their employees" (id.), something that the Signs do not do for MTA employees; and

WHEREAS, DOB also distinguishes Bush Terminal and Dorset which the Appellant cites for the proposition that "developments are immune from local zoning regulations even if such developments are unrelated to governmental purposes other than production of revenues;" and

WHEREAS, DOB finds that aside from the fact that Bush deals with statutes wholly separate from those at issue in the instant appeal, the Appellant ignores the Bush court's statement that the Port Authority's power to construct a terminal that has incidental storage space "might be transcended if, under cover of that power, the Port Authority assumed to construct an office or loft building intended primarily for revenue and only incidentally for terminal purposes" (id. at 316); and

WHEREAS, further, DOB notes that the Bush court went on to say "[p]roperty used primarily to obtain revenue or profit is not held for a public use and is not ordinarily immune from taxation" (id. at 321); and

WHEREAS, DOB notes that the MTA Signs are exclusively for revenue and not at all related to transportation; and

WHEREAS, DOB states that while the Appellant cites Crown Commc'n New York, Inc. v. Dep't of Transp. of State, 4 N.Y.3d 159, 168 N.E.2d 934 (2005), the Crown court specifically distinguished the proposed construction in its case (a telecommunications tower that would benefit public safety and environmental goals) with the case of Little Joseph Realty, Inc. v. Town of Babylon, 41 N.Y.2d 738 (1977), which "merely involve[d] the lease of government owned space to a private firm for the exclusive purpose of making a profit" (Crown, at 168); and

WHEREAS, thus, DOB finds that it was critical to the Crown court that the proposed land use serve a public interest that was not solely rental income from private businesses wholly unrelated to any further public purpose, but rather, that it was "an integral component of the State's plan of promoting public safety and reducing the proliferation of cellular towers, clearly salient public purposes;" and

WHEREAS, DOB finds that the facts of the instant appeal are also unlike facts that courts have found to pass the Monroe balancing analysis because such cases involved proposed land uses that had significant and direct benefit to the public such as Crown (construction of telecommunications antennae would promote "the State's public safety and environmental goals"); Monroe (finding that the expansion of an international airport serves "interstate and intrastate commerce goals [and] is in both the local and greater public interest"); and Town of Hempstead v. State of New York, 42 A.D.3d 527, 529-30 (2d Dep't 2007) (finding that constructing wireless communication equipment to close a "serious gap in wireless communication coverage" outweighed residents' complaints about the tower's visibility); and

3. There is a Distinction between MTA's and NYCTA's Authority as Related to Advertising Signs

WHEREAS, as to MTA's authority, DOB states that the Appellant erroneously argues that "if the legislature had intended the legislative grant of power to MTA regarding signage to be less than that granted to NYCTA, subsequent court decisions or advisory opinions ... (i.e., Witherspoon and 1982 Opinion) would have cited or referred to such ... to support the[ir] conclusions" however, there is no indication that the issue of NYCTA authority arose during Witherspoon and the Attorney General's consideration of these issues, nor is it relevant to their determination of 1266(8)'s application; and

WHEREAS, DOB finds that the Appellant's argument that the general description of MTA's authority contained in PAL § 1265(14) (*General powers of the authority*), which states that MTA may "do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this title," conveys to MTA local exemption for the Signs because NYCTA, a subsidiary of MTA with a specific local law exemption for advertising signs, has an analogous general powers section that omits the word "desirable" from the description of NYCTA's powers, is unsupported; and

WHEREAS, DOB states that there is no indication in any relevant authority that the addition of the word "desirable" in MTA's enabling statute grants it a local law exemption for the Signs or that, as the Appellant argues, its exempt activities "do not have to have any real relationship to its purpose;" and

WHEREAS, thus, DOB states that the *General Powers* section's use of the general term "desirable" should not be read to overrule the specific limit on local law exemption provided in PAL § 1266(8)'s use of the term "transportation or transit purposes;" and

WHEREAS, lastly, DOB states that given the above-detailed interpretive history of MTA signs exemption by relevant authorities, Appellant's arguments that MTA, as the "parent of NYCTA," has a *greater* right to advertising signs than the NYCTA must fail; in contrast, State statutes specifically give that authority to NYCTA but not to MTA; and

WHEREAS, DOB concludes that NYCTA has been specifically delegated the authority to have advertising signs and MTA has not and that questions about the wisdom or consistency of these enactments are beyond the scope of this appeal; and

WHEREAS, DOB states that it is also not significant under the Monroe balancing test that potentially inconsistent local signage regulations may be imposed upon MTA in different jurisdictions and finds no support for the Appellant's position that "the Legislature could not and would not have intended for MTA to be subject to a multitude of different local signage regulations;" and

B. Supplemental Arguments Regarding DOB's Authority

1. The Zoning Resolution Governs the Use and Development of the Railroad Properties at Issue

WHEREAS, DOB states that Appellant's assertion that NYC Charter § 643 precludes DOB enforcement over all of the Signs, including MTA, Amtrak, and CSX, is incorrect; and

WHEREAS, DOB notes that NYC Charter § 643 says, in relevant part, "the jurisdiction of the department ... shall not extend to ... such other structures used in conjunction with or in furtherance of waterfront commerce or navigation or to bridges, tunnels or subways or structures appurtenant thereto;" and

WHEREAS, DOB asserts that railroads are distinct from subways, and if the legislature wanted to exclude railroads from DOB jurisdiction, it would have mentioned railroads along with subways in this section; and

WHEREAS, DOB asserts that railroads are not excluded from DOB jurisdiction based upon this Charter provision merely because subways are functionally similar to other kinds of railroads in some respects; and

WHEREAS, as to Appellant's assertion about railroad overpasses being the equivalent to bridges, DOB's records indicate that none of the Signs are located on bridges; if Appellant brings additional evidence that the Signs are, in fact, on bridges, DOBwill review those facts; and

WHEREAS, DOB states that the Zoning Resolution governs the use of railroad properties as long as the Signs are located within a lot of record that existed on December 15, 1961, and there is no subsequent development that relied on the lot being merged into a larger zoning lot, or subdivided into smaller zoning lots, then the Signs are located within a zoning lot and subject to zoning, regardless of whether they are located on streets or railroad rights-of-way; and

WHEREAS, DOB finds that the Appellant erroneously argues that the Zoning Resolution does not govern the use or development of railroad properties because "[r]ailroads are similar to streets and sidewalks," and streets are not subject to zoning; and

WHEREAS, DOB notes that the Appellant's submissions list blocks and lots of record for all Signs on MTA property except 40072502 (BSA Cal. No. 118-12-A) and DOB requires more information on its precise location to determine whether it is located within a lot of record existing on December 15, 1961 or otherwise within an un-subdivided tract of land that also is subject to zoning; and

2. DOB has Authority to Correct its Interpretation of the Laws at Issue

WHEREAS, DOB states that the Appellant argues that its actions must be overturned as an unreasonable departure from prior agency practices because "sudden and unexplained changes in an agency's interpretation of laws ... are presumed to be arbitrary and capricious;" and

WHEREAS, DOB states that it previously held the opinion that it did not have jurisdiction over commercial advertising signs on railroad property (see, e.g., 1980 memorandum from Buildings Deputy Commissioner, Irving E. Minkin, P.E.); and

WHEREAS, however, after conducting further legal research during the course of the litigation in Clear Channel Outdoor, Inc. v. City of New York, 608 F.Supp. 2d 477 (S.D.N.Y. 2009) aff'd, 594 F.3d 94 (2d Cir. 2010), DOB states that it came to the conclusion that revenue generated from advertising signs does not, by itself, have the requisite connection to transportation necessary to support a local law exemption for the Signs; and

WHEREAS, DOB states that it has explained its change in position on railroad zoning jurisdiction both before and during the pendency of these appeals, and the change in interpretation is well founded in case law and

statutory language including, Charles A. Field Delivery, which expressly supports administrative agencies' right to correct erroneous interpretations of law; and

WHEREAS, DOB states that, as required by Charles A. Field Delivery, it has given explicit and extensive treatment to the issue of its change in position on railroad jurisdiction during the proceedings of Clear Channel; in 2008, in connection with the litigation in Clear Channel, Phyllis Arnold, then the Deputy Commissioner for Legal Affairs and the Chief Code Counsel, wrote in an affirmation that "during my time as DOB's General Counsel I made the legal determination that, for the most part, DOB did not have the authority to enforce the arterial highway sign regulations against [MTA, Amtrak, and other governmental entities]" and that a 1980 memorandum by then DOB Deputy Commissioner Irving Minkin was likely "why historically DOB did not take enforcement against these entities;" and

WHEREAS, DOB notes that Ms. Arnold further wrote that she became aware, only after making a legal determination that DOB lacked authority to enforce the Zoning Resolution against MTA and Amtrak, that "the New York State Attorney General issued an opinion (the "Attorney General's Opinion") stating that the City did have the jurisdiction to require the removal of signs on railroad and Transit Authority property that had been erected in violation of the City's zoning laws" she also "c[a]me to the conclusion that revenue generated from advertising signs is not by itself transportation-related and thus [] DOB has the authority to enforce the arterial highway sign regulations against advertising signs ... owned or controlled by the MTA [as well as Port Authority and Amtrak];" and

3. DOB's Correction of Its Interpretation does not Require a Formal Rule

WHEREAS, DOB states that Appellant's argument that its change in the legal interpretations at issue is "tantamount to issuance of a new regulatory rule without the notice and comment procedures required under the CAPA" is unavailing as an interpretation of federal and State law in the application of the Zoning Resolution does not itself, require formal rule making; rather, "DOB [is] responsible for administering and enforcing the zoning resolution, and [its] interpretation must therefore be given great weight and judicial deference." Appelbaum v. Deutsch, 66 N.Y.2d 975 (1985); and

WHEREAS, secondly, DOB asserts that administrative agencies are "free, like courts, to correct a prior erroneous interpretation of the law," (Appelbaum, at 519) and DOB's change in interpretation merely corrects its prior incorrect interpretation (which was, itself, *not* a rule) in light of case law, influential opinions by State authorities, and statutory language; and

4. DOB Does Not Take a Position as to the Potential Legal Non-Conforming Status of the Signs

WHEREAS, DOB states that the Appellant has not pursued a claim that the Signs meet the requirements for a legal non-conforming use that may continue pursuant to ZR §§ 52-11 and 52-61 and, accordingly, such claims are not addressed within the subject appeal; and

5. DOB's Enforcement Against the Signs is not a Regulatory Taking

WHEREAS, DOB states that the Appellant has failed to prove its claim that DOB's interpretation is a regulatory taking because DOB's jurisdictional position in these matters stems from the language of the statutes granting and limiting the rights and immunities of MTA and Amtrak; and

WHEREAS, DOB states that its correct interpretation of these statutes allowing for enforcement based upon its interpretation cannot be considered a taking since MTA and Amtrak would not be entitled to the rights and immunities allegedly being taken; and

WHEREAS, however, DOB states that if these statutes create an unconstitutional takings action, any such claim must necessarily be directed against the state and federal statutes themselves, rather than DOB's enforcement of the statutes and such a claim is outside of the Board's jurisdiction; and

CONCLUSION

WHEREAS, the Board upholds DOB's rejection of the Signs' registration based on the following primary conclusions: (1) revenue generation alone is not a transportation purpose within the meaning of PAL § 1266(8); (2) the MTA and NYCTA may have different rights related to sign regulations; and (3) DOB is not estopped from correcting its practice of allowing the Signs; and

WHEREAS, first, the Board concludes that the generation of revenue is not a transportation or transit-related purpose as required by PAL § 1266(8); the Board finds that the Appellant has not provided support for its claim that the generation of revenue, without any accompanying service, is a transportation or transit-related purpose; and

WHEREAS, the Board finds that Grand Central and Penny Port recognize certain active commercial use located within Grand Central Station as serving a transportation purpose and that those enterprises are distinct from advertising signs, which are visible objects that do not offer any interaction or service to railroad passengers; and

WHEREAS, further, the Board notes that the court in Penny Port was careful not to give unlimited exemption over the entire station, in recognition that there may be some commercial enterprises that are not exempt; and

WHEREAS, the Board agrees with DOB that the same or similar terms may have different meaning in different contexts and therefore is not persuaded by the Appellant's assertion that transportation purpose means the same thing from a taxation versus a zoning perspective or that case law that analyzes provisions related to taxation is binding on case law that analyzes a use regulation; and

WHEREAS, the Board agrees with DOB that the definition of "railroad facility" (PAL § 1261(13)) does not inform the meaning of "transportation or transit purpose"

(PAL § 1266(8)) because the terms are starkly dissimilar in context and purpose and the Appellant erroneously conflates them in order to give broader meaning to transportation purpose, a connection the courts have not made; and

WHEREAS, the Board is not persuaded by the Appellant's assertions that the mere physical integration of the signs into the railroad facility reflects a transportation purpose as the courts have identified the actual use as a key factor in the transportation purpose analysis, rather than co-location or control; and

WHEREAS, similarly, the Board finds that the Appellant's assertion that the signs are for the benefit of passengers is very strained; the Board notes that the signs are for advertising and not for informational purposes and that many of the signs may not even be visible to train passengers as they are directed to the arterials; and

WHEREAS, the Board agrees with DOB that Witherspoon has not been overruled and notes that not even the Appellant asserts that Witherspoon has been explicitly overruled by Monroe or any other case; and

WHEREAS, the Board agrees with DOB that the Monroe balancing test is not necessary because the statute is clear that there is not preemption for non-transportation purposes, but that if the criteria were analyzed, it supports DOB's conclusions; and

WHEREAS, accordingly, the Board agrees with DOB that Witherspoon is the only case directly on point and it has not been overruled so, at the very least, is persuasive authority; and

WHEREAS, however, the Board concludes that even if Witherspoon were ignored, the Board does not find a basis for preemption, a conclusion informed by the statutory language and Penny Port and Grand Central; and

WHEREAS, specifically, the courts Penny Port and Grand Central note that revenue generation is incidental and the transportation purpose is the actual use (i.e. incidental commercial enterprises integrated into the station) and that the Appellant failed to show how the Signs are integrated or how they serve commuters; and

WHEREAS, the Board is not persuaded by the Appellant's assertion that because the MTA controls the NYCTA, it has broader power in all contexts; the Board finds that the power dynamic between a parent and subsidiary may vary depending on the entities and the weight given to the different entities can be different in different contexts; and

WHEREAS, the Board notes that NYCTA has explicit language allowing signs to be exempt and that the MTA has no such provision; and

WHEREAS, the Board does not find that these proceedings are the appropriate forum to question the wisdom of and establish the potentially intricate relationship between the NYCTA and the MTA; and

WHEREAS, accordingly, in the absence of explicit authority for MTA to have the ability to install advertising contrary to zoning regulations, the Board concludes that NYCTA and MTA have different rights; and

WHEREAS, the Board does not find that the fact that MTA is authorized to do all things "necessary, convenient or desirable" (PAL § 1265(14)) and NYCTA is authorized only to do all things "necessary or convenient" (PAL § 1204(17)) is persuasive that MTA has broader authority in the context of signs; and

WHEREAS, the Board finds that the Appellant failed to provide any legislative history to support its claim regarding MTA's absolute power; and

WHEREAS, the Board supports DOB's position that it erroneously exempted the Signs from zoning regulations and now seeks to correct its error for the reasons explained in Clear Channel; the Board finds that there is no support for the Appellant's claim that the right for the Signs continues because there was a longstanding arrangement for DOB not to enforce against the Signs, as DOB does not have the authority to make an arrangement contrary to zoning regulations; and

WHEREAS, the Board is not persuaded by the Appellant's position that no deference should be given to DOB's position since it was first articulated in the course of litigation; the Board finds that it is not relevant when DOB first articulated its position as long as that is the position it currently defends and substantiates; and

WHEREAS, the Board agrees with DOB that, as here, a correction of an erroneous interpretation is not within the scope of a rule, subject to CAPA requirements; and

WHEREAS, the Board disagrees with the Appellant that the application of zoning regulations constitutes a taking; the Board notes that the Appellant has the opportunity to establish the legality of its non-conforming Signs pursuant to ZR §§ 52-11 and 52-61, and maintain the Signs that meet those commonly-applied and upheld standards; and

WHEREAS, the Board notes that the City's right to eliminate non-conforming uses through zoning has been repeatedly upheld by the courts; specifically, the Board notes that the Court of Appeals has held that, "[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination[,]" and "municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them." 550 Halstead Corp. v. Zoning Bd. Of Appeals, 1 N.Y.3d 561, 562 (2003) and that DOB's recent enforcement furthers that goal in line with what zoning regulations contemplate; and

WHEREAS, therefore, the Board finds that DOB's enforcement against the Signs is warranted, and as such, DOB properly rejected the Appellants' registration of the Signs.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated March 26, 2012 and May 10, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, January 29, 2013.

119-12-A thru 124-12-A, 127-12-A, 134-12-A, 135-12-A, 180-12-A, 273-12-A, 274-12-A
APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.
OWNER OF PREMISES – CSX
SUBJECT – Application April 25, 2012, June 11, 2012 – Appeal challenging Department of Buildings' determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.
PREMISES AFFECTED –

QUEENS
Brooklyn Queens Expressway and 31st Street (Block 1137, Lot 22)
Brooklyn Queens Expressway and 32nd Avenue (Block 1137, Lot 22)
Brooklyn Queens Expressway and 34th Avenue (Block 1255, Lot 1)
Brooklyn Queens Expressway and Northern Boulevard (Block 1163, Lot 1)
Long Island Expressway and 74th Street (Block 2539, Lot 502)

BRONX
Major Deegan Expressway and South of Van Cortland (Block 3269, Lot 70)
Major Deegan Expressway at 167th Street (Block 2539, Lot 502)

COMMUNITY BOARD #1/2/5Q and 4/8BX
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 Montanez 5
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to 12 Notice of Sign Registration Rejection letters from the Bronx and Queens Borough Commissioners of the Department of Buildings ("DOB"), dated March 26, 2012, May 10, 2012, and August 8, 2012, denying registration for signs at the subject sites (the "Final Determination"), which read, in pertinent part:

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and, as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on October 17, 2012, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2012, and then to decision on January 29, 2013; and

WHEREAS, the subject appeal concerns 12 signs located on property owned by CSX, within R4, R5, R7-1, M1-1, and M3-1 zoning districts (the "Signs"); and

WHEREAS, this appeal is part of a larger body of appeals brought by CBS, Lamar Advertising and Clear Channel, all outdoor advertising sign companies that are subject to registration requirements under Local Law 51 of 2005; and

WHEREAS, the Board notes that under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs as a means for DOB to enforce 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 (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 one-half acre (5,000 m) or more; and

WHEREAS, pursuant to the requirements of Article 502 and Rule 49 with respect to signs within 900 feet of arterial highways, each of the Appellants submitted an inventory of outdoor signs under its control and completed a Sign Registration Application for each sign and an OAC3 Outdoor Advertising Company Sign Profile; and

WHEREAS, DOB, by letters, dated March 26, 2012 and May 10, 2012 issued the determinations related to the Signs within CBS' inventory on CSX property, which form the basis of the appeal; and

WHEREAS, at the consent of the three Appellants – one representing signs operated by CBS, one representing signs operated by Clear Channel, and one representing signs operated by Lamar Advertising, the Board heard and reviewed a total of 38 appeal applications (for 38 permits and 38 rejection letters) on the same hearing calendar; on January 29, 2013, the Board rendered a decision related to the applicability of the Zoning Resolution on Metropolitan Transportation Authority (MTA) properties (BSA Cal. Nos. 117-12-A et al) (the "MTA Resolution"), Amtrak properties (BSA Cal. Nos. 130-12-A et al), and property formerly controlled by the Department of Ports and Trade (BSA Cal. Nos. 183-12-A through 185-12-A); and

WHEREAS, the companion decisions cover the 26 applications not addressed in this resolution which is solely for the 12 signs on CSX property; and

WHEREAS, only CBS has signs on the subject sites, so it is the only Appellant in the subject appeal associated with the rights of the Signs; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

WHEREAS, the Appeal arises from the Final Determinations for the Signs, for which DOB rejected Sign Registration based on the fact that the Signs do not comply with underlying zoning regulations and are not subject to any exemption; and

WHEREAS, in its initial submission, the Appellant

asserted general claims about DOB's enforcement of the signs on railroad property, but in subsequent submissions only pursued its defense of signs on Amtrak and MTA property; and

WHEREAS, accordingly, DOB only defended its position in support of enforcing against signs on railroad property, generally; and

WHEREAS, the Appellant's general arguments against DOB's enforcement of signs on railroad property are "Supplemental Arguments" in the MTA Resolution and are reiterated here; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts the following primary arguments in support of its position that DOB does not have the authority to enforce against the signs on CSX property: (1) zoning regulations do not apply on railroad properties; (2) DOB cannot reverse its position on enforcement without going through the rulemaking process; (3) many of the signs are legal non-conforming uses; and (4) enforcement against the signs constitutes a taking; and

1. The Zoning Resolution Does Not Govern the Use or Development of Railroad Properties

WHEREAS, the Appellant asserts that the City lacks jurisdiction over all railroad properties; and

WHEREAS, the Appellant asserts that the City has stated that the Zoning Resolution "does not govern the use or development of the City's streets and sidewalks," and therefore, signage on or over streets is deemed exempt; the Appellant asserts that railroads are similar to streets in that they serve a similar purpose – the movement of people and goods; and

WHEREAS, the Appellant states that the Zoning Resolution recognizes the similarity between streets and railroad property, as evidenced in the Zoning Resolution's definition of "block," which is defined as a "tract of land bounded by streets, public parks, railroad rights-of-way …"; and

WHEREAS, the Appellant states that additionally, under the New York City Charter § 643(7), DOB lacks jurisdiction over "bridges, tunnels or subways or structures appurtenant thereto;" and

WHEREAS, the Appellant states that since railroads are functionally equivalent to subways and at least some of the Signs are located on railroad overpasses, a type of a bridge, under the City Charter, DOB's jurisdiction does not extend to railroad properties and to structures appurtenant to railroad properties, such as the Signs; and

WHEREAS, accordingly, the Appellant concludes that the Zoning Resolution and the City Charter preclude DOB from exercising jurisdiction over railroad properties; and

2. DOB's Determination was Arbitrary and Capricious

WHEREAS, the Appellant asserts that DOB's notices of enforcement reflect a sudden change in the agency's position which is presumed to be arbitrary and capricious; and

WHEREAS, the Appellant asserts that for more than 30 years, DOB has taken the position that the City's signage laws and regulations give it no jurisdiction over advertising signs on railroad rights of way and DOB's consistent interpretation of its authority under the zoning laws not to extend to railroad rights of way is well documented; and

WHEREAS, the Appellant states that under the unreasonable departure doctrine, sudden changes in a government agency's position are presumed to be unlawful, which follows "from the policy considerations embodied in administrative law" by which sudden and unexplained changes in an agency's interpretation of laws it is charged with administering are presumed to be arbitrary and capricious; and

WHEREAS, the Appellant states that in Matter of Charles A. Field Delivery Services, 66 N.Y.2d 516, 518 (1985), the Court of Appeals reversed a decision of the Unemployment Insurance Appeal Board because of an unexplained inconsistency with prior decisions of the Board; and

WHEREAS, the Appellant also cites to Richardson v. N.Y. City Dep't of Soc. Svcs., 88 N.Y.2d 35, 40 (1996) in which the Court of Appeals rejected an agency's change in its interpretation of governing statute and implementing regulation as "arbitrary and capricious" where the new interpretation was "diametrically opposite" to the agency's longstanding interpretation of that same provision of law, and where the change was not supported by a "reasoned explanation on the part of the agency;" and

WHEREAS, the Appellant states that the principle underlying these decisions that an unexplained change in an agency's longstanding interpretation of law is presumed improper protects the reasonable expectations of regulated persons and institutions; and

3. DOB Engaged in a Rule Making without the Notice and Comment Procedures Required under the City Administrative Procedure Act (CAPA)

WHEREAS, the Appellant states that even if DOB's change in its interpretation of the signage regulations is found to be lawful, such change in interpretation would still be unlawful as it violates CAPA; and

WHEREAS, specifically, the Appellant asserts that DOB's change in position regarding signs on railroad properties is tantamount to issuance of a new regulatory rule without the notice and comment procedures required under CAPA; and

WHEREAS, the Appellant states that such a change in regulatory requirements without following CAPA is unlawful; and

4. Many of the Signs are Legal Non-Conforming Uses

WHEREAS, the Appellant asserts that even if the Signs are not deemed to be exempt, many would qualify as legal non-conforming uses and, therefore, be permitted to continue; and

WHEREAS, the Appellant states that it has not

presented a case to establish that the Signs are legal non-conforming uses, and that it no longer has much of the records and documentation that would establish the legal non-conforming uses, but that many of the signs would be deemed legal pursuant to ZR §§ 52-11 and 52-61; and

5. These Enforcement Actions Against the Signs Would Constitute a Regulatory Taking that Requires Just Compensation

WHEREAS, the Appellant asserts that DOB's actions would deprive CSX of any viable use of its property interest and amount to a regulatory taking, which is a governmental regulation of the uses of a property to so excessive a degree that the regulation effectively amounts to a de facto exercise of the government's eminent domain power; and

WHEREAS, the Appellant states that if DOB is affirmed and the Appellant is compelled to remove the Signs, the Appellant will be entitled to just compensation in the amount of the fair market value of the Signs' location usages under state and federal laws; and

DOB'S POSITION

WHEREAS, in support of is position that its enforcement is proper, DOB asserts that (1) the Zoning Resolution governs the use of the CSX properties; (2) DOB has the authority to correct its former erroneous position without going through a rulemaking; (3) the Appellant has not provided evidence to establish legal non-conforming use for any of the signs; and (4) enforcement against the signs does not constitute a regulatory taking; and

WHEREAS, DOB notes that the Appellant has not alleged that any State or Federal law exempts CSX, a private entity, from the City's jurisdiction and/or enforcement; and

1. The Zoning Resolution Governs the Use and Development of the Railroad Properties at Issue

WHEREAS, DOB states that Appellant's assertion that NYC Charter § 643 precludes DOB enforcement over all of the Signs, including MTA, Amtrak, and CSX, is incorrect; and

WHEREAS, DOB notes that NYC Charter § 643 says, in relevant part, "the jurisdiction of the department . . . shall not extend to . . . such other structures used in conjunction with or in furtherance of waterfront commerce or navigation or to bridges, tunnels or subways or structures appurtenant thereto;" and

WHEREAS, DOB asserts that railroads are distinct from subways, and if the legislature wanted to exclude railroads from DOB jurisdiction, it would have mentioned railroads along with subways in this section; and

WHEREAS, DOB asserts that railroads are not excluded from DOB jurisdiction based upon this Charter provision merely because subways are functionally similar to other kinds of railroads in some respects; and

WHEREAS, as to Appellant's assertion about railroad overpasses being the equivalent to bridges, DOB's records indicate that none of the Signs are located on bridges; if Appellant brings additional evidence that the Signs are, in fact, on bridges, DOB will review those facts; and

WHEREAS, DOB states that the Zoning Resolution governs the use of railroad properties as long as the Signs are located within a lot of record that existed on December 15, 1961, and there is no subsequent development that relied on the lot being merged into a larger zoning lot, or subdivided into smaller zoning lots, then the Signs are located within a zoning lot and subject to zoning, regardless of whether they are located on streets or railroad rights-of-way; and

WHEREAS, DOB finds that the Appellant erroneously argues that the Zoning Resolution does not govern the use or development of railroad properties because "[r]ailroads are similar to streets and sidewalks," and streets are not subject to zoning; and

WHEREAS, DOB notes that the Appellant's submissions list blocks and lots of record for all Signs except for two, neither of which is on CSX property; and

2. DOB has Authority to Correct its Interpretation of the Laws at Issue

WHEREAS, DOB states that the Appellant argues that its enforcement must be overturned as an unreasonable departure from prior agency practices because "sudden and unexplained changes in an agency's interpretation of laws . . . are presumed to be arbitrary and capricious;" and

WHEREAS, DOB states that it previously held the opinion that it did not have jurisdiction over commercial advertising signs on railroad property (see, e.g., 1980 memorandum from Buildings Deputy Commissioner, Irving E. Minkin, P.E.); and

WHEREAS, however, after conducting further legal research during the course of the litigation in Clear Channel Outdoor, Inc. v. City of New York, 608 F.Supp. 2d 477 (S.D.N.Y. 2009) aff'd, 594 F.3d 94 (2d Cir. 2010), DOB states that it came to the conclusion that revenue generated from advertising signs does not, by itself, have the requisite connection to transportation necessary to support a local law exemption for the Signs; and

WHEREAS, DOB states that it has explained its change in position on railroad zoning jurisdiction both before and during the pendency of these appeals, and the change in interpretation is well founded in case law and statutory language including, Charles A. Field Delivery, which expressly supports administrative agencies' right to correct erroneous interpretations of law; and

WHEREAS, DOB states that, as required by Charles A. Field Delivery, it has given explicit and extensive treatment to the issue of its change in position on railroad jurisdiction during the proceedings of Clear Channel; in 2008, in connection with the litigation in Clear Channel, Phyllis Arnold, then the Deputy Commissioner for Legal Affairs and the Chief Code Counsel, wrote in an affirmation that "during my time as DOB's General Counsel I made the legal determination that, for the most part, DOB did not have the authority to enforce the arterial highway sign regulations against [MTA, Amtrak, and other governmental entities]" and that a 1980 memorandum by then DOB Deputy Commissioner Irving Minkin was likely "why

historically DOB did not take enforcement against these entities;" and

WHEREAS, DOB notes that Ms. Arnold further wrote that she became aware, only after making a legal determination that DOB lacked authority to enforce the Zoning Resolution against MTA and Amtrak, that "the New York State Attorney General issued an opinion (the "Attorney General's Opinion") stating that the City did have the jurisdiction to require the removal of signs on railroad and Transit Authority property that had been erected in violation of the City's zoning laws" she also "c[a]me to the conclusion that revenue generated from advertising signs is not by itself transportation-related and thus . . . DOB has the authority to enforce the arterial highway sign regulations against advertising signs . . . owned or controlled by the MTA [as well as Port Authority and Amtrak];" and

3. DOB's Correction of Its Interpretation does not Require a Formal Rule

WHEREAS, DOB states that Appellant's argument that its change in the legal interpretations at issue is "tantamount to issuance of a new regulatory rule without the notice and comment procedures required under the CAPA" is unavailing as an interpretation of federal and State law in the application of the Zoning Resolution does not itself, require formal rule making; rather, "DOB [is] responsible for administering and enforcing the zoning resolution, and [its] interpretation must therefore be given great weight and judicial deference." Appelbaum v. Deutsch, 66 N.Y.2d 975 (1985); and

WHEREAS, secondly, DOB asserts that administrative agencies are "free, like courts, to correct a prior erroneous interpretation of the law," (Appelbaum, at 519) and DOB's change in interpretation merely corrects its prior incorrect interpretation (which was, itself, *not* a rule) in light of case law, influential opinions by State authorities, and statutory language; and

4. DOB Does Not Take a Position as to the Potential Legal Non-Conforming Status of the Signs

WHEREAS, DOB states that the Appellant has not pursued a claim that the Signs meet the requirements for a legal non-conforming use that may continue pursuant to ZR §§ 52-11 and 52-61 and, accordingly, such claims are not addressed within the subject appeal; and

5. DOB's Enforcement Against the Signs is not a Regulatory Taking

WHEREAS, DOB states that the Appellant has failed to prove its claim that DOB's interpretation is a regulatory taking; and

WHEREAS, DOB states that its correct interpretation of relevant statutes allowing for enforcement based upon its interpretation cannot be considered a taking since CSX would not be entitled to the rights allegedly being taken; and

WHEREAS, however, DOB states that if the zoning regulations create an unconstitutional takings action, any such claim must necessarily be directed against the relevant statutes themselves, rather than DOB's enforcement of the statutes and such a claim is outside of the Board's jurisdiction; and

CONCLUSION

WHEREAS, the Board upholds DOB's rejections of the Signs' registration and agrees that the signs on CSX property are subject to zoning regulations and DOB is not estopped from correcting its practice of allowing the signs; and

WHEREAS, the Board notes that the Appellant did not pursue any arguments specific to CSX and did not identify any claims against CSX throughout the hearing process; and

WHEREAS, the Board notes that the Appellant did not make any claims related to Federal or State statute and preemption for the CSX sites; and

WHEREAS, the Board supports DOB's position that it erroneously exempted the Signs from zoning regulations and now seeks to correct its error for the reasons explained in Clear Channel; the Board finds that there is no support for the Appellant's claim that the right for the Signs continues because there was a longstanding arrangement for DOB not to enforce against the Signs, as DOB does not have the authority to make an arrangement contrary to zoning regulations; and

WHEREAS, the Board is not persuaded by the Appellant's position that no deference should be given to DOB's position since it was first articulated in the course of litigation; the Board finds that it is not relevant when DOB first articulated its position as long as that is the position it currently defends and substantiates; and

WHEREAS, the Board notes that the Appellant has not asserted that DOB had a practice of non-enforcement against signs on CSX properties that was similar to its practice of non-enforcement against signs on MTA and Amtrak properties; and

WHEREAS, additionally, the Board notes that DOB did not acknowledge CSX properties specifically in the Clear Channel litigation; and

WHEREAS, the Board agrees with DOB that, as here, a correction of an erroneous interpretation is not within the scope of a rule, subject to CAPA requirements; and

WHEREAS, the Board disagrees with the Appellant that the application of zoning regulations constitutes a taking; the Board notes that the Appellant has the opportunity to establish the legality of its non-conforming Signs pursuant to ZR §§ 52-11 and 52-61, and maintain the Signs that meet those commonly-applied and upheld standards; and

WHEREAS, however, the Board agrees with DOB that any taking claim is more appropriate for another forum; and

WHEREAS, the Board notes that the City's right to eliminate non-conforming uses through zoning has been repeatedly upheld by the courts; specifically, the Board notes that the Court of Appeals has held that, "[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination[,]" and "municipalities may adopt measures regulating nonconforming uses and may, in a

reasonable fashion, eliminate them." 550 Halstead Corp. v. Zoning Bd. Of Appeals, 1 N.Y.3d 561, 562 (2003) and that DOB's recent enforcement furthers that goal in line with what zoning regulations contemplate; and

WHEREAS, therefore, the Board finds that DOB's enforcement against the Signs is warranted, and as such, DOB properly rejected the Appellants' registration of the Signs.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated March 26, 2012, May 10, 2012, and August 8, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, January 29, 2013.

130-12-A and 171-12-A through 179-12-A
APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.
OWNER OF PREMISES – Amtrak
SUBJECT – Application April 25, 2012, June 11, 2012 – Appeal challenging Department of Buildings' determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.
PREMISES AFFECTED –

QUEENS
Skillman Avenue between 28th and 29th Streets (Block 72, Lot 250)

BRONX
Cross Bronx Expressway/east of Sheridan Expressway
Cross Bronx Expressway and the Bronx River (Block 3905, Lot 1)
Cross Bronx Expressway/east of Sheridan Expressway and the Bronx River (Block 3904, Lot 1)
I-95 and Hutchinson Parkway (Block 4411, Lot 1)
Bruckner Boulevard and Hunts Point Avenue (Block 2734, Lot 30)
Bruckner Expressway/north of and 156th Street (Block 2730, Lot 101)

COMMUNITY BOARD #2Q and 2/6/9/11BX
ACTION OF THE BOARD – Appeal Granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a total of ten Notice of Sign Registration Rejection letters from the Queens and Bronx Borough Commissioners of the Department of Buildings ("DOB"), dated March 26, 2012 and May 10, 2012, denying registration for signs at the subject sites (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 Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and, as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on October 17, 2012, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2012, and then to decision on January 29, 2013; and

WHEREAS, the subject appeal concerns ten signs located on property owned by Amtrak, within C8-1, M1-2 (HP), M3-1, R3-2, and R7-1 zoning districts (the "Signs"); and

WHEREAS, this appeal is part of a larger body of appeals brought by CBS, Lamar Advertising and Clear Channel, all outdoor advertising sign companies that are subject to registration requirements under Local Law 51 of 2005; and

WHEREAS, the Board notes that under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs as a means for DOB to enforce 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 (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 one-half acre (5,000 m) or more; and

WHEREAS, pursuant to the requirements of Article 502 and Rule 49 with respect to signs within 900 feet of arterial highways, each of the Appellants submitted an inventory of outdoor signs under its control and completed a Sign Registration Application for each sign and an OAC3 Outdoor Advertising Company Sign Profile; and

WHEREAS, DOB, by letters, dated March 26, 2012 and May 10, 2012 issued the determinations related to the Signs within CBS' inventory on Amtrak property, which form the basis of the appeal; and

WHEREAS, the Appeal arises from the Final Determinations for ten signs, for which DOB rejected Sign Registration based on the fact that the Signs do not comply with underlying zoning regulations and are not subject to any exemption; and

WHEREAS, at the consent of the three Appellants – one representing signs operated by CBS, one representing signs operated by Clear Channel, and one representing signs operated by Lamar Advertising, the Board heard and reviewed a total of 38 appeal applications (for 38 permits and 38 rejection letters) on the same hearing calendar; on January 29, 2013, the Board rendered a decision related to the applicability of the Zoning Resolution on Metropolitan Transportation Authority (MTA) properties (BSA Cal. Nos. 117-12-A et al) (the "MTA Resolution"), CSX properties (BSA Cal. Nos. 119-12-A et al), and property formerly

controlled by the Department of Ports and Trade (BSA Cal. Nos. 183-12-A through 185-12-A); and

WHEREAS, the companion decisions cover the 28 applications not addressed in this resolution which is solely for the ten signs on Amtrak property; and

WHEREAS, only CBS represents sites on Amtrak property, so it is the only Appellant in the subject appeal associated with Amtrak's rights; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts the following primary arguments: (1) Amtrak is exempt from the City's signage regulations, pursuant to 49 U.S.C. § 24301(g) because such regulations would affect its routes, rates, and services; and (2) Amtrak is exempt from the City's signage regulations, pursuant to 49 U.S.C. § 24902(j) because the Signs are an improvement within the Northeast Corridor Improvement Project (NCIP) and Amtrak has received federal subsidies during relevant periods; and

I. The Signs are Exempt from Local Zoning Pursuant to 49 U.S.C. § 24301(g)

WHEREAS, 49 U.S.C. § 24301(g) *Amtrak/Status and applicable laws*) provides, in pertinent part:

> (g) Nonapplication of rate, route, and service laws.—A state or other law related to rates, routes, or services does not apply to Amtrak in connection with rail passenger transportation; and

WHEREAS, the Appellant asserts that Amtrak is exempt from the City's signage regulation as such regulations affect rates, routes, and services; and

WHEREAS, the Appellant asserts that every dollar of revenue lost from the Signs would be irreversible and irreplaceable to Amtrak, and such loss of revenue would have substantial, adverse impacts on Amtrak's rates, routes and services in that Amtrak would be forced to, among others things, (i) increase its rates, (ii) reduce the routes served, (iii) reduce spending on maintenance and repairs, and (iv) reduce railroad transportation and related services; and

WHEREAS, in support of this claim, the Appellant submitted an affidavit from the Amtrak Project Director in charge of Amtrak third-party advertising, which states that "[w]ithout the revenue Amtrak generates from its outdoor advertising, Amtrak likely would require an additional $4.2 million in government funding annually;" and

WHEREAS, the Appellant also cites to Nat'l Railroad Passenger Corp. v. Caln Township, CIV.A. 08-5398, 2010 WL 92518 (E.D. Pa. Jan. 8, 2010), in which the District Court analyzes 49 U.S.C. § 24301(g) and § 24902(j) in the context of a Pennsylvania township weed control ordinance applied to land "adjacent to the railroad roadbed" on part of an Amtrak route; the court concluded that Amtrak was exempt from the weed control ordinance pursuant to both sections; and

WHEREAS, the Appellant notes that the court in Caln stated that even a local regulation that indirectly impacts Amtrak's routes cannot be enforced against Amtrak under 49 U.S.C. § 24301(g); and

WHEREAS, specifically, the Appellant notes that the court in Caln considered whether a local weed ordinance was preempted under 49 U.S.C. 24301(g), which states, in relevant part, "[a] State or other law related to rates, routes, or service does not apply to Amtrak in connection with rail passenger transportation;" and

WHEREAS, the Appellant notes that the Caln court was guided by Supreme Court cases that interpreted different preemption statutes with similar language as § 24301(g), finding preemption where local laws had a "connection with or reference to a carrier's rates, routes or services" "even if its effect on rates, routes, or services was only indirect" but not where "the impact of the state law is too tenuous, remote, or peripheral to have pre-emptive effect" (id. at 3); and

WHEREAS, the Appellant finds Caln to be on point in that it concerned a local law that was deemed to relate to Amtrak's rates, routes, or services and was thus not enforceable, even if such effects are indirect, except where the effects are tenuous, remote, or peripheral; and

WHEREAS, the Appellant states that the "relate to" language means any law that has a "connection with or reference to" rates, routes, or services (Caln at 3, citing Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992)); and

WHEREAS, the Appellant rebuts DOB's argument that the enforcement of the City's signage regulations against Amtrak would have only a very tenuous, remote and peripheral effect on rates, routes and services; and

WHEREAS, the Appellant asserts that in the subject case, under the broad interpretation given to this statute, the City's signage regulations negatively impact Amtrak's routes and services in that such regulation will reduce Amtrak's revenues and ultimately result in Amtrak's greater reliance on government subsidies and/or increases to Amtrak's fares; and

WHEREAS, the Appellant asserts that this impact is not "tenuous, remote or peripheral;" rather, Amtrak would be directly burdened with a reduction in revenues, significantly impacting Amtrak's operations and would be forced to increase its reliance and dependence on federal governmental subsidies, directly against Congress' intent and goals for Amtrak; and

WHEREAS, the Appellant contends that the City's attempt to regulate signage on Amtrak properties would directly contradict and contravene Congress' statutory directive for Amtrak to minimize its reliance on government subsidies through the use of its facilities and agreements with the private sector; and

WHEREAS, the Appellant asserts that there is no meaningful distinction between expenditures required to comply with local regulations that put a drain on resources and local regulations that prohibit revenue generation - both set Amtrak back to a position of further deficit; and

WHEREAS, the Appellant asserts that DOB's conclusion that the Appellant or Amtrak is unsure of the effects of the City's prohibition of advertising signs on Amtrak properties or that such effects are speculative is not reasonable and the City's signage regulations have a direct and significant effect on rates, routes and services; and

II. The Signs are Exempt from Local Zoning Pursuant to 49 U.S.C. § 24902(j)

WHEREAS, 49 U.S.C. § 24902(j) (*Amtrak/Goals and Requirements/NCIP*) provides, in pertinent part:

> (j) Applicable procedures.—No State or local building, zoning, subdivision, or similar or related law . . . shall apply in connection with the construction, ownership, use, operation, financing, leasing, conveying . . . of (i) any improvement undertaken by or for the benefit of Amtrak as part of, or in furtherance of, the Northeast Corridor Improvement Project . . . or chapter 241, 243, or 247 of this title or (ii) any land . . . on which such improvement is located and adjoining, surrounding or any related land . . . This subsection shall not apply to any improvement or related land unless Amtrak receives a Federal operating subsidy in the fiscal year in which Amtrak commits to or initiates such improvement; and

WHEREAS, the Appellant asserts that the City's signage regulations cannot be enforced against Amtrak under 49 U.S.C. § 24902(j) as no State or local building, zoning, subdivision, or similar or related to law is to apply in connection with the "construction, ownership, use, operation, … leasing, conveying" of an improvement taken for the benefit of Amtrak and any land on which such improvement is located and adjoining, surrounding, and related land; and

WHEREAS, the Appellant notes that in order to satisfy § 24902(j)'s exemption, the Signs must satisfy two requirements of the provision: (1) they must be an improvement undertaken for the benefit of Amtrak, or land on which such improvement is located, in furtherance of the NCIP or other specified general Amtrak goals; and (2) Amtrak must receive a federal operating subsidy for the year in which Amtrak commits to or initiates such improvement; and

WHEREAS, the Appellant asserts that despite the plain language of this exemption statute, DOB would like the Board to agree that the "Signs cannot be considered an improvement for the benefit of NCIP because they have no direct bearing to NCIP's core transportation purpose;" and

WHEREAS, the Appellant asserts that DOB does not cite any authority that requires that a beneficial improvement have a direct bearing to Amtrak's core transportation purpose and that DOB ignores the fact that such laws do not apply to any land on which such an improvement is located and to any adjoining, surrounding, and related land; and

WHEREAS, the Appellant asserts that the Amtrak properties are clearly within the scope of § 24902(j) and contends that DOB mistakenly states and suggests that "train transportation" is the purpose, as Amtrak's actual purpose is to provide "efficient and effective" railroad transportation (49 U.S.C. § 24101(b)); and

WHEREAS, the Appellant states that under DOB's reading of § 24902(j), anything that does not have a direct bearing to Amtrak's core transportation purpose would be subject to the City's signage and other building or zoning regulations; and

WHEREAS, the Appellant asserts that § 24902(j) does not mention transportation purpose anywhere and only states that the improvement be undertaken by or for the benefit of Amtrak as part of, or in furtherance of, NCIP or other sections of the U.S. rail program for passenger transportation, including those under Chapters 241, 243 and 247 of Title 49; and

WHEREAS, in support of the assertion that § 24902(j) has broad applicability, the Appellant notes that the cited Chapter 241 of Title 49 is a general section under Part C, Passenger Transportation, of the U.S. Rail Programs that includes, among other things, Amtrak's missions and goals; Chapter 243 is the Amtrak authorizing statute; and Chapter 247 relates to the Amtrak route system; and

WHEREAS, the Appellant asserts that the exemption under § 24902(j) is a broad one, as recognized by the court in Caln; and

WHEREAS, the Appellant notes that in Caln, the court held that the governing weed control ordinance was inapplicable to Amtrak properties under § 24902(j), which broadly covers not only land within the railroad roadbeds, but also covers surrounding or related land; and

WHEREAS, the Appellant asserts that the use of Amtrak railroad properties for signage is an improvement undertaken for the benefit of Amtrak as part of, and in furtherance of, the NCIP in that it provides revenues necessary for the NCIP; and

WHEREAS, the Appellant asserts that it is apparent that the improvement need not be undertaken pursuant to or have any nexus to NCIP, but that it be undertaken by or for the benefit of Amtrak pursuant to various federal passenger rail transportation programs, including, but not limited to, NCIP; and

WHEREAS, the Appellant states that DOB's narrow reading is contrary to the broad exemption provided by § 24902(j); and

WHEREAS, as to the subsidy, the Appellant represents that Amtrak received federal subsidies that satisfy the exemption requirement; and

WHEREAS, the Appellant asserts that Amtrak has never been profitable and has always relied on and received federal subsidies; and

WHEREAS, further, the Appellant asserts that the Signs on Amtrak properties were erected at various times in the past during which time the DOB has held such signs to be exempt from the City's signage regulations, thus the only relevant period for Amtrak's receipt of federal subsidies should be the year in which DOB arbitrarily changed its mind and started to claim that such signs are subject to its jurisdiction (*i.e.*, 2012); and

WHEREAS, in support of this assertion, the Appellant submitted a February 3, 2012 News Release by Amtrak, which reflects that the federal government appropriated $466 million in federal operating subsidy in fiscal year 2012, and for fiscal year 2013, Amtrak requested $450 million in federal operating support; and

WHEREAS, the Appellant asserts that Amtrak subsidy dollars are allocated on a project by project basis, rather than on a program by program basis, pursuant to an annual grant agreement; therefore, specific information relating to the actual allocation to or use of such funds pursuant to the NCIP is not readily available and extremely difficult to obtain but Amtrak informed the Appellant that a great

percentage of the federal grant money is used or allocated to NCIP and is available on a piecemeal basis; and

WHEREAS, the Appellant asserts that for example, during the fiscal year 2011, as of September 30, 2011, Amtrak had spent 38 percent of approximately $1.3 billion authorized under the American Recovery and Reinvestment Act of 2009 on NCIP and that similar allocations have been and are made every fiscal year; and

WHEREAS, the Appellant asserts that contrary to DOB's assertion, there is no requirement that the government subsidy be used for, dedicated to, allocated or otherwise have any relationship to the NCIP; instead, the Appellant asserts that what is required by the plain language of § 24902(j) is that Amtrak receive such subsidies; and

WHEREAS, the Appellant notes that it has provided clear evidence demonstrating that Amtrak has received government subsidies every year since its creation and that, therefore, the exemption applies; and

WHEREAS, as far as subsidies, the Appellant believes that (i) DOB should not require it to produce evidence that Amtrak received government subsidies for the last several decades, a period during which the DOB held Amtrak properties to be exempt from the City's signage regulations, and (ii) that because of such determination, evidence of such subsidies for such period are not relevant; however, the Appellant provided documentation from the Federal Railroad Administration and Amtrak's Annual Report for Fiscal Year 2011, which demonstrates that Amtrak has relied on and received federal subsidies since its creation; and

WHEREAS, the Appellant asserts that by creating the NCIP, Congress found that it is a "valuable resource of the United States," (49 U.S.C. § 24101(a)(7)) and gave Amtrak the goals to "minimize Government subsidies by encouraging State, regional and local governments and the private sector, separately or in combination, to share the cost of … operating the facilities," and to "maximize the use of its resources, including the most cost-efficient use of … facilities and real property" (49 U.S.C. §§ 24101(c)(2) and (c)(12)); and

WHEREAS, the Appellant asserts that Amtrak was encouraged and directed to "make agreements with the private sector and undertake initiatives … designed to maximize its revenues and minimize Government subsidies" (49 U.S.C. § 24101(d)); and

WHEREAS, the Appellant asserts that in order to comply with such federal statutory directives, Amtrak adopted a business plan that extracts financial value and generates income from its real estate and other assets and that such revenues support Amtrak's core business and contribute towards the intercity passenger rail operations that serve New York City and other cities and reduce "Amtrak's reliance on government funding;" and

WHEREAS, the Appellant asserts that its business plan specifically directs the development of advertising on Amtrak properties; and

WHEREAS, the Appellant asserts that Amtrak has not historically had a self-supporting operation (*i.e.*, Amtrak has not been able to generate revenues sufficient to cover all of its costs and expenses), and all revenues generated through third-party advertising on Amtrak properties go toward reducing Amtrak's reliance on government subsidies; and

WHEREAS, the Appellant notes that no other jurisdiction has ever attempted to "impose local controls over advertising on Amtrak property," and asserts that this is further evidence that any such attempt would be in contravention of Amtrak's federal authorizing statute; and

WHEREAS, the Appellant concludes that the application of the City's signage regulations to NCIP, a program that the Amtrak railways in the City are under, would be contrary to the NCIP statute and Congress' intent; and

DOB'S POSITION

WHEREAS, in support of its position that the Signs on Amtrak property are not exempt from zoning regulations, DOB asserts that: (1) 49 U.S.C. § 24301(g) does not exempt the Signs because Appellant has failed to establish that such regulation would affect its routes, rates, and services; and (2) 49 U.S.C. § 24902(j) does not exempt the Signs because they do not serve a transportation purpose and the Appellant has not established the requisite federal subsidies during relevant periods; and

I. The Amtrak Signs are not Eligible for Exemption from Local Zoning under 49 U.S.C. § 24301(g)

WHEREAS, DOB distinguishes Caln from the subject case and finds that it does not support the Appellant's conclusion; and

WHEREAS, DOB states that following the noted interpretive background, the Caln court found that the vegetation ordinance under consideration was "related to Amtrak routes" and not "tenuous, remote or peripheral" because "Amtrak would be burdened with using its limited workforce and funds on continuously maintaining the property in Caln Township to ensure it is 'free from weed or plant growth in excess of [eight inches];' this drain on resources was deemed to have a significant impact on other operations on the Keystone Route" (id. at 4 (alteration in original)); and

WHEREAS, DOB notes that the potential for other vegetation ordinances with varying height limits being enforced against Amtrak all along its route was disfavored and thus the court found the ordinance at issue "preempted by 24301(g)" (id. at 4); and

WHEREAS, DOB finds that the Caln case is distinguishable from the subject case in that zoning enforcement against the Signs would have only a very tenuous, remote, and peripheral effect on rates, routes, and services, if any effect at all; and

WHEREAS, DOB states that the Appellant claims that "the City's signage regulations negatively impact Amtrak's routes and services in that such regulation will reduce Amtrak's revenues and ultimately result in Amtrak's greater reliance on government subsidies *and/or* increases to Amtrak's fares" but never describes what effect, if any, there will be on rates, routes, and services except to state what the loss of revenue would be; and

WHEREAS, DOB asserts that Appellant's use of "and/or" language in describing the regulations' alleged effect on rates implies that Appellant does not know if there will be *any* effect on rates, nor does Appellant describe what

the effect, if any, will be; and

WHEREAS, DOB states that it is also unclear how this speculative effect on fares supports Appellant's claim of an effect on "routes and services;" on this subject, Appellant's affidavit from the Amtrak Project Director in charge of Amtrak third-party advertising states only that "[w]ithout the revenue Amtrak generates from its outdoor advertising, Amtrak likely would require an additional $4.2 million in government funding annually;" and

WHEREAS, DOB notes that Amtrak's Project Director does not say that losing the advertising revenue would have any effect on routes, rates, or services at all; thus, in contrast to the facts of Caln, the claimed impact of the City's zoning on Amtrak's routes, rates and services in this appeal is tenuous, remote, and peripheral and Amtrak is not, therefore, exempt from local regulation by § 24301(g); and

II. The Amtrak Signs are not eligible for Exemption from Local Zoning under 49 U.S.C. § 24902(j)

WHEREAS, DOB states that this claim of exemption fails for the same reason as Appellant's arguments in the MTA context (see BSA Cal. No. 117-12-A et al); the Signs cannot be considered an improvement for the benefit of the NCIP because they have no direct bearing to NCIP's core transportation purpose; and

WHEREAS, firstly, as stated in Appellants' submissions, the goal in chief of Amtrak and the NCIP's enabling statutes is to provide train transportation; DOB cites to the Appellant's statement that "Amtrak was created ... [to provide] passenger railway services throughout the country"; and

WHEREAS, although, as Appellant has documented, Amtrak also has goals to "minimize Government subsidies" and to "maximize the use of its resources" (49 U.S.C. § 2410(c)1(12)), these goals are only indirectly related to its goal in chief of providing railway transportation; and

WHEREAS, DOB asserts that as with Appellant's arguments in the MTA context, Appellant's arguments under § 24902(j) fail because the Signs have no direct bearing to its core purpose; as Witherspoon decided:

> the use of the real property for the erection and maintenance of commercial advertising signs [] has no direct bearing to the governmental function for which [the authority] was created. On the contrary, such use is merely *incidental* to the goal in chief – the continued operation of the formerly tottering railroads. To that extent the use of the land for that purpose is proprietary. The immunity, insofar as applicable, is a limited one.

52 Misc.2d at 323 (emphasis in original); and

WHEREAS, DOB asserts that the Signs on Amtrak property are no more entitled to exemption from local regulation than the Signs on MTA property; and

WHEREAS, further, DOB states that the Caln court's examination of 49 U.S.C. § 24902(j) in the context of the local weeding ordinance shows that § 24902(j) does not exempt the Amtrak Signs from zoning in this appeal; and

WHEREAS, DOB states that in Caln, the court found that Amtrak was exempt from the local law under this section because Amtrak had shown that the rail lines in the township were an improvement for the benefit of the NCIP (id. at 4) and once that fact was established, it follows from the statute that land surrounding the tracks covered by the weeding ordinance was also exempt; and

WHEREAS, DOB contrasts Caln with the subject case in which Appellant argues that "[t]he use of Amtrak railroad properties for signage is an improvement undertaken for the benefit of Amtrak as part of, and in furtherance of, the NCIP in that it provides revenues necessary for the NCIP"; and

WHEREAS, DOB asserts that the Appellant has failed to address a critical exception to this immunity section, which reads, in relevant part, "[t]his subsection shall not apply to any improvement or related land unless Amtrak receives a Federal operating subsidy in the fiscal year in which Amtrak commits to or initiates such improvement;" and

WHEREAS, DOB asserts that the Appellant has not documented that Amtrak received a federal operating subsidy in the fiscal year in which Amtrak committed to or initiated each of the Signs at issue, and thus it has not documented that the Amtrak Signs are eligible for § 24902(j)'s exemption even if the Signs were an NCIP improvement; and

WHEREAS, DOB asserts that exemption is not appropriate in the absence of evidence of a subsidy in the fiscal year in which Amtrak committed to or initiated the Sign "improvement;" and

WHEREAS, DOB asserts that although the Appellant contends that Amtrak received a federal operating subsidy in the fiscal year in which it committed to the Signs, the Appellant has not provided
clear evidence demonstrating that Amtrak has received government subsidies every year since its creation; and has still not documented when Amtrak committed to or initiated each of the Amtrak Signs (or if it did so at all); and

WHEREAS, DOB asserts that until the Appellant can establish that it overcomes the exception to § 24902(j)'s local law exemption, it is not entitled to such exemption; and

SUPPLEMENTAL ARGUMENTS

WHEREAS, the Board notes that the Appellant made several supplemental arguments in the context of the larger appeal, which are addressed in full, with DOB's responses, in the MTA Resolution; and

WHEREAS, the Board notes that it was not persuaded by any of the Appellant's supplemental arguments common to all of the appeals related to signs on railroad property and, thus, declines to address the arguments here; the MTA Resolution includes the complete discussion of the arguments and the Board adopts the same rejection of all of the Appellant's supplemental arguments; and

CONCLUSION

WHEREAS, based upon its review of the record, the Board disagrees with the Appellant that 49 U.S.C. § 24301(g) affords Amtrak exemption from the City's signage regulations but agrees with the Appellant that 49 U.S.C. § 24902(j) affords it exemption; and

WHEREAS, as to 49 U.S.C. § 24301(g), the Board is not persuaded that the City's sign regulations are the kind of regulations that affect rates, routes, and services; and

WHEREAS, the Board agrees with DOB that the Appellant has failed to establish a connection between the

regulations and Amtrak's rates, routes, and services and does not find that, by the clear language, zoning is the kind of law contemplated by § 24301(g); and

WHEREAS, however, the Board agrees with the Appellant that signs on Amtrak properties are exempt from the sign regulations in the Zoning Resolution in accordance with 49 U.S.C. § 24902(j); and

WHEREAS, as to 49 U.S.C. § 24902(j), the Board notes that there are two requisite conditions for the Signs: (1) that they must be an improvement undertaken for the benefit of Amtrak, or land on which such improvement is located, in furtherance of the NCIP or other specified general Amtrak goals; and (2) Amtrak must receive a federal operating subsidy for the year in which Amtrak commits to or initiates such improvement; and

WHEREAS, as to the first, the Board agrees with the Appellant that the language is clear and that the Signs fall within the plain meaning of the broad term "improvement;" and

WHEREAS, as to the subsidy requirement, similarly, the Board finds that the language is clear and that it reflects simply Amtrak as a whole must have received a federal operating subsidy for the year in which it committed to or initiated the Signs; and

WHEREAS, the Board agrees with the Appellant that the meaning of subsidy also lacks specificity and accepts Appellant's evidence that Amtrak has received a subsidy for every year of its existence and, thus, would have received a subsidy for the year it committed to the Signs; and

WHEREAS, the Board disagrees with DOB's finding that § 24902(j) requires that the subsidy be clearly linked to the NCIP as § 24902(j) also allows for the improvement to be associated with Amtrak's broader goals for passenger transportation, in the alternate; and

WHEREAS, however, even if there were a requirement that the improvement and the subsidy be related to the NCIP, it is reasonable to conclude that the Signs on land that is part of Amtrak's Northeast Corridor system are improvements that benefit the NCIP and that they were committed to or initiated by subsidy dedicated to the NCIP, given Amtrak's history of receiving federal subsidies; and

WHEREAS, the Board agrees with the Appellant that Caln supports the conclusion that § 24902(j) exempts the subject Signs from the City's signage regulations; and

WHEREAS, the Board finds that DOB's invocation of concepts and terminology from the MTA cases are misplaced for the following reasons: (1) the language of § 24902(j) is clear, and (2) as argued in the MTA appeal, terminology may have different meaning in different contexts/statutes and there is no reason to infer that "transportation purpose" in the MTA context was intended, in the absence of it actually being stated in the text; and

WHEREAS, accordingly, the Board finds that there is no basis to insert the concept of "transportation purpose" from the State's MTA enabling statute into § 24902(j); and

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated March 26, 2012 and May 10, 2012, is hereby granted.

Adopted by the Board of Standards and Appeals, January 29, 2013.

205-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communication LLC.

OWNER OF PREMISES – Borden Realty Corporation.

SUBJECT – Application June 29, 2012 – Appeal challenging the Department of Buildings' determination that a sign is not entitled to non-conforming use status as an advertising sign. R7-2 /C2-4 (HRW) Zoning District.

PREMISES AFFECTED – 355 Major Deegan Expressway, bounded by Exterior Street, Major Deegan Expressway to the east, Harlem River to the west, north of the Madison Avenue Bridge, Block 2349, Lot 46, Borough of Bronx.

COMMUNITY BOARD #1BX

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 5

Negative:.....0

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 May 30, 2012, denying registration for a sign at the subject site (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 Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. We note that there is no proof of second roof sign structure except for undated and incomplete rider to lease agreement. 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 December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 29, 2013; 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 bounded by Exterior Street, a service road adjacent to the Major Deegan Expressway, to the east, and the Harlem River to the west, within a C2-4 (R7-2) zoning district; and

WHEREAS, the site is occupied by a two-story warehouse building (the "Building") with two advertising signs, with dimensions of 19'-6" by 48'-0" (936 sq. ft.) each, mounted on a single rooftop sign structure with two

identical interconnected sections, with one portion of the structure facing southeast and one portion of the structure facing northeast (the "Sign Structure"); and

WHEREAS, the southeast-facing sign was accepted for registration by DOB on March 4, 2011 (the "Registered Sign"), while the northeast-facing was rejected from registration by DOB (the "Subject Sign"); and

WHEREAS, the Appellant states that when the signs were installed the site was within an M1-2 zoning district which was rezoned to an M2-1 zoning district in 1988; pursuant to a 2009 rezoning, the site is now zoned C2-4 (R7-2); and

WHEREAS, the Subject Sign is located approximately 45'-7" from the Major Deegan Expressway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign Structure (the "Appellant"); and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

WHEREAS, the Appellant identifies the relevant statutory requirements related to sign registration in effect since 2005; and

WHEREAS, the Appellant states that 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

WHEREAS, the Appellant asserts that 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, the Appellant notes that affidavits are also listed as an acceptable form of evidence; and

REGISTRATION PROCESS

WHEREAS, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, it submitted a Sign Registration Application for the Subject Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Subject Sign; (2) photographs of the Subject Sign; and (3) an affidavit from Richard Theryoung, a retired president of the sign company, attesting that the Subject Sign operated as an advertising sign at the time he began his employment in December 1979 (the "Theryoung Affidavit"); and

WHEREAS, the Appellant states that it submitted the same evidence in connection with the Subject Sign as it did for the Registered Sign, except that the application for the Registered Sign also included a DOB application submitted on November 30, 1979 with respect to that sign; and

WHEREAS, by letter dated March 4, 2011, DOB issued a Sign Identification Number to the Registered Sign but did not issue any comment regarding the Subject Sign; and

WHEREAS, on October 3, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that it is unable to accept the Subject Sign for registration due to "Failure to provide proof of legal establishment;" and

WHEREAS, by letter dated December 14, 2011, the Appellant submitted to DOB a response letter which included evidence of the establishment of the Subject Sign (together with the Registered Sign) as of 1963; and

WHEREAS, by letter, dated May 10, 2012, DOB issued the determination which forms the basis of the appeal, stating that "the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

> ZR § 12-10 *Definitions*
> Sign
> A "sign" is any writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or
> pennant), or any other figure of similar character,

that:

(a) Is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a #building or other structure#;

(b) Is used to announce, direct attention to, or advertise; and

(c) Is visible from outside a #building#. A #sign# shall include writing, representation or other figures of similar character, within a #building#, only when illuminated and located in a window…

* * *

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. . .

* * *

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 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 § 52-83

Non-Conforming Advertising Signs

In all Manufacturing Districts, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Section…42-55, any non-conforming advertising sign except a flashing sign may be structurally altered, reconstructed, or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

(a) The creation of a new non-conformity or an increase in the degree of non-conformity of such sign;
(b) An increase in the surface area of the sign; or
(c) An increase in the degree of illumination of such sign; 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…

* * *

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 the 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; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Subject Sign was established as an advertising sign prior to November 1, 19791, as required under ZR § 42-55, and may therefore be maintained as a legal non-conforming advertising sign pursuant to ZR § 52-11, and (2) the Subject Sign has operated as an advertising sign with no discontinuance of two years or more since its establishment; and

Establishment Prior to November 1, 1979

WHEREAS, as to the establishment of the Subject Sign prior to November 1, 1979, the Appellant contends that the Subject Sign has been continuously maintained at the site in conjunction with the Registered Sign since at least 1963, when the Sign Structure was constructed for the two signs; and

WHEREAS, in support of its assertion that the Subject Sign was established prior to November 1, 1979, the Appellant relies on: (1) a lease agreement between Allied Outdoor Advertising, Inc. ("Allied"), and the then property owner dated September 25, 1963, for use of the Sign Structure at the site, to expire on November 30, 1966, with an option to extend to November 30, 1969 (the "1963 Lease"); (2) an affidavit from licensed Master Sign Hanger Robert Roniger dated June 29, 2012, stating that the structure supporting the Subject Sign and the Registered Sign was constructed in the 1960s as a unified structure with two sign faces on a single pedestal (the "Roniger Affidavit"); (3) a lease agreement between Allied and Metropolitan Roofing Supplies Company ("Metropolitan") dated April 8, 1969 for use of the sign structure at the site, to expire on November 30, 1979 (the "1969 Lease"); (4) a letter dated December 5, 1969 from Metropolitan to Allied proposing a rider to adjust the rent of the signs following the enlargement of the two signs at the site (the "1969 Letter Agreement"); (5) a rider to the 1969 Lease extending the lease term to December 1, 1984 and granting permission to extend the width of the two signs by eight feet each (the "1969 Lease Rider"); (6) the Theryoung Affidavit, which states that the Subject Sign has operated as an advertising sign since at least December 1979; (7) an aerial

1 DOB acknowledges that the surface area of the Subject Sign does not exceed 1,200 sq. ft. on its face, 30 feet in height, or 60 feet in length, and therefore the Subject Sign may have legal non-conforming status if erected prior to November 1, 1979 pursuant to ZR § 32-662.

photograph dated January 3, 1980, taken from the rear of the Sign Structure, showing the Subject Sign and the Registered Sign mounted on the same structure (the "1980 Photograph"); and (8) aerial photographs dated August 10, 1983 which reflect that the Subject Sign and the Registered Sign were displaying advertising copy for Marlboro Lights on that date (the "1983 Photographs"); and

WHEREAS, the Appellant states that the 1963 Lease reflects that Allied leased a *de minimus* amount of space in the building to support the sign structure, "together with a steel sign structure erected on the roof of said premises"; however the Appellant asserts that there is no indication that Allied ever maintained an office at the site or used the Subject Sign to advertise for Allied; and

WHEREAS, the Appellant argues that the 1969 Lease Rider clearly shows that the rooftop sign structure supported two distinct signs at that time, as the 1969 Lease Rider granted Allied the right "to extend *both* signs 8 ft." (emphasis added); and

WHEREAS, accordingly, the Appellant argues that as early as 1969 the documents specifically reference two signs at the site, and in rejecting the Subject Sign while accepting the Registered Sign, DOB ignored the record before it, which demonstrates that the Subject Sign was established along with the Registered Sign for advertising use prior to November 1, 1979; and

WHEREAS, in response to DOB's claim that evidence of the establishment of the Subject Sign prior to November 1, 1979 is limited to an "undated and incomplete rider," the Appellant asserts that while the date of execution of the rider to the 1969 Lease is unavailable, it is the date of the 1969 Lease (April 8, 1969), and not the rider, that is relevant, and the 1969 Rider references two signs that are covered by the 1969 Lease; and

WHERES, the Appellant argues that the 1969 Letter Agreement, signed by the same signatories as the 1969 Lease Rider, also references two signs and therefore provides further corroboration that the 1969 Lease covers two signs; and

WHEREAS, the Appellant asserts that, taken together, the 1969 Lease, the 1969 Lease Rider and the 1969 Letter Agreement establish that two advertising signs were existing at the site in 1969, a decade before the November 1, 1979 date by which the Subject Sign needed to have been established to be considered a legal non-conforming use pursuant to ZR § 42-55(c)(2); and

WHEREAS, the Appellant states that to further support the contemporaneous establishment of the Subject Sign with the Registered Sign, the Appellant consulted a sign construction expert (and an employee of a subsidiary of Appellant), Robert Roniger, who is one of approximately twenty licensed Master Sign Hangers in the City of New York, and has worked as a sign hanger in the City of New York for over thirty years; and

WHEREAS, the Roniger Affidavit identifies the Sign Structure supporting the Registered Sign and the Subject Sign as a stick-figure angle-iron type structure, which is a type of sign structure predominantly utilized in the 1950s and 1960s, and states that after the 1960s the design of sign structures changed to a tubular design or I-beam construction; the Roniger Affidavit further states that the use of square head bolts and the condition and wear of the structure also point to its construction in the 1960s, as beginning in the 1970s installers and fabricators switched from square head to hex head bolts; and

WHEREAS, the Roniger Affidavit concludes that the Sign Structure was designed and constructed as a single interconnected structure with two sign faces in the 1960s; and

WHEREAS, the Board notes that Mr. Roniger also provided oral testimony at hearing in support of the statements made in his affidavit; and

WHEREAS, the Appellant notes that the same stick figure angle iron sign structure constructed in the 1960s continues to support both the Subject Sign and the Registered Sign today, and represents that a review of the photographs included with the Roniger Affidavit makes clear even to the layperson that the Sign Structure was constructed as a single unit; and

WHEREAS, the Appellant notes that the Theryoung Affidavit states that Allied had been operating two advertising signs at the time he began his employment in December 1979, and that at that time the two advertising signs were not then newly built; and

WHEREAS, the Appellant asserts that the 1980 Photograph clearly depicts two signs on the Sign Structure, and that the photograph, taken only two days and two months after November 1, 1979, corroborates the claim in the Theryoung Affidavit that the Subject Sign and the Registered Sign existed on the relevant date for legal establishment; and

WHEREAS, the Appellant states that during that same time period, on November 30, 1979, an application for what appears to be only the southeastern-facing Registered Sign only was submitted to DOB in order to legalize the already-existing Registered Sign; and

WHEREAS, the Appellant represents that despite its best efforts, it was unable to locate a similar application for the Subject Sign, but that nonetheless, all the evidence, including the 1980 Photograph, points to the existence of both signs simultaneously since the 1963 Lease; and

WHEREAS, the Appellant contends that there is no indication in the available records that the Registered Sign ever existed independently of the Subject Sign, but that consistent with the Roniger Affidavit, and per the 1979 DOB application, the earliest permit for the Registered Sign appears to have been issued in 1962 when the structure supporting both the Registered Sign and the Subject Sign was originally constructed; and

WHEREAS, the Appellant asserts that DOB accepted the Registered Sign based solely on the submission of the 1979 DOB application and rejected the Subject Sign for lacking the same documentation; however, as the 1980 Photograph shows, the Subject Sign and the Registered Sign were existing as part of a single structure while the 1979

DOB application for the Registered Sign was pending; and

WHEREAS, while it was unable to locate a parallel application for the Subject Sign, the Appellant argues that the absence of this piece of evidence alone cannot cancel out the documentation provided, including leases and photographs, which clearly establish that the Subject Sign was erected upon the same structure as the Registered Sign well before November 1, 1979, and by rejecting the Subject Sign because a similar piece of documentation is not available, DOB impermissibly interpreted the standard set forth in Rule 49 to require that a particular form of evidence be submitted for the Subject Sign to be accepted for registration; accordingly, DOB's rejection of the Subject Sign is arbitrary and unreasonable; and

WHEREAS, the Appellant argues that Rule 49 provides that a range of evidence may be used to establish the legal non-conforming status of a given sign, and notes that Rule 49-15(d)(15)(b) sets for the relevant evidentiary standard 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. Affidavits, Department cashier's receipts and permit applications, without other supporting documentation, are not sufficient to establish the non-conforming status of a sign. [emphasis added]; and

WHEREAS, the Appellant asserts that, per Rule 49, it has provided ample evidence for the Board to conclude that the Subject Sign existed on the Sign Structure leased to and used by advertising companies since prior to November 1, 1979, including: (1) the leases which reference a single integrated sign structure supporting the Subject Sign and the Registered Sign; (2) the 1969 Lease Rider referring to the extension of *both* signs; and (3) photographs showing advertising copy from the 1980s; and

WHEREAS, the Appellant further asserts that affidavits that are supported by documentary evidence are also acceptable forms of evidence under Rule 49, and that the Roniger Affidavit corroborates the leases and photographs referencing a single sign structure; and

WHEREAS, the Appellant argues that because the Roniger Affidavit is supported by the leases and photographs and because it logically flows that the a two-faced sign structure was not constructed to display advertising signage on only one of its faces, it must be concluded that the Subject Sign existed along with the Registered Sign throughout its history; and

WHEREAS, the Appellant concludes that all the evidence taken together meets the requirements of Rule 49 and indicates that the Subject Sign was established as an advertising sign prior to November 1, 1979; and

Continuous Use

WHEREAS, the Appellant asserts that the Subject Sign has been continuously used to display advertising copy since November 1, 1979, without any two-year interruption during that period; and

WHEREAS, in support of the continuous use of the Subject Sign as an advertising sign since November 1, 1979, the Appellant has submitted the following evidence: (1) the 1969 Lease Rider extending the lease term to December 1, 1984; (2) the 1980 Photograph; (2) aerial photographs dated August 10, 1983 showing advertising copy for Marlboro Lights on the Subject Sign and Registered Sign; (3) an aerial photograph dated July 17, 1985 showing the Subject Sign and the Registered Sign mounted on the same sign structure; (4) a lease agreement for the entire site between New York City Industrial Development Agency and Borden Realty Corp. dated September 1, 1991 and expiring September 13, 2001, recognizing Allied's existing lease and its right to sublease the sign structure for advertising use; (5) an assignment of the advertising signage sublease from Metropolitan to Borax Paper Products, Inc., dated September 13, 1991; (6) a lease dated November 18, 1992 between then property owner Borax Paper Products, Inc., and Allied for approximately 300 sq. ft. on the roof of the building, to expire on November 30, 2004; (7) a lease dated February 24, 2000 between the property owner and the Appellant referencing the double-faced sign structure, commencing November 30, 2004; (8) a photograph of the Registered Sign and Subject Sign with a Clear Channel logo from approximately 2003; (9) a photograph of the Subject Sign depicting advertising copy, dated January 2005; (10) a photograph of the Subject Sign depicting advertising copy, dated March 2006; (11) a photograph of the Subject Sign depicting advertising copy, dated August 2007; (12) a photograph of the Subject Sign depicting advertising copy, dated May 2008; (13) the Sign Registration Application, including photographs of the Subject Sign; (14) a photograph of the Subject Sign depicting advertising copy, dated May 2010; (15) a photograph of the Subject Sign depicting advertising copy, dated November 2011; and (16) a photograph of the Subject Sign depicting advertising copy, dated June 2012; and

DOB'S POSITION

WHEREAS, DOB asserts that the Appellant has not submitted sufficient evidence to meet the criteria set forth in RCNY § 49-15(d)(5) that a non-conforming northeast-facing sign existed at the site prior to November 1, 1979; and

WHEREAS, DOB states that ZR § 42-55(c)(2) confers non-conforming use status to any advertising sign erected, structurally altered, relocated or reconstructed prior to November 1, 1979, and that according to Rule 49, acceptable evidence that a non-conforming sign existed and the size of the sign that existed as of the relevant date set forth in the Zoning Resolution to establish its lawful status includes "permits, sign-offs of applications after completion, photographs and leases demonstrating the non-conforming use existed prior to the relevant date" and that "affidavits, Department cashier's receipts and permit applications without other supporting documentation, are not sufficient to establish the non-conforming status of a sign"; and

WHEREAS, DOB argues that the 1963 Lease, which

references a "steel sign structure erected on the roof" describes a single sign and it is unclear whether the referenced sign is the Registered Sign or the Subject Sign at the site; and

WHEREAS, DOB further argues that the 1963 Lease does not provide the dimensions or surface area of the sign, and it does not describe the use of the sign as an advertising sign; and

WHEREAS, DOB asserts that if there were two signs existing at the site at this time, the 1963 Lease should refer to both signs, or the Appellant should provide DOB with a second lease for the Subject Sign for the relevant time period; and

WHEREAS, DOB notes that the Appellant concedes that the Sign Structure displayed an accessory sign in 1963 promoting the landlord's roofing supply business at the site, and argues that the Appellant has not provided evidence of the date the Subject Sign was allegedly changed to an advertising use; and

WHEREAS, DOB contends that paragraph 2 of the 1963 Lease provides that "Tenant agrees to restore the sign to its present condition advertising Metropolitan Roofing Supplies Co. Inc. and its product" and the 1969 Lease between Metropolitan and Allied identifies Metropolitan as the landlord, which suggests that the Subject Sign's use was accessory to a roofing supply business at the site; and

WHEREAS, DOB argues that the 1969 Lease does not support the claim that the Subject Sign existed at the site, as the lease describes only one sign and provides that the landlord will not permit "any other sign structure to be erected upon the said roof during the period of this lease" and that this provision does not apply to "the sign on the rear wall of the premises nor the sign called for in paragraph "6" which advertises the products of the Metropolitan Roofing Supplies Co., Inc."; DOB asserts that this language indicates that there were only two signs at the site, a wall sign and the accessory sign that is the subject of the leases, and therefore instead of showing that the Subject Sign existed at the site, the leases provide more support for a presumption that the accessory sign described in the leases is the Registered Sign that was legalized as an advertising sign by the 1979 permit; and

WHEREAS, DOB asserts that the 1969 Letter Agreement also does not demonstrate that the Subject Sign existed, and argues that by changing paragraph 6 to grant a right to extend the "height and/or width of the existing sign (8' long x 4' high on one side of face and 5' long by 4' high on the other side of face)," this document appears to allow the lessee to convert the single sign to a double-faced sign, and the Appellant offers no evidence that the lessee exercised the right to install two sign faces; and

WHEREAS, as to the 1969 Lease Rider which refers to a right to increase the size of two signs at the site, DOB notes that it is an undated document and the Appellant offers no evidence that the right to reconstruct the sign as a double faced sign structure or to change the size of any sign at the site was exercised by the lessee; and

WHEREAS, DOB notes that neither the 1969 Letter Agreement nor the 1969 Lease Rider provide the sign's dimensions or mention that it was used for advertising; and

WHEREAS, DOB argues that a permit for the Registered Sign does not prove that the Subject Sign is an advertising sign erected, altered, relocated or reconstructed at the premises prior to November 1, 1979, and there is no reason both signs would not have received a permit in 1979 if both signs were eligible to be legalized per ZR § 42-55; and

WHEREAS, DOB asserts that the Roniger Affidavit, which states that the sign structure is a single integrated structure designed for two signs and installed in the 1960s, is insufficient to demonstrate that the Subject Sign is an advertising sign erected, altered, relocated or reconstructed at the premises prior to November 1, 1979, and in the event that such a structure was installed in the 1960s, the structure is not proof that an advertising sign was displayed prior to November 1, 1979; and

WHEREAS, DOB further asserts that the Roniger Affidavit was submitted without acceptable supporting documentation per Rule 49-15(d)(5) and does not demonstrate that a non-conforming sign existed at the site; and

WHEREAS, based upon the above, DOB concludes that the Appellant has not submitted sufficient evidence to prove that the Subject Sign was established as an advertising sign at the site prior to November 1, 1979; and

WHEREAS, the Board notes that DOB has not provided any testimony in response to the Appellant's claim that the use of the Subject Sign as an advertising sign has been continuous since November 1, 1979, without any two-year interruption; and

CONCLUSION

WHEREAS, the Board agrees with the Appellant that the Subject Sign was established prior to November 1, 1979; and

WHEREAS, specifically, the Board finds that the totality of the evidence, including the 1963 Lease, the 1969 Lease, the 1969 Lease Rider, the 1969 Letter Agreement, the Roniger Affidavit, the Theryoung Affidavit, the 1980 Photograph, and the 1983 Photographs are sufficient to establish that a northeast-facing advertising sign was maintained on the Sign Structure prior to November 1, 1979; and

WHEREAS, at the outset, the Board notes that it finds the Roniger Affidavit, in addition to the testimony provided by licensed Master Sign Hanger Robert Roniger at hearing, compelling to establish that the sign structure located on the roof of the subject building was constructed in the 1960s as a unified structure with two identical interconnected sections, with one portion of the structure facing southeast and one portion of the structure facing northeast; and

WHEREAS, the Board agrees with DOB that the Roniger Affidavit, in and of itself, is insufficient to demonstrate that the Subject Sign existed as an advertising sign prior to November 1, 1979, however, the Board considers it to be relevant evidence that the Sign Structure existed as a single interconnected two-faced structure at the site prior to November 1, 1979; and

WHEREAS, contrary to DOB's position that the Roniger Affidavit was submitted without acceptable supporting documentation per Rule 49-15(d)(5), the Board finds that in the instant case the photographs submitted with the Roniger Affidavit, in addition to the other evidence submitted by the Appellant, is sufficient supporting documentation for the purpose of establishing that the Sign Structure has existed at the site in its current form since the 1960s; and

WHEREAS, because the Board is convinced that the Sign Structure existed at the site since the 1960s, the Board finds that the references in both the 1963 Lease and 1969 Lease to a "steel sign structure erected on the roof" of the building refer to the Sign Structure which still exists on the roof of the building; and

WHEREAS, as to DOB's argument that the 1963 Lease and 1969 Lease describe only one sign and therefore provide more support for the position that only the Registered Sign existed at this time, the Board considers the reference to a single sign in the leases to be more indicative of a lack of clarity in regards to the proper way to reference the signs attached to the interconnected two-faced structure, such that the signs on the Sign Structure may have alternately been referred to as one sign or two signs in much the same way as the Board has seen historical references to double-sided signs alternately referred to as one sign or two signs; and

WHEREAS, the Board disagrees with DOB's position that the language in the 1963 Lease requiring the tenant to "restore the sign to its present condition advertising Metropolitan…" in the event it does not exercise the option to extend, and the fact that the 1969 Lease identifies Metropolitan as the landlord suggests that the sign's use was accessory to a roofing supply business at the site; rather, the Board considers the language in the 1963 Lease to suggest that Allied, an advertising company, intended to replace the accessory signage on the Sign Structure with advertising signage, and that the purpose of the lease provision in question was to require that Allied remove its advertising signage and re-install the accessory signage only in the event that it did not exercise the option to extend the lease; and

WHEREAS, the Board considers it unlikely that Allied, as an advertising company, would enter into the 1963 Lease and the 1969 Lease, which extended the lease for an additional ten years until November 30, 1979, solely to maintain the accessory signage that had previously been located on the Sign Structure; rather, the Board finds that a reasonable inference can be made that Allied entered into the leases in furtherance of its business as an advertising company, and as such replaced the accessory signage with advertising signage; and

WHEREAS, the Board agrees with the Appellant that the language in the 1969 Letter Agreement granting a right to extend the "height and/or width of the existing sign (8' long x 4' high on one side of face and 5' long by 4' high on other side of face)" indicates that there were two signs on the Sign Structure at the time and that the 1969 Letter Agreement authorized the tenant to extend each of the signs; and

WHEREAS, the Board further agrees with the Appellant that the 1969 Lease Rider, which granted Allied the right to "extend both signs 8 ft. and cut face of bottom of both signs 2 ½ ft" further indicates that two signs were maintained on the Sign Structure during the course of the 1969 Lease; and

WHEREAS, as to the fact that the 1969 Lease Rider is undated, the Board agrees with the Appellant that, because the 1969 Lease Rider refers back to the 1969 Lease, the relevant date is that of the 1969 Lease, and the Board notes that the 1969 Lease Rider would not be able to confer a right to extend both signs unless both signs already existed at the time of the 1969 Lease; and

WHEREAS, the Board considers it logical that Allied, as an advertising company leasing a sign structure with two faces, would place advertising copy on both the northeast-facing portion of the Sign Structure and the southeast-facing portion of the Sign Structure, rather than making use of only half of the Sign Structure; and

WHEREAS, the Board agrees with the Appellant that the 1980 Photograph provides further evidence that the Subject Sign existed at the site prior to November 1, 1979; and

WHEREAS, the Board finds that, although the 1980 Photograph was taken two months and two days after November 1, 1979, it clearly shows a northeast facing sign on the Sign Structure in addition to the Registered Sign, and considers the fact that the photograph was taken so shortly after the relevant date serves to corroborate the other evidence submitted by the Appellant regarding the existence of the Sign Structure and the Subject Sign at the site prior to November 1, 1979; and

WHEREAS, the Board notes that the 1980 Photograph shows the rear of the Sign Structure, and therefore it does not explicitly reflect that advertising copy was maintained on the Subject Sign at the time; however, the Board finds the fact that the Sign Structure was leased by an advertising company for more than 16 years prior to the date of the photograph, in combination with the 1983 Photographs which clearly show advertising copy on the Subject Sign to be convincing evidence that advertising copy was maintained on the Subject Sign prior to November 1, 1979; and

WHEREAS, while the Board does not consider any one piece of evidence submitted by the Appellant to be sufficient, standing alone, to demonstrate the establishment of the Subject Sign, it finds the totality of the evidence provided, when considered in the aggregate, to be sufficient for the Board to make a reasonable inference that the Subject Sign existed as an advertising sign prior to November 1, 1979; and

WHEREAS, as to the dimensions of the Subject Sign, the Board finds the existing dimensions of 19'-6" high by 48'-0" wide to be appropriate, based on (1) the Theryoung Affidavit, which states that the Subject Sign had those approximate dimensions as of December 1979, (2) the 1980 Photograph, which shows the Subject Sign occupying the entire width and the majority of the height of the northeast-facing portion of the Sign Structure, and which shows that the Subject Sign had approximately the same dimensions as the

Registered Sign, (3) the fact that the dimensions of the northeast-facing portion of the Sign Structure are 32'-6" high by 48'-0" wide, and (4) the fact that the DOB application to legalize the Registered Sign, approved on March 24, 1980, lists the dimensions of the Registered Sign as 20'-0" high by 50'-0" wide; and

WHEREAS, as noted above, DOB did not provide any testimony contesting the Appellant's position that the Subject Sign has been continuously maintained as an advertising sign since November 1, 1979; and

WHEREAS, the Board finds the evidence submitted by the Appellant sufficient to establish the continued existence of the Subject Sign as an advertising sign since November 1, 1979 without any two-year interruption, such that the Subject Sign is entitled to legal non-conforming status pursuant to ZR § 52-11; and

WHEREAS, accordingly, the Board finds that the Appellant has established the existence of the Subject Sign as an advertising sign prior to November 1, 1979 and its continuous use as an advertising sign since that date.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated May 30, 2012, is hereby granted.

Adopted by the Board of Standards and Appeals, January 29, 2013.

208-12-A, 216-12-A thru 232-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 647-649 Washington Avenue, LLC, owner.

SUBJECT – Application July 2, 2012 – Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.

PREMISES AFFECTED – 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47 and 49 McGee Lane, north side of McGee Lane, east of Harbor Road and West of Union Avenue, Block 01226, Lots 123, 122, 121, 120, 119, 118, 117, 116, 115, 114, 113, 112, 111, 110, 109, 108, 107 and 106, 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 Montanez ….....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 31, 2012, acting on Department of Buildings Application Nos. 520099312, 520099321, 520099330, 520099349, 520099358, 520099367, 520099376, 520099385, 520099394, 520099401, 520099410, 520099429, 520099438, 520099447, 520099456, 5200099465, 520099474, and 520099483, reads in pertinent part:

The street giving access to proposed building is not duly placed on the official map of the city of New York, Therefore:

A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law.

B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to Section BC501.3.1 of the NYC Building Code; and

WHEREAS, this is an application under General City Law ("GCL") § 36, to permit the construction of eighteen two-story one-family homes with accessory off-street parking for two vehicles; and

WHEREAS, the proposed homes are part of a larger residential development which front on mapped streets (Harbor Road, Leyden Avenue, and Union Avenue), which do not require GCL relief from the Board; and

WHEREAS, a public hearing was held on this application on January 15, 2013, after due notice by publication in *The City Record*, and then to decision on January 29, 2013; and

WHEREAS, the subject block (Block 1226) was the subject of a private rezoning application to change the former M1-1 zoning district to the current R3A zoning district, which was approved by the City Council on May 11, 2011; and

WHEREAS, the subject site is located east of Harbor Road, north of Leyden Avenue, and west of Union Avenue, within an R3A zoning district; and

WHEREAS, by letter dated November 27, 2012, the Fire Department states that it has reviewed the proposal and has no objection as long as the following conditions are met: (1) interconnected smoke alarms are installed in compliance with NYC Building Code Section 907.2.10; (2) hydrants are located within 250 feet of the entrance to each home and the hydrants have eight-inch or greater water mains; (3) the height of the homes do not exceed 35 feet above grade plane; (4) No Parking signs are maintained at the entrance and along one side of the fire access road (McGee Lane) where is parking is prohibited; and (5) the No Parking signs have a minimum dimension of 12 inches wide by 18 inches high and have red letters on a white reflective background; and

WHEREAS, in response, the applicant submitted a revised site plan noting the conditions requested 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 decision of the Staten Island Borough Commissioner, dated May 31, 2012, acting on Department of Buildings Application Nos. 520099312, 520099321, 520099330, 520099349, 520099358, 520099367, 520099376, 520099385, 520099394, 520099401, 520099410, 520099429, 520099438, 520099447, 520099456, 5200099465, 520099474, and 520099483, 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 December 18, 2012"–(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 (1) the applicant will install interconnected smoke alarms in compliance with NYC Building Code Section 907.2.10; (2) hydrants will be located within 250 feet of the entrance to each home and the hydrants will have eight-inch or greater water mains; (3) the height of the homes will not exceed 35 feet above grade plane; (4) "No Parking" signs will be maintained at the entrance and along one side of the fire access road (McGee Lane) where is parking is prohibited and the signs will have a minimum dimension of 12 inches wide by 18 inches high and have red letters on a white reflective background, in accordance with 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 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;

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

Adopted by the Board of Standards and Appeals January 29, 2013.

287-12-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Brian Rudolph, lessee.

SUBJECT – Application October 5, 2012 – Proposed enlargement of existing building located partially within the bed of a mapped street, contrary to General City Law Section 35, and upgrade of an existing private disposal system, contrary to the Department of Building policy. R4 zoning district.

PREMISES AFFECTED – 165 Reid Avenue, east side of Beach 201 Street, 335' north of Breezy Point Boulevard, Block 16350, Lot 400, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 21,

2012, acting on Department of Buildings Application No. 420618139, reads in pertinent part:

For Board of Standards and Appeals Only

A1- The proposed enlargement is on a site where the building and lot are located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 35 of the General City Law.

A2- The proposed upgrade of the private disposal is contrary to the Department of Buildings policy; and

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

WHEREAS, by letter dated November 12, 2012 the Fire Department states that it has reviewed the subject proposal and states that as the enlargement is more than 125 percent of the existing square footage, the Fire Department requires that the entire building be fully sprinklered; and

WHEREAS, in response to the Fire Department's request the applicant has provided a revised site plan indicating that the building will be fully sprinklered and smoke alarms will be interconnected to the existing hard-wired electrical system; and

WHEREAS, by letter dated January 22, 2013, the Fire Department states that it has reviewed the submission and has no further objections; and

WHEREAS, by letter dated October 25, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated January 28 , 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency'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 September 21, 2012, acting on Department of Buildings Application No. 420618139, 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 shall substantially conform to the drawing filed with the application marked "Received December 19, 2012 "-one (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) only;

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;

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

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

Adopted by the Board of Standards and Appeals, January 29, 2013.

119-11-A
APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.
SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.
PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for deferred decision.

265-12-A & 266-12-A
APPLICANT – Jesse Masyr, Watchel Masyr & Missry, LLP, for Related Retail Bruckner LLC.
OWNER OF PREMISES – Ciminello Property Associates.
SUBJECT – Application September 5, 2012 – Appeal challenging Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. M1-2 & R4/C2-1 zoning district.
PREMISES AFFECTED – 980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway, Block 5542, Lot 41, Borough of Bronx.
COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for postponed hearing.

ZONING CALENDAR

115-12-BZ
CEQR #12-BSA-124K
APPLICANT – Sheldon Lobel, P.C., for RMDS Realty Associates, LLC, owner.
SUBJECT – Application April 24, 2012 – Special Permit (§73-44) to allow for a reduction in parking from 331 to 221 spaces in an existing building proposed to be used for ambulatory diagnostic or treatment facilities in Use Group 6 parking category B1. C4-2A zoning district.
PREMISES AFFECTED – 701/745 64th Street, Seventh and Eighth Avenues, Block 5794, Lot 150 & 165, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 6, 2012, acting on Department of Buildings Application No. 320230567, reads in pertinent part:

> [R]eduction in the number of off street parking spaces…requires a special permit from the Board of Standards and Appeals, pursuant to section ZR 73-44; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, partially within a C4-2 zoning district and partially within a C4-2A zoning district, a reduction in the required number of accessory parking spaces for an office building from 331 to 240, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in The City Record, with continued hearings on December 4, 2012 and January 8, 2012, and then to decision on January 29, 2013; 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, Brooklyn, recommends approval of this application; and

WHEREAS, New York City Council Member Sara M. Gonzalez provided testimony in support of this application; and

WHEREAS, the applicant's initial application requested a reduction in the required number of accessory parking spaces from 331 to 221 spaces, to be provided at the subject site and at three separate off-site locations; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its application to provide a total of 240 accessory parking spaces, to be provided at the

subject site and at two off-site locations; and

WHEREAS, the subject site is located on the northeast corner of 7th Avenue and 64th Street, partially within a C4-2 zoning district and partially within a C4-2A zoning district; and

WHEREAS, the site has approximately 476 feet of frontage along 64th Street, 180 feet of frontage along 7th Avenue, and a total lot area of 86,680 sq. ft.; and

WHEREAS, the zoning lot is comprised of two tax lots (Lots 150 and 165), with a four-story building on Lot 150 (recently enlarged from two stories) and a three-story building located on Lot 165 (the "Buildings"), with a total floor area for both buildings on the zoning lot of 205,808 sq. ft. (2.4 FAR); the maximum permitted floor area is 258,000 sq. ft. (3.0 FAR); and

WHEREAS, the applicant notes that the Buildings were originally constructed prior to December 15, 1961, with a total pre-1961 zoning floor area of 73,344 sq. ft. for both buildings; and

WHEREAS, the applicant notes that the only parking spaces required for the Buildings is for developments or enlargements after December 15, 1961, and since 73,344 sq. ft. of the Buildings' floor area existed prior to December 15, 1961, only 132,464 sq. ft. of the Buildings' floor area is subject to the parking requirements of the Zoning Resolution; and

WHEREAS, the applicant states that the Buildings are currently occupied by office space throughout, with a 138-space parking garage in the cellar of the building on Lot 165, and a 17-space parking garage on a portion of the first floor of the building on Lot 150; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C4-2 and C4-2A zoning districts, 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 ambulatory diagnostic or treatment facilities and the noted 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 400 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 required parking spaces for the current and proposed uses at the site is 331; and

WHEREAS, the applicant represents that the proposed use of the site does not require 331 accessory parking spaces; and

WHEREAS, in addition to the 155 accessory parking spaces provided within the Buildings, the applicant proposes to provide an additional 85 parking spaces at two off-site locations, for a total of 240 accessory parking spaces; and

WHEREAS, specifically, the applicant states that 63 accessory spaces will be provided at 6208 8th Avenue (Block 5794, Lot 75), and 22 accessory spaces will be provided at 720 64th Street (Block 5821, Lot 13); and

WHEREAS, the applicant represents that the proposed 240 parking spaces are sufficient to accommodate the parking demand generated by the use of the site; and

WHEREAS, the applicant notes that the proposed total of 240 accessory parking spaces would provide 19 more spaces than the minimum of 221 required under the special permit; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic or treatment facility and Use Group 6 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant notes that the existing tenants at the Buildings are all Use Group 6 professional offices and the recently completed enlargement to the building on Lot 150 will facilitate expanded floor area available to the existing tenants or comparable tenants; and

WHEREAS, in addition, the applicant states 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, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response, the applicant states that the site is well served by mass transit, as it is on the same block as the entrance to the MTA N Subway Line, and City buses running along 8th Avenue and 65th Street, one block away from the site, are utilized by a significant number of employees and visitors to the site; and

WHEREAS, the applicant represents that the demand for on-site parking at the Buildings is further diminished by the fact that a number of employees and visitors to the site live close enough to walk, and visitors are often dropped off/picked up, such that they do not require a space when they come to the site; and

WHEREAS, the applicant submitted a parking demand and capacity analysis report which states that only approximately 50 percent of the Buildings' current employees travel by private auto or park on-site, and the Buildings' current occupants do not fully utilize the on-site parking that is available, as utilization of the Buildings' parking facilities is 81 percent, with 126 of 155 spaces occupied; and

WHEREAS, the applicant also submitted an on-street parking survey which reflects that between 11:00 a.m. and 2:00 p.m. approximately 21 legal spaces out of approximately 359 spaces, or six percent, were available in the immediate vicinity of the site; and

WHEREAS, based upon the above, the Board agrees that the accessory parking space needs 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 617.4; 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. 12BSA124K, dated April 17, 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 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 §§ 73-44 and 73-03 to permit, partially within a C4-2 zoning district and partially within a C4-2A zoning district, a reduction in the required number of accessory parking spaces for an office building from 331 to 240, 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 January 24, 2013" – twenty (20) sheets, and on further condition:

THAT there shall be no change in the operation of the site without prior review and approval by the Board;

THAT a minimum of 240 parking spaces will be provided, with 155 parking spaces located in the Buildings, 63 parking spaces located at 6208 8th Avenue (Block 5794, Lot 75), and 22 parking spaces located at 720 64th Street (Block 5821, Lot 13);

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 shall appear on the Certificate of Occupancy;

THAT the layout and design of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, January 29, 2013.

9-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.

SUBJECT – Application January 17, 2012 – 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 – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278, 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 12, 2013, at 1:30 P.M., for decision, hearing closed.

61-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Martha Schwartz, owner; Altamarea Group, lessee.

SUBJECT – Application March 15, 2012 – Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). M1-5B zoning district.

PREMISES AFFECTED – 216 Lafayette Street, between Spring Street and Broome Street, 25' of frontage along Lafayette Street, Block 482, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

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 26, 2013, at 1:30 P.M., for decision, hearing closed.

106-12-BZ
APPLICANT – Eric Palatnik, P.C., for Edgar Soto, owner; Autozone, Inc., lessee.
SUBJECT – Application April 17, 2012 – Special Permit (§73-50) to permit the development of a new one-story retail store (UG 6), contrary to rear yard regulations (§33-292). C8-3 zoning district.
PREMISES AFFECTED – 2102 Jerome Avenue between East Burnside Avenue and East 181st Street, Block 3179, Lot 20, Borough of Bronx.
COMMUNITY BOARD #5BX

ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for continued hearing.

148-12-BZ
APPLICANT – Eric Palatnik, P.C., for Esther Kuessous, owner.
SUBJECT – Application May 8, 2012 – Special Permit (§73-621) for the enlargement of an existing single family semi-detached residence, contrary to floor area, lot coverage and open space (ZR §23-141(b)). R4 zoning district.
PREMISES AFFECTED – 981 East 29th Street, between Avenue I and Avenue J, Block 7593, Lot 12, Borough of Brooklyn.
COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for continued hearing.

159-12-BZ
APPLICANT – Eric Palatnik, P.C., for Joseph L. Musso, owner.
SUBJECT – Application May 22, 2012 – Variance (§72-21) to allow for the enlargement of a Use Group 4 medical office building, contrary to rear yard requirements (§24-36). R3-2 zoning district.
PREMISES AFFECTED – 94-07 156th Avenue, between Cross Bay Boulevard and Killarney Street, Block 11588, Lot 67, 69, Borough of Queens.
COMMUNITY BOARD #10Q
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 26, 2013, at 1:30 P.M., for decision, hearing closed.

233-12-BZ
APPLICANT – Richard G. Leland, Esq./Fried Frank Harris Shriver & Jacob, for Porsche Realty, LLC, owner; Van Wagner Communications, lessee.
SUBJECT – Application July 19, 2012 – Variance (§72-21) to legalize an advertising sign in a residential district, contrary to use regulations (§22-00). R3X zoning district.
PREMISES AFFECTED – 246-12 South Conduit Avenue, bounded by 139th Avenue, 246th Street and South Conduit Avenue, Block 13622, Lot 7, Borough of Queens.
COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for continued hearing.

234-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner; LA Fitness, lessee.
SUBJECT – Application July 20, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*LA Fitness*). 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 Street, Block 4226, Lot 16, Borough of Bronx.
COMMUNITY BOARD #11BX
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 26, 2013, at 1:30 P.M., for decision, hearing closed.

294-12-BZ
APPLICANT – Eric Palatnik, P.C., for David Katzive, owner; Thomas Anthony, lessee.
SUBJECT – Application October 11, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Everyday Athlete*). C5-2A/DB special zoning district.
PREMISES AFFECTED – 130 Clinton Street, aka 124 Clinton Street, between Joralemon Street and Aitken Place, Block 264, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for continued hearing.

295-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Laura Danoff and Scott Danoff, owners.
SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district.
PREMISES AFFECTED – 49-33 Little Neck Parkway, Block 8263, Lot 110, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for continued hearing.

302-12-BZ

APPLICANT – Davidoff Hutcher & Citgron LLP, for YHD 18 LLC, owner; Lithe Method LLC, lessee.

SUBJECT – Application October 18, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Lithe Method*). C6-4A zoning district.

PREMISES AFFECTED – 32 West 18th Street, between Fifth and Sixth Avenues, Block 819, Lot 1401, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on December 4, 2012, under Calendar No. 143-07-BZ and printed in Volume 97, Bulletin No. 50, is hereby corrected to read as follows:

143-07-BZ

APPLICANT – Fredrick A. Becker, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application July 16, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a three-story and cellar synagogue, which expired on July 22, 2012. R2 zoning district.

PREMISES AFFECTED – 6404 Strickland Avenue, northeast corner of Strickland Avenue and East 64th Street, Block 8633, Lot 1, 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 Montanez 5

Negative:.....0

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 the construction of a three-story and cellar synagogue with accessory religious-based preschool, which expired on July 22, 2012; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; 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 northeast corner of Strickland Avenue and East 64th Street, within an R2 zoning district; and

WHEREAS, on July 22, 2008, under the subject calendar number, the Board granted a variance to permit the proposed construction of a three-story and cellar synagogue with accessory religious-based preschool, contrary to the underlying zoning district regulations for front and side yards, floor area and floor area ratio, front wall height, sky exposure plane, and parking; and

WHEREAS, substantial construction was to be completed by July 22, 2012, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant represents that the owner is now prepared to proceed with 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 22, 2008, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on December 4, 2016; *on condition*:

THAT substantial construction will be completed by December 4, 2016;

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

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

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

(DOB Application No. 302279488)

Adopted by the Board of Standards and Appeals, December 4, 2012.

***The resolution has been revised to correct the Public Hearing date on the 2nd WHEREAS, and the location on 4th WHEREAS. Corrected in Bulletin Nos. 4-5, Vol. 98, dated February 7, 2013.**

BULLETIN

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DIRECTORY

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_____

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53-13-BZ
116-118 East 169th Street, corner of Walton Avenue and East 169th Street with approx. 198.7' of frontage along East 169th Street and 145.7' along Walton Avenue., Block 2466, Lot(s) 11, 16, & 17, Borough of **Bronx, Community Board: 4**. Variance (§72-21) to permit the enlargement of the existing UG 3 school, located within an R8 zoning district, which exceeds the 23' one-story maximum permitted obstruction in the required rear yard and is therefore contrary to ZR §§24-36 and 24-33(b).

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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 26, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 26, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

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

374-04-BZ
APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., owner.
SUBJECT – Application December 5, 2012 – Extension of Time to complete construction of a previously-granted Variance (§72-21) for the development of a seven-story residential building with ground floor commercial space, which expired on October 18, 2009; Amendment to approved plans; and waiver of the Rules. C6-2A zoning district/SLMD.
PREMISES AFFECTED – 246 Front Street, fronting on Front and Water Streets, 126' north of intersection of Peck Slip and Front Street, Block 107, Lot 34, Borough of Manhattan.
COMMUNITY BOARD #1M

APPEALS CALENDAR

110-10-BZY
APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities LLC c/o Blake Partners LLC, owner.
SUBJECT – Application November 19, 2012 – Extension of Time to complete construction and obtain a Certificate of Occupancy of a previous Board approval pursuant to §11-332 permitting the extension of time to complete construction of a minor development commenced under the prior R6 zoning, which expired on October 19, 2012. R5A zoning district.
PREMISES AFFECTED – 123 Beach 93rd Street, western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot 11, Borough of Queens.
COMMUNITY BOARD #14Q

201-10-BZY
APPLICANT – Kramer Levin Naftalis & Frankel, for 180 Orchard LLC., owner.
SUBJECT – Application January 18, 2013 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which will expire on March 15, 2013. C4-4A zoning district.
PREMISES AFFECTED – 180 Orchard Street, Orchard Street to Ludlow Street, Block 412, Lot 5, Borough of Manhattan.
COMMUNITY BOARD #3M

288-12-A thru 290-12-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orin, Inc., owner.
SUBJECT – Application October 9, 2012 –Proposed construction of three two family homes not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SRD) zoning district.
PREMISES AFFECTED – 319, 323, 327 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot 2, 3, 4, Borough of Staten Island.
COMMUNITY BOARD #3SI

304-12-A
APPLICANT –Eric Palatnik, P.C., for Success Team Development, LLC, owner.
SUBJECT – Application October 26, 2012 – Proposed seven-story residential development located within the mapped but inbuilt portion of Ash Avenue, pursuant to Section 35 of the General City Law. R6A zoning district.
PREMISES AFFECTED – 42-32 147th Street, west side, south of the intersection of Sanford Avenue and 147th Street, Block 5374, Lot 59, Borough of Queens.
COMMUNITY BOARD #7Q

CALENDAR

FEBRUARY 26, 2013, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 26, 2013, at 1:30 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

250-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Carla Zeitouny and Raymond Zeitouny, owners.
SUBJECT – Application August 13, 2012 – 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); less than the required rear yard (ZR §23-47) and perimeter wall height (ZR §23-631). R3-2 zoning district.
PREMISES AFFECTED – 2410 Avenue S, south side of Avenue S, between East 24th and Bedford Avenue, Block 7303, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #15BK

315-12-BZ
APPLICANT – Akerman Senterfitt, LLP, for Pali Realty LLC, owner.
SUBJECT – Application November 20, 2012 – Special Permit (§73-50) to permit a modification of the rear yard requirements Z.R.§33-29 (Special Provisions applying along District Boundaries). C4-3 zoning district.
PREMISES AFFECTED – 23-25 31st Street, east side of 31st Street, between 23rd Avenue and 23rd Road, Block 835, Lot 27 & 31, Borough of Queens.
COMMUNITY BOARD #1Q

318-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 45-47 Crosby Street Tenant Corp./CFA Management, owner; SoulCycle 45 Crosby Street, LLC, lessee.
SUBJECT – Application November 29, 2012 – Special permit (§73-36) to permit a physical culture establishment (*SoulCycle*) within a portion of an existing building. M1-5B zoning district.
PREMISES AFFECTED – 45 Crosby Street, east side of Crosby Street, 137.25' north of intersection with Broome Street, Block 482, Lot 3, Borough of Manhattan.
COMMUNITY BOARD #2M

320-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for West 116 Owners Realty LLC, owner; Blink 116th Street, Inc., lessee.
SUBJECT – Application December 6, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*). C4-5X zoning district.
PREMISES AFFECTED – 23 West 116th Street, north side of West 116th Street, 450' east of intersection of Lenox Avenue and W. 116th Street, Lot 1600, Lot 20, Borough of Manhattan.
COMMUNITY BOARD #10M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, FEBRUARY 5, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

39-65-BZ
APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.
SUBJECT – Application March 13, 2012 – Amendment of a previously-approved variance (§72-01) to convert repair bays to an accessory convenience store at a gasoline service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy, which expired on January 11, 2000; and Waiver of the Rules. C3 zoning district.
PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, 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 Hinkson and Commissioner Montanez 4
Negative:.....0
Absent: Commissioner Ottley-Brown.....1
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, and an amendment to permit certain modifications to the site; 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 October 30, 2012 and January 8, 2013, and then to decision on February 5, 2013; 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 this application; and

WHEREAS, the site is located on the southeast corner of Knapp Street and Voorhies Avenue, within a C3 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 16, 1965 when, under the subject calendar number, the Board granted a variance to permit the construction of an automotive service station with accessory uses including the storage of boats and public parking; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, most recently, on August 11, 1998, the Board granted an extension of time to obtain a certificate of occupancy, which expired on August 11, 1999; and

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

WHEREAS, the applicant also requests an amendment to eliminate the automotive repair service use and convert the automotive repair bays to an accessory convenience store; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the accessory convenience store is contained within a completely enclosed building; and (ii) the accessory convenience store has a maximum retail selling space of 2,500 sq. ft. or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the proposed convenience store is located within an enclosed building and has a retail selling space of less than 2,500 sq. ft. or 25 percent of the zoning lot area; and

WHEREAS, at hearing the Board directed the applicant to provide landscaping on the site as shown in the previously-approved plans; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the existing landscaping will be trimmed and manicured and 4'-0" evergreen shrubs will be planted; and

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

Therefore it is Resolved that the Board of Standards and Appeals *amends* the resolution, dated March 16, 1965, 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 grant, to expire on February 5, 2014, and to permit the noted site modifications; *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 22, 2013'–(6) sheets; and *on further condition:*

THAT all signage will comply with C3 zoning district regulations;

THAT landscaping will be provided and maintained in accordance with the BSA-approved plans;

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

THAT a new certificate of occupancy will be obtained by February 5, 2014;

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

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

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

DOB/other jurisdiction objection(s) 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. 320359465)

Adopted by the Board of Standards and Appeals February 5, 2013.

85-91-BZ
APPLICANT – Carl A. Sulfaro, Esq. for Lada Limited Liability Company, owner; Bayside Veterinary Center, lessee.
SUBJECT – Application August 20, 2012 – Extension of Term (§11-411) of a previously granted variance for a veterinarian's office, accessory dog kennels and a caretaker's apartment which expired on July 21, 2012; amendment to permit a change to the hours of operation and accessory signage. R3-1 zoning district.
PREMISES AFFECTED – 204-18 46th Avenue, south side of 46th Avenue 142.91' east of 204th Street. Block 7304, Lot 17, 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 Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown.....1
THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term for the continued use of the site as a veterinarian's office (Use Group 6) with accessory kennels and a caretaker's apartment (Use Group 16), which expired on July 21, 2012, and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, with a continued hearing on January 8, 2013, and then to decision on February 5, 2013; 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, Queens, recommends approval of this application, with the condition that the term be limited to five years; and

WHEREAS, the site is located on the south side of 46th Avenue between 204th Street and the Clearview Expressway Service Road, within an R3-1 zoning district; and

WHEREAS, the site has 80 feet of frontage on 46th Avenue, a depth of 100 feet, and a total lot area of 8,000 sq. ft.; and

WHEREAS, the site is occupied by a two-story building with veterinarian's office (Use Group 6) at the first floor, an accessory caretaker's apartment at the second floor, and accessory kennels in a separate building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 22, 1954 when, under BSA Cal. No. 698-53-BZ, the Board granted a variance to permit the maintenance of dog kennels, the practice of veterinary medicine, a caretakers apartment, and an accessory garage in a residential district, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on July 21, 1992, the Board granted the re-establishment of the lapsed variance, to permit a veterinarian's office (Use Group 6) and accessory dog kennels with a caretaker's apartment (Use Group 16), and a proposed structural alteration to the interior of the buildings, for a term of ten years; and

WHEREAS, a condition of the grant was that adjoining Lot 14 not be used in conjunction with the uses on the site; and

WHEREAS, most recently, on June 15, 2004, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on July 21, 2012; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also requests an amendment to permit: (1) a non-illuminated sign to be erected at the property solely identifying the name "Bayside Veterinary Center"; (2) an extension of the hours of operation; and (3) the use of a small portion of Lot 14 for the maneuvering of customer vehicles; and

WHEREAS, as to the hours of operation, the applicant states that the existing hours are: Monday through Friday, from 9:00 a.m. to 7:00 p.m.; Saturday, from 9:00 a.m. to 12:00 p.m.; and closed on Sundays; and

WHEREAS, the applicant requests that the hours be extended on Saturdays to 9:00 a.m. to 7:00 p.m., since many local pet owners have limited time during the week to visit the site and the demand for veterinary services is increased on Saturdays; and

WHEREAS, as to the parking, the applicant states that the site provides on-site parking for five customer vehicles; on the east side of the office building there are two parking spaces, and the remaining three spaces are provided on the west side of the office building; and

WHEREAS, the applicant states that in order to access the most westerly parking space, it is necessary for a vehicle to cross part of vacant Lot 14 and for a small portion of the parked vehicle to remain on part of Lot 14; and

WHEREAS, the applicant further states that, in compliance with the prior resolution, the greater part of Lot 14 has been completely fenced and remains vacant, but the applicant requests that parking of customer cars partially on the open part of Lot 14 closest to 46th Avenue be permitted

in order to accommodate the parking on the westerly side of the office building; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and 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 July 21, 1992, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the expiration of the prior grant, to expire on July 21, 2022, and to permit the noted modifications to the site; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received 'August 20, 2012'-(5) sheets and 'December 18, 2012'-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on July 21, 2022;

THAT signage will comply with the BSA-approved plans;

THAT the hours of operation will be: Monday through Saturday, from 9:00 a.m. to 7:00 p.m.; and closed Sundays;

THAT a portion of adjoining Lot 14 may be used for the maneuvering and parking of customer cars, as illustrated on the BSA-approved plans;

THAT the above condition will be reflected on the certificate of occupancy;

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 the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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. 401718539)

Adopted by the Board of Standards and Appeals February 5, 2013.

93-97-BZ
APPLICANT – Eric Palatnik, P.C., for Pi Associates, LLC, owner.
SUBJECT – Application March 13, 2012 – Amendment to a previously granted variance (§72-21) to permit the change in use of a portion of the second floor from accessory parking spaces to UG 6 office use. C4-3 zoning district.
PREMISES AFFECTED – 136-21 Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 11, Borough of Queens.
COMMUNITY BOARD #7Q
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown.....1

Adopted by the Board of Standards and Appeals, February 5, 2013.

982-83-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.
SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.
PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192nd Street, Block 5513, Lot 27, Borough of Queens.
COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to March 12, 2013, at 10 A.M., for adjourned hearing.

167-95-BZ
APPLICANT – Walter T. Gorman, P.E., for Springfield L. I. Cemetery Society, owners.
SUBJECT – Application September 21, 2012 – Extension of Term of a previously approved variance (§72-21) which permitted the maintenance and repairs of motor operated cemetery equipment and parking and storage of motor vehicles accessory to the repair facility which expired on February 4, 2012. An amendment of the resolution by reducing the area covered by the variance. R3A zoning district.
PREMISES AFFECTED – 121-18 Springfield Boulevard, west side of Springfield Boulevard, 166/15' south of 121st Avenue, Block 12695, Lot 1, Borough of Queens.
COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for continued hearing.

211-00-BZ
APPLICANT – Sheldon Lobel, P.C., for Hoffman & Hoffman, LLC, owner.
SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved Variance (§72-21) which permitted the legalization of residential units on the second through fourth floors of a mixed use four story building, manufacturing and residential (UG 17 & 2) which expired on April 17, 2005; Amendment for minor modification to the approved plans; Waiver of the Rules. M1-2 zoning district.
PREMISES AFFECTED – 252 Norman Avenue, southeast corner of the intersection of Norman Avenue and Monitor Street, Block 2657, Lot 1, Borough Brooklyn.
COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to March 5,

2013, at 10 A.M., for continued hearing.

20-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich LLC, owners.
SUBJECT – Application January 3, 2013 – Extension of Time to Complete Construction of approved Special Permit (§75-53) for the vertical enlargement to an existing warehouse (UG17) which expired on January 13, 2013. C6-2A zoning district.
PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street between Greenwich Street and Collister Street, Block 214, Lot 1, 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-Brown……..1
ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

97-12-A & 98-12-A
APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communications, LLC.
OWNER OF PREMISES - 620 Properties Associates, LLC.
SUBJECT – Application April 11, 2012 – Appeal challenging Department of Buildings' determination regarding right to maintain existing advertising sign in manufacturing district. M1-5/CL zoning district.
PREMISES AFFECTED – 620 12th Avenue, between 47th and 48th Streets, Block 1095, Lot 11, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez 4
Absent: Commissioner Ottley-Brown.....1
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to two Notice of Sign Registration Rejection letters from the Borough Commissioner of the Department of Buildings ("DOB"), dated March 12, 2012, denying registration for two signs at the subject site (the "Final Determinations"), which read, in pertinent part:

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. The photos do not support proof of advertising sign use during relevant legal establishment periods. 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 December 4, 2012, after due notice by publication in *The City Record*, and then to decision on February 5, 2013; and

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

WHEREAS, the subject site is located on the east side of 12th Avenue, between West 47th Street and West 48th Street, in an M2-4 zoning district within the Special Clinton District; and

WHEREAS, the site is occupied by a four-story building and rooftop sign structure with two advertising signs; one at the northern portion of the roof, facing northwest, and one at the southern portion of the roof, facing southwest (the "Signs"); and

WHEREAS, the Signs have dimensions of 14'-0" high by 48'-0" wide (672 sq. ft.) each and are located approximately 25 feet from the West Side Highway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, pursuant to ZR § 42-55, advertising signs are not permitted within 200 feet of an arterial highway, except that advertising signs erected prior to June 1, 1968 are considered legal non-conforming uses; and

WHEREAS, this appeal is brought on behalf of the lessee of the sign structure (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on its contention that there was a permissible discontinuance of the Signs during the period from 1973 to 1989 due to the closure of the West Side Highway, and that the Signs have otherwise been used continuously for advertising purposes without any discontinuance of more than two years since their establishment prior to June 1, 1968; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

WHEREAS, the Appellant identifies the relevant statutory requirements related to sign registration in effect since 2005; and

WHEREAS, the Appellant states that 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

WHEREAS, the Appellant asserts that 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, the Appellant notes that affidavits are also listed as an acceptable form of evidence; and

WHEREAS, the Appellant cites to a guidance document provided by DOB, which sets forth the instructions for filing under Rule 49 and asserts 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, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, it submitted an inventory of outdoor signs under its control and Sign Registration Applications for the Signs and completed OAC3 Outdoor Advertising Company Sign Profiles, attaching the following documentation: (1) diagrams of the Signs; (2) photographs of the Signs; and (3) 1947 DOB permits for each of the Signs; and

WHEREAS, on October 3, 2011, DOB issued two Notices of Sign Registration Deficiency, stating that it is unable to accept the Signs for registration due to "Failure to provide proof of legal establishment – permit and historical photos do not state advertising use;" and

WHEREAS, by letter dated January 12, 2012, the Appellant submitted a response to DOB, providing additional evidence, including photographs and leases, regarding the legal establishment of the Signs; and

WHEREAS, by letter dated February 9, 2012, the Appellant submitted additional materials in response to DOB's request that the Appellant provide additional evidence as to the subject building's use prior to 1979; and

WHEREAS, by letter, dated March 12, 2012, DOB issued the determinations which form the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

> 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 § 42-58
Signs Erected Prior to December 13, 2000
M1 M2 M3
In all districts, as indicated, a #sign# erected prior to December 13, 2000, shall have #non-conforming use# status pursuant to Sections 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of #non-conformity# of such #sign# as of such date with the provisions of Sections 42-52, 42-53 and 42-54, where such #sign# shall have been issued a permit by the Department of Buildings on or before such date.

* * *

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.
The provisions of this Section shall not apply where such discontinuance of active operations is directly caused by war, strikes or other labor difficulties, a governmental program of materials rationing, or the construction of a duly authorized improvement project by a governmental body or a public utility company. . .

* * *

ZR § 52-83
Non-Conforming Advertising Signs
In all Manufacturing Districts, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Section…42-55, any non-conforming advertising sign except a flashing sign may be structurally altered, reconstructed, or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

(a) The creation of a new non-conformity or an increase in the degree of non-conformity of such sign;
(b) An increase in the surface area of the sign; or
(c) An increase in the degree of illumination of such sign.

* * *

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…

* * *

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 the 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; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determinations should be reversed because there was a permissible discontinuance of the Signs during the period from 1973 to 1989 due to the extraordinary circumstance of the collapse and reconstruction of the West Side Highway, and because the Signs have otherwise been used continuously for advertising purposes without any discontinuance of more than two years since their establishment prior to June 1, 1968; and

WHEREAS, specifically, the Appellant asserts that it has provided evidence that the Signs have been in continuous use as advertising signs since prior to June 1, 1968, without any interruption of two years or more, with the exception of the period when the West Side Highway was under construction; and

WHEREAS, the Appellant notes that ZR § 52-61, which requires that a non-conforming use be continued without any interruption of two years or more to maintain its status as a non-conforming use, also contemplates that under certain exceptional circumstances, discontinuance of a non-conforming use for a period exceeding two years does not divest a property owner of its right to maintain the non-conforming use; and

WHEREAS, specifically, the Appellant states that ZR § 52-61 states that where the construction of a duly authorized improvement project by a governmental body or a public utility company directly prevents the property owner from continuing a non-conforming use, the non-conforming use may not be deemed to have been "discontinued" within the meaning of the Zoning Resolution; and

WHEREAS, the Appellant states that in December 1973, the elevated West Side Highway collapsed, which led to a governmental determination that it was no longer safe to operate any portion of the elevated highway and that it needed to be closed and dismantled; and

WHEREAS, the Appellant represents that the means for reconstructing the highway was subject to extensive controversy and debate, as well as extensive preparations and safety measures that were put into place before active dismantling could begin, and the construction of the new highway at grade required the closure and dismantling of the existing elevated highway; therefore the physical act of closing the elevated highway was the commencement of "construction" for the purposes of ZR § 52-61 and the re-opening of the West Side Highway to traffic in late 1989 or early 1990 marked the completion of such "construction"; and

WHEREAS, the Appellant contends that the reconstruction of the West Side Highway was a duly authorized improvement project by a governmental body that rendered the Signs unusable, and therefore the two-year discontinuance period was tolled pursuant to ZR § 52-61 from the collapse of the West Side Highway in 1973 to the end of construction in approximately 1989; and

WHEREAS, therefore, the Appellant argues that the Department of Finance photograph dated between 1982 and 1987 (the "1982 – 1987 DOF Photograph") and the photograph from the 1980s showing the West Side Highway closed near the site (the "1980s Photograph"), both of which indicate an absence of advertising copy on the building's rooftop sign structures, do not serve as evidence of the Signs' discontinuance because any photo that shows temporary discontinuance during the period from 1973 to 1989 is irrelevant in determining the non-conforming use status of the Signs and should be disregarded; and

WHEREAS, the Appellant asserts that a reasonable reading of the phrase "directly caused by" in ZR § 52-61 encompasses the instant situation and that ZR § 52-61 does not require a physical occupation of the zoning lot by the listed activities; and

WHEREAS, the Appellant argues that two of the listed factors under ZR § 52-61, "war" and "materials rationing", would not need to be located on the zoning lot, but rather would create general conditions under which a given use could not be continued, and there is no basis in the zoning text for setting a different locational standard for a duly authorized improvement project (such as the highway reconstruction) if the effect of rendering the use unfeasible is the same; and

WHEREAS, the Appellant contends that the closure of the elevated highway rendered the active operation of the Signs impossible; and

WHEREAS, the Appellant asserts that the Signs, located on the roof of the subject building, at a height of over 80 feet, were displayed to traffic on the elevated West Side Highway and were rented by outdoor advertising companies for this purpose, and with the elevated highway adjacent to the building closed, there were no longer any "customers" to view the signs and therefore no outdoor

advertising company would lease the Signs to keep them in active operation; the Appellant argues that this is precisely the effect of a governmental action that ZR § 52-61 was enacted to provide protection against; and

WHEREAS, the Appellant submitted an affidavit from Yale Citrin, a principal of the subject building owner, who also testified at hearing, stating that no outdoor advertising companies would place copy on the Signs during the time between the closure of the elevated highway in 1974 and the reopening of the highway in 1989 and that the closure of the elevated highway was the direct cause of this inability to continue active operation of the Signs; and

WHEREAS, the Appellant contends that in order to continue the active operation of the Signs during the closure of the elevated highway, the owner would have had to pay an outdoor advertising company to post and maintain advertising signs; and

WHEREAS, in response to DOB's argument that that outdoor advertising companies would not negotiate contracts with advertisers simply because "the signs would be less profitable" misconstrues the reality, as indicated in the testimony and affidavit of Mr. Citrin, that advertising use of the Signs was entirely infeasible at any price during the closure, dismantling and reconstruction of the highway; and

WHEREAS, the Appellant argues that judicial precedent supports protection of property rights through a broad reading of ZR § 52-61, and that in 149 Fifth Avenue Corp. v. James Chin et al., 305 A.D. 2d 194, 759 N.Y.S.2d 455 (1st Dept, 2003), the Court interpreted ZR § 52-61 consistent with the Appellant's position in this matter; and

WHEREAS, the Appellant states that in 149 Fifth Avenue Corp. the work which caused a discontinuance of active operations of an advertising sign was repair of the building's façade, which work was performed by the building owner and the façade inspection and repair were required by a law that was applicable to all properties six stories in height or greater; and

WHEREAS, the Appellant notes that the Supreme Court reversed the Board's denial of protection under ZR § 52-61, and the Appellate Division affirmed the decision, finding that a contrary reading of the Zoning Resolution "would raise a most serious question as to whether the Zoning Resolution purports to authorize an unconstitutional taking." Id at 456; and

WHEREAS, the Appellant asserts that, similarly, in the subject case, interpreting ZR § 52-61 to find that the Signs had been discontinued for more than two years during the time of the collapse, dismantling, and reconstruction of the highway would be an unconstitutional taking; and

WHEREAS, the Appellant contends that the instant appeal is more directly within the plain meaning of ZR § 52-61 than 149 Fifth Avenue Corp., in that the latter case involved an interruption of the use caused by legally mandated work performed by the property owner himself, while in the subject case the massive undertaking that was the closure and deconstruction of the elevated West Side Highway during the 1970s and 1980s much more clearly fits within the meaning of "duly authorized improvement project by a governmental body"; and

WHEREAS, the Appellant argues that despite the fact that in 149 Fifth Avenue Corp. the property owner himself had control over the timing of the repairs and thus the length of the interruption of the non-conforming use, the Court interpreted ZR § 52-61 to strongly favor the maintenance of property rights; and

WHEREAS, the Appellant asserts that ZR § 52-61 protects property rights where the continuance of a use would be infeasible for reasons outside the property owner's control, especially when the cause of the hardship is the government's own action, and to read ZR § 52-61 to require property owners to maintain a non-conforming use by operating at a loss because of factors completely outside their control would be an absurd result; and

DOB'S POSITION

WHEREAS, DOB asserts that even if the Signs were established as non-conforming advertising signs, such non-conforming uses would be required to terminate per ZR § 52-61, which requires a non-conforming use to terminate if for a continuous period of two years active operation of substantially all of the non-conforming use is discontinued; and

WHEREAS, DOB notes that the Appellant acknowledged that the Signs were not used from 1973 through 1989 while the West Side Highway was closed to traffic and undergoing repair, and identified the 1982-1987 DOF Photograph and the 1980s Photograph as representative of site conditions during the 16-year period when no advertising signs were displayed (the 1982-1987 DOF Photograph does not clearly show advertising signs and the 1980s Photograph shows two empty sign structures); and

WHEREAS, DOB asserts that the Appellant is incorrect that ZR § 52-61 does not apply during the time the advertising signs were not displayed, and notes that the statute does not apply where discontinuance of active operations is "directly caused by war, strikes or other labor difficulties, a governmental program of materials rationing, or the construction of a duly authorized improvement project by a governmental body or a public utility company"; and

WHEREAS, DOB argues that, since these forces must be the *direct cause* of the discontinuance, the discontinuance must result from their occurrence alone and without the intervention of another force operating from an independent source; and

WHEREAS, DOB notes that the Appellant acknowledges that the Signs were not used during this period only because the owner was unable to lease the Signs to major outdoor advertising sign companies, who in turn would not negotiate contracts with advertisers during the closure of the West Side Highway to traffic when the signs would be less profitable; therefore, although the closure of the highway was an influential factor in the Signs' disuse, the lack of a market for advertising signs in this location was the direct cause of the discontinuance, and the Zoning

Resolution makes no allowance for discontinuance due to the absence of public demand for a non-conforming use; and

WHEREAS, DOB argues that repair work on the West Side Highway did not directly prevent use of the Signs, and based on the photographs submitted by the Appellant, the building and the sign structures remained intact during construction work on the West Side Highway, and therefore there is no basis for the claim that the highway repair work directly interfered with the Signs' use; and

WHEREAS, DOB contends that presumably the signs were not used at this time only because they would be enjoyed by a smaller audience during the closure of the West Side Highway to traffic; and

WHEREAS, DOB asserts that the exceptions to ZR § 52-61 must be read narrowly, as forces that make it impossible to continue the non-conforming use, in order to be consistent with its general purpose of restricting further investment in incompatible non-conforming uses by preventing reactivation after a significant period of inactivity; and

WHEREAS, DOB asserts that the concept of tolling ZR § 52-61 where the non-conforming advertising sign use is impossible to continue is reflected in 149 Fifth Avenue Corp., where the sign painted on a building façade needed to be removed in order to perform legally required façade inspection and repairs; and

WHEREAS, DOB argues that unlike the sign use that the Court did not deem "discontinued" within the meaning of ZR § 52-61 in 149 Fifth Avenue Corp., here the interruption in use of the Signs was not "compelled by legally mandated, duly permitted and diligently completed repairs"; and

WHEREAS, DOB asserts that in the subject case, the use did not stop due to the owner's temporary need to remove the signs to perform required repairs to the building on which the signs were located, rather, it is reasonable to assume that the use was discontinued merely because of reduced viewership; accordingly, neither the text nor 149 Fifth Avenue Corp. support the Appellant's claim that ZR § 52-61 would not operate to terminate non-conforming sign uses at the site; and

WHEREAS, accordingly, DOB concludes that the Signs were discontinued for more than two years and the non-conforming use must be terminated pursuant to ZR § 52-61; and

CONCLUSION

WHEREAS, the Board agrees with DOB that, because the use of the Signs was discontinued for more than two years during the period the West Side Highway was closed, even if the Signs were established as non-conforming advertising signs, such use was required to terminate per ZR § 52-61; and

WHEREAS, the Board finds that the 1982-1987 DOF Photograph and the 1980s Photograph indicate that the Signs were not displaying advertising copy at the time the photographs were taken, and the Board notes that the Appellant has not contested that the Signs were discontinued for more than two years between the period from 1973 to 1989; and

WHEREAS, the Board disagrees with the Appellant's assertion that the two-year discontinuance period was tolled pursuant to ZR § 52-61 from the date of the collapse of the West Side Highway in 1973 to the end of construction in approximately 1989; and

WHEREAS, specifically, the Board notes the ZR § 52-61 requirement that a non-conforming use must be terminated if the use has been discontinued for more than two years is subject only to the following limited exceptions:

> where such discontinuance of active operations is *directly caused* by war, strikes or other labor difficulties, a governmental program of materials rationing, or *the construction of a duly authorized improvement project by a governmental body* or a public utility company. . . (emphasis added); and

WHEREAS, the Board agrees with DOB that in order to be exempt from the discontinuance provision of ZR § 52-61, the "construction of a duly authorized improvement project by a governmental body" must have been the *direct* cause of the discontinuance of the Signs, without the intervention of another force operating from an independent source; and

WHEREAS, the Board disagrees with the Appellant's contention that the collapse, dismantling, and reconstruction of the West Side Highway rendered the active operation of the Signs impossible; and

WHEREAS, the Board acknowledges that the closure of the highway influenced the Appellant's decision to discontinue the use of the Signs, however the Board finds that such closure did not *directly cause* the discontinuance of the Signs but rather created a market condition in which the Appellant may have been unable to lease the Signs and made the decision to discontinue their use; and

WHEREAS, the Board agrees with DOB that the lack of a market for advertising signs in this location was the direct cause of the discontinuance, and the Zoning Resolution makes no allowance for discontinuance due to the absence of public demand for a non-conforming use; and

WHEREAS, the Board notes that the closure of the highway did not require that the Appellant remove the advertising copy that was purportedly on the sign structures prior to the collapse of the highway; and

WHEREAS, the Board agrees with DOB that based on the photographs submitted by the Appellant, the building and the sign structures remained intact and accessible during construction work on the West Side Highway, and therefore there is no basis for the claim that the highway repair work *directly* interfered with the Signs' use; and

WHEREAS, the Board further agrees with DOB that the exceptions to ZR § 52-61 should be read narrowly, in order to be consistent with its general purpose of restricting further investment in incompatible non-conforming uses by preventing reactivation after a significant period of inactivity; and

WHEREAS, the Board notes that, during the period

from approximately 1973 to 1989, the highway (1) collapsed, (2) was closed, (3) was dismantled, and (4) was reconstructed, and the Appellant acknowledges that a significant amount of time passed between the closure of the highway due to its collapse and the commencement of the dismantling and reconstruction of the highway; and

WHEREAS, the Board disagrees with the Appellant that the collapse of the highway and its subsequent closure, in and of themselves, should be considered the commencement of "the construction of a duly authorized improvement project by a governmental body"; similarly, the Board finds that the collapse and closure of the highway is not covered by any of the other exceptions to ZR § 52-61, which are limited to "war, strikes or other labor difficulties, [and] a governmental program of materials rationing"; and

WHEREAS, the Board finds that even assuming it was convinced that the dismantling and reconstruction of the highway constituted "the construction of a duly authorized improvement project by a governmental body," the Appellant has provided no evidence that the Signs were in use as advertising signs during the period between the collapse of the highway and the actual commencement of the dismantling and reconstruction of said highway; and

WHEREAS, the Board disagrees with the Appellant that in 149 Fifth Avenue Corp. the Court interpreted ZR § 52-61 consistent with the Appellant's position in the subject case; and

WHEREAS, the Board finds the facts of 149 Fifth Avenue Corp., where the non-conforming advertising sign was removed in order to make legally mandated building façade inspections and repairs, to be distinguishable from the subject case where the closure of the West Side Highway merely created an adverse market condition for the use of the advertising signs but did not make it physically impossible to continue their use; and

WHEREAS, the Board disagrees with the Appellant's argument that the subject case is more directly within the plain meaning of ZR § 52-61 than 149 Fifth Avenue Corp. because the closure and reconstruction of the West Side Highway more clearly fits within the meaning of "duly authorized improvement project by a governmental body" than the need for legally mandated repair work performed by the property owner himself; and

WHEREAS, specifically, the Board finds that even assuming that the closure of the West Side Highway is more representative of a "duly authorized improvement project by a governmental body," the critical distinction between the cases is that in 149 Fifth Avenue Corp. the discontinuance was "directly caused" by the legally mandated repair work in that the owner was physically unable to both do the repair work and continue the non-conforming use of the sign, while the discontinuance of the Signs at the site was not "directly caused" by the closure of the highway but was the result of the owner's business decision based on the inability to find a market for the Signs; and

WHEREAS, the Board disagrees with the Appellant that the application of ZR § 52-61 in the subject case constitutes a taking, and notes that the City's right to eliminate non-conforming uses through zoning has been repeatedly upheld by the courts; specifically, the Board notes that the Court of Appeals has held that, "[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination[,]" and "municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them." 550 Halstead Corp. v. Zoning Bd. Of Appeals, 1 N.Y.3d 561, 562 (2003) and that DOB's recent enforcement furthers that goal in line with what zoning regulations contemplate; and

WHEREAS, accordingly, the Board agrees with DOB that neither the text nor 149 Fifth Avenue Corp. support the Appellant's claim that ZR § 52-61 should be tolled for the approximately 16-year period between 1973 and 1989; and

WHEREAS, the Board notes that the Appellant made supplemental arguments regarding the establishment of the Signs prior to June 1, 1968 and the continuous use of the Signs from that date until 2012; however, the Board does not find it necessary to make a determination on these issues given its conclusion that the Sign was admittedly discontinued for more than two years during the period that the West Side Highway was closed and that the discontinuance was not tolled pursuant to ZR § 52-61; and

WHEREAS, the Board notes that the Appellant has enjoyed the benefit of the Signs for more than 20 years after the reopening of the West Side Highway, and any advertising sign at the site should have been terminated prior to that time due to the discontinuance of the advertising use of the Signs for more than two years during the time between the collapse of the highway and its reconstruction; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's registration of the Signs.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated March 12, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, February 5, 2013.

162-12-A

APPLICANT – Davidoff Hutcher & Citron, LLP, for CBS Outdoor, Inc.

OWNER OF PREMISES: Winston Network, Inc.

SUBJECT – Application May 31, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continue non-conforming use status as advertising sign, pursuant to Z.R.§52-731. R4 zoning district.

PREMISES AFFECTED – 49-21 Astoria Boulevard North, northwest corner of Astoria Boulevard North and Hazen Street, Block 1000, Lot 19, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez 4
Absent: Commissioner Ottley-Brown.....1
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Queens Borough Commissioner of the Department of Buildings ("DOB"), dated May 1, 2012, denying Application No. 40015701 from registration for a sign at the subject site (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 Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, and then to decision on February 5, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is located at the northwest corner of Astoria Boulevard North and Hazen Street, in an R4 zoning district; and

WHEREAS, the site is occupied by an advertising sign with dimensions of 14'-0" high by 48'-0" wide (672 sq. ft.) located on a ground structure (the "Sign"); and

WHEREAS, the Sign is located approximately 84 feet from and within view of the Grand Central Parkway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the owner of the Sign (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on its assertion that (1) ZR § 52-731 has no application to lawful, non-conforming uses that predate its adoption; and (2) the application of ZR § 52-731 would result in an unconstitutional taking of property; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

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

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 guidance document provided by DOB sets forth the instructions for filing under Rule 49 and asserts 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, the parties agree that prior to September 27, 2011, the Appellant submitted a Sign Registration Application for the Sign; and

WHEREAS, on September 27, 2011, DOB notified the Appellant that its Sign Registration Application failed to establish any basis for the sign to remain, and requested proof that the Sign complied with ZR § 52-731; and

WHEREAS, on February 28, 2012, the Appellant responded that the Sign was a legal non-conforming use

which pre-dated the adoption of ZR § 52-731 and therefore it was not applicable to the Sign; and

WHEREAS, by letter dated May 1, 2012, DOB issued the determination which forms the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

ZR § 52-11

General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

* * *

ZR § 52-731

Advertising signs

In all #Residence Districts#, a #non-conforming advertising sign# may be continued for ten years after December 15, 1961, or such later date that such #sign# becomes #non-conforming#, providing that after the expiration of that period such #non-conforming advertising sign# shall terminate.

* * *

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…

* * *

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 the 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; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) ZR § 52-731 has no application to lawful, non-conforming uses that predate its adoption; and (2) the application of ZR § 52-731 would result in an unconstitutional taking of property; and

1. Legal Precedent Supports the Continuation of Pre-Existing Non-Conforming Uses

WHEREAS, the Appellant asserts that the Signs were lawfully established prior to the adoption of ZR § 52-731, and therefore such section does not apply to the Signs; and

WHEREAS, the Appellant notes that a permit for the Signs was issued by DOB in 1937; and

WHEREAS, the Appellant cites to Toys-R-Us v. Silva, 89 N.Y.2d 411, 421 (1996) for the principle that "zoning restrictions, being in derogation of common law property rights, [are] strictly construed and any ambiguity [is] resolved in favor of the property owner"; and

WHEREAS, the Appellant asserts that the Zoning Resolution protects the continued use of non-conforming signs since "[i]t is the law of this state that non-conforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding contrary provisions of the [zoning] ordinance." Costa v. Callahan, 41 A.D. 3d 1111, 1113 (3d Dept. 2007), citing Matter of Rudolf Steiner Fellowship Found v. DeLuccia, 90 N.Y.2d 453, 463 (1997); and

WHEREAS, the Appellant argues that statutes are to be construed prospectively and not retrospectively unless

otherwise provided (See In re Town of Islip v. Caviglia, 73 N.Y.2d 544, 560-61 (1989)), and that unlike the statute at issue in Caviglia, the Appellant asserts that ZR § 52-731 is not content-neutral since it is exclusively directed to advertising signs and not any other manner of signs, and, accordingly, the general rule of prospective construction of statutes should apply; and

WHEREAS, the Appellant claims that the subject case is distinguishable from the authorities previously relied upon by the Board in upholding the applicability of ZR § 52-731; and

WHEREAS, specifically, the Appellant asserts that (1) in 550 Halstead Corp. v. Zoning Bd. of Appeals, 1 N.Y.3d 561, 562 (2003) the non-conforming use was expanded and extended contrary to the local ordinance, whereas in this case the use as advertising signs pursuant to permits has remained constant, and (2) in Off Shore Restaurant Corp. v. Linden, 30 N.Y.2d 160 (1972), there was a clear change in use from a delicatessen to a cocktail lounge, thus requiring compliance with the municipal off-street parking requirement; and

WHEREAS, accordingly, the Appellant contends that since the statute at issue was adopted in 1963, after the non-conforming use status of the Sign, permitted in 1937, was established, it cannot be applied with respect to the Sign; and

2. DOB's Enforcement of the Sign would be an Unconstitutional Taking

WHEREAS, the Appellant asserts that the application of ZR § 52-731 would result in an unconstitutional taking of property in violation of the Fifth Amendment; and

WHEREAS, the Appellant contends that amortization provisions, such as the one set forth in ZR § 52-731, do not provide just compensation for the taking of a lawful advertising sign use consistent with the taking clause of the Fifth Amendment, which states: "…nor shall private property be taken for public use without just compensation;" and

WHEREAS, the Appellant argues that the Federal Highway Administration ("FHWA") has provided clear guidance on this issue, and has expressly determined that the removal of legal advertising signs (such as those at issue on these appeals) located on federal roads or controlled highways pursuant to the Highway Beautification Act, 23 U.S.C. 131, requires the payment of just compensation to the owner of such advertising signs; and

WHEREAS, the Appellant asserts that Congress has repeatedly rejected the amortization of lawful advertising sign uses and amended the Highway Beautification Act in 1978 to clarify that "just compensation shall be paid upon the removal" of such advertising signs; and

WHEREAS, the Appellant further asserts that, as recently as 2006, FHWA confirmed as part of a national assessment of advertising sign control programs that amortization of sign uses is no longer an issue because of the settled principle that cash compensation must be paid in connection with such takings, and that in response to efforts by those seeking the removal of non-conforming advertising signs, FHWA noted: "some continue to advocate amortization as a means to accomplish this, but widespread use of this approach was effectively prohibited by Federal legislation;" and

WHEREAS, the Appellant argues that DOB is relying on a statute that merely provided the owners and operators of lawfully established signs a period of years to continue such operations, without regard for any cash compensation for such takings; and

WHEREAS, accordingly, the Appellant asserts that ZR § 52-731 is inconsistent with Federal guidance on this issue and, if applied as DOB intends, will impose a significant deprivation of the Appellant's constitutional rights; and

DOB'S POSITION

WHEREAS, DOB asserts that zoning regulations prohibit the Sign in the subject R4 zoning district, as set forth at ZR § 22-30, which does not include advertising signs among the permitted uses; and

WHEREAS, DOB states that non-conforming advertising signs are permitted in residential zoning districts only when they comply with Chapter 2 of Article 5 of the Zoning Resolution; and

WHEREAS, specifically, DOB cites to ZR § 52-11, which states that "a non-conforming use may be continued, except as otherwise provided in this Chapter;" and

WHEREAS, DOB continues by citing ZR § 52-731, which expressly provided a limitation on the use of non-conforming advertising signs in residential zoning districts; the original text states that:

> [i]n all Residence Districts, a non-conforming advertising sign may be continued for eight years after the effective date of this resolution or such later date that such sign becomes non-conforming, provided that after the expiration of that period such non-conforming advertising sign shall terminate; and

WHEREAS, DOB notes that on August 22, 1963, the original ZR § 52-731 was amended to allow a ten-year, rather than an eight-year, amortization period; the 1963 version of the text, allowing for a ten-year amortization period remains in effect today; and

WHEREAS, DOB states that in order to maintain the Sign, the Appellant must demonstrate that: (1) the Sign is non-conforming (a lawful pre-existing non-conforming use, as defined at ZR § 12-10) and (2) it has been less than ten years since the Sign became non-conforming; and

WHEREAS, DOB asserts that the Appellant has failed to provide adequate evidence to demonstrate that the advertising sign has ever been "non-conforming" in the sense that it was lawfully established per ZR § 12-10 as "[a]ny lawful use…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, DOB states that the lawful use must have been established on December 15, 1961 or at the time of a

relevant zoning amendment; and

WHEREAS, DOB notes that the Appellant has submitted proof of a permit issued by DOB in 1937 for a sign structure and states that if it were to assume that the sign existed lawfully on December 15, 1961, based on the 1937 permit, on December 15, 1961, it would have become "non-conforming;" and

WHEREAS, DOB states that even if the Sign existed lawfully on December 15, 1961, such a sign would have become non-conforming on that date when the site was zoned R4 and the 1963/current version of ZR § 52-731 requires that the Sign be removed within ten years of it becoming non-conforming, which was on December 15, 1971; and

WHEREAS, accordingly, DOB asserts that its rejection of the sign registration is appropriate because the Sign does not comply with ZR § 52-731; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the language of ZR § 52-731 is clear and requires that because any advertising sign at the site became a non-conforming use on December 15, 1961 when it was mapped to be within an R4 zoning district, such use should have been terminated by December 15, 1971; and

WHEREAS, as to the Appellant's assertion that DOB has improperly changed its position on the legality of the signs, the Board supports DOB's position that it may correct the erroneous issuance of its permits; and

WHEREAS, further, the Board notes that the presence of a permit does not render a use lawful, when the permit was issued erroneously; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing a permit in 1937, but it does note that the Appellant has enjoyed the benefit of the Sign for more than 40 years past the December 15, 1971 date when any sign at the site should have been terminated; and

WHEREAS, the Board agrees with DOB that even if the Appellant were to establish that the Sign was lawfully non-conforming at relevant dates, the question is moot since even a lawfully non-conforming sign would have to have been terminated on or before December 15, 1971; and

WHEREAS, accordingly, the Board finds that the advertising sign use should have been terminated on or before December 15, 1971, pursuant to ZR § 52-731; and

WHEREAS, the Board notes that the ZR § 12-10 definition of non-conforming use and ZR § 52-731 contemplate prospective enforcement in that uses that were rendered non-conforming on December 15, 1961 (like the subject Sign) were able to remain for ten years so long as they were lawful on December 15, 1961 (per ZR § 12-10); and

WHEREAS, the Board notes that the adoption of the 1961 Zoning Resolution did not prohibit the continuance of non-conforming uses, but rather newly non-conforming uses were able to exist in derogation of the Zoning Resolution, but only for a specified period; and

WHEREAS, as to the applicability of statutes adopted after a use has been established, the Board notes that per the Court of Appeals, municipalities may adopt laws regarding previously existing nonconforming uses. 550 Halstead Corp., 1 N.Y.3d at 562; Matter of Toys "R" Us v Silva, 89 N.Y.2d 411, 417, (1996); and

WHEREAS, specifically, the Board notes that the Court of Appeals has held that, "[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination[,]" and "municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them." 550 Halstead Corp., 1 N.Y.3d at 562; and

WHEREAS, further, the Board notes that in Off Shore Restaurant Corp., the Court stated, "the courts do not hesitate to give effect to restrictions on non-conforming uses . . . It is because these restrictions flow from a strong policy favoring the eventual elimination of nonconforming uses" 30 N.Y.2d at 164; and

WHEREAS, the Board finds that, despite the Appellant's attempt to distinguish the facts of 550 Halstead Corp. and Off Shore Restaurant Corp. from those of the subject case, the cited cases are relevant with regard to the above-mentioned holdings pertaining to the regulation of non-conforming uses; and

WHEREAS, the Board notes that ZR § 52-731 is not contrary to ZR § 52-11, which states that "a nonconforming use may be continued, except as otherwise provided in [Chapter 2]" because the Board notes that non-conforming uses are protected by Article V, but, as anticipated at ZR § 52-11, there are limiting conditions; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that its purported satisfaction of the Sign Registration requirement supersedes the clear, undisputed text of the Zoning Resolution; and

WHEREAS, as to the Appellant's assertion that the application of ZR § 52-731 would amount to a regulatory taking, the Board disagrees with the Appellant that the application of zoning regulations constitutes a taking; however, the Board finds that to the extent ZR § 52-731 does constitute an unconstitutional takings action, any such claim is properly directed against the statute itself, rather than DOB's enforcement of the statute, and such a claim is more appropriately addressed in a different forum; and

WHEREAS, the Board disagrees with the Appellant's reliance on the Federal Highway Beautification Act, which regulates advertising signs located within 660 feet of federal roads or controlled highways, and distinguishes that statute from ZR § 52-731, which prohibits advertising signs in residential districts regardless of the proximity of such signs to an arterial or highway; and

WHEREAS, the Board notes that the purpose of ZR § 52-731, to eliminate prior non-conforming advertising signs from residential districts in which such commercial uses are incompatible, has no relationship to the stated purpose for the Federal Highway Beautification Act's regulation of

advertising signs, which is "to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty"; thus, the Board finds the Appellant's reliance on the Federal Highway Beautification Act to be misguided; and

WHEREAS, the Board further notes that the Appellant has provided no evidence that the Federal Highway Beautification Act should apply to the regulation of the Sign, where DOB's enforcement results from the location of the Sign in a residential district and not its proximity to any federal roads or controlled highways; and

WHEREAS, as noted above, in addition to the ten-year amortization period provided under ZR § 52-731, the Appellant has enjoyed the benefit of the Sign for more than 40 years past the December 15, 1971 date when any sign at the site should have been terminated; and

WHEREAS, accordingly, the Board finds that DOB properly rejected the Sign from registration.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated May 1, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, February 5, 2013.

167-12-A

APPLICANT – Davidoff Hutcher & Citron, LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES: Flash Inn Inc. c/o Danny Miranda

SUBJECT – Application June 7, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign, pursuant to Z.R. §52-731. R7-2 zoning district.

PREMISES AFFECTED – 101-07 Macombs Place, northwest corner of Macombs Place and West 154th Street, Block 2040, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez 4

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

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 May 9, 2012, denying Application No. 10032201 from registration for a sign at the subject site (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 Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, and then to decision on February 5, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is located at the northwest corner of Macombs Place and West 154th Street, in an R7-2 zoning district; and

WHEREAS, the site is occupied by a building with a rooftop sign structure supporting an advertising sign with dimensions of 20'-0" high by 48'-0" wide (960 sq. ft.) (the "Sign"); and

WHEREAS, the Sign is located approximately 200 feet from and within view of the Harlem River Drive, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the owner of the Sign (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on its assertion that (1) ZR § 52-731 has no application to lawful, non-conforming uses that predate its adoption; and (2) the application of ZR § 52-731 would result in an unconstitutional taking of property; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

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

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 guidance document provided by DOB sets forth the instructions for filing under Rule 49 and asserts 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, the parties agree that prior to September 29, 2011, the Appellant submitted a Sign Registration Application for the Sign; and

WHEREAS, on September 29, 2011, DOB notified the Appellant that its Sign Registration Application failed to establish any basis for the sign to remain, and requested proof that the Sign complied with ZR § 52-731; and

WHEREAS, on February 29, 2012, the Appellant responded that the Sign was a legal non-conforming use which pre-dated the adoption of ZR § 52-731 and therefore it was not applicable to the Sign; and

WHEREAS, by letter dated May 9, 2012, DOB issued the determination which forms the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

> ZR § 52-11
> General Provisions
> A #non-conforming use# may be continued, except as otherwise
> provided in this Chapter.
>
> * * *
>
> ZR § 52-731
> Advertising signs
> In all #Residence Districts#, a #non-conforming advertising sign# may be continued for ten years after December 15, 1961, or such later date that such #sign# becomes #non-conforming#, providing that after the expiration of that period such #non-conforming advertising sign# shall terminate.
>
> * * *
>
> 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…
>
> * * *
>
> 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 the 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; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) ZR § 52-731 has no application to lawful, non-conforming uses that predate its adoption; and (2) the application of ZR § 52-731 would result in an unconstitutional taking of property; and

1. Legal Precedent Supports the Continuation of Pre-Existing Non-Conforming Uses

WHEREAS, the Appellant asserts that the Signs were lawfully established prior to the adoption of ZR § 52-731, and therefore such section does not apply to the Signs; and

WHEREAS, the Appellant notes that a permit for the Signs was issued by DOB in 1937; and

WHEREAS, the Appellant cites to Toys-R-Us v. Silva, 89 N.Y.2d 411, 421 (1996) for the principle that "zoning restrictions, being in derogation of common law property rights, [are] strictly construed and any ambiguity [is] resolved in favor of the property owner"; and

WHEREAS, the Appellant asserts that the Zoning Resolution protects the continued use of non-conforming signs since "[i]t is the law of this state that non-conforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding contrary provisions of the [zoning] ordinance." Costa v. Callahan, 41 A.D. 3d 1111, 1113 (3d Dept. 2007), citing Matter of Rudolf Steiner Fellowship Found v. DeLuccia, 90 N.Y.2d 453, 463 (1997); and

WHEREAS, the Appellant argues that statutes are to be construed prospectively and not retrospectively unless otherwise provided (See In re Town of Islip v. Caviglia, 73 N.Y.2d 544, 560-61 (1989)), and that unlike the statute at issue in Caviglia, the Appellant asserts that ZR § 52-731 is not content-neutral since it is exclusively directed to advertising signs and not any other manner of signs, and, accordingly, the general rule of prospective construction of statutes should apply; and

WHEREAS, the Appellant claims that the subject case is distinguishable from the authorities previously relied upon by the Board in upholding the applicability of ZR § 52-731; and

WHEREAS, specifically, the Appellant asserts that (1) in 550 Halstead Corp. v. Zoning Bd. of Appeals, 1 N.Y.3d 561, 562 (2003) the non-conforming use was expanded and extended contrary to the local ordinance, whereas in this case the use as advertising signs pursuant to permits has remained constant, and (2) in Off Shore Restaurant Corp. v. Linden, 30 N.Y.2d 160 (1972), there was a clear change in use from a delicatessen to a cocktail lounge, thus requiring compliance with the municipal off-street parking requirement; and

WHEREAS, accordingly, the Appellant contends that since the statute at issue was adopted in 1963, after the non-conforming use status of the Sign, permitted in 1937, was established, it cannot be applied with respect to the Sign; and

2. DOB's Enforcement of the Sign would be an Unconstitutional Taking

WHEREAS, the Appellant asserts that the application of ZR § 52-731 would result in an unconstitutional taking of property in violation of the Fifth Amendment; and

WHEREAS, the Appellant contends that amortization provisions, such as the one set forth in ZR § 52-731, do not provide just compensation for the taking of a lawful advertising sign use consistent with the taking clause of the Fifth Amendment, which states: "…nor shall private property be taken for public use without just compensation;" and

WHEREAS, the Appellant argues that the Federal Highway Administration ("FHWA") has provided clear guidance on this issue, and has expressly determined that the removal of legal advertising signs (such as those at issue on these appeals) located on federal roads or controlled highways pursuant to the Highway Beautification Act, 23 U.S.C. 131, requires the payment of just compensation to the owner of such advertising signs; and

WHEREAS, the Appellant asserts that Congress has repeatedly rejected the amortization of lawful advertising sign uses and amended the Highway Beautification Act in 1978 to clarify that "just compensation shall be paid upon the removal" of such advertising signs; and

WHEREAS, the Appellant further asserts that, as recently as 2006, FHWA confirmed as part of a national assessment of advertising sign control programs that amortization of sign uses is no longer an issue because of the settled principle that cash compensation must be paid in connection with such takings, and that in response to efforts by those seeking the removal of non-conforming advertising signs, FHWA noted: "some continue to advocate amortization as a means to accomplish this, but widespread use of this approach was effectively prohibited by Federal legislation;" and

WHEREAS, the Appellant argues that DOB is relying on a statute that merely provided the owners and operators of lawfully established signs a period of years to continue such operations, without regard for any cash compensation for such takings; and

WHEREAS, accordingly, the Appellant asserts that ZR § 52-731 is inconsistent with Federal guidance on this issue and, if applied as DOB intends, will impose a significant deprivation of the Appellant's constitutional rights; and

DOB'S POSITION

WHEREAS, DOB asserts that zoning regulations prohibit the Sign in the subject R7-2 zoning district, as set forth at ZR § 22-30, which does not include advertising signs among the permitted uses; and

WHEREAS, DOB states that non-conforming advertising signs are permitted in residential zoning districts only when they comply with Chapter 2 of Article 5 of the Zoning Resolution; and

WHEREAS, specifically, DOB cites to ZR § 52-11, which states that "a non-conforming use may be continued, except as otherwise provided in this Chapter;" and

WHEREAS, DOB continues by citing ZR § 52-731, which expressly provided a limitation on the use of non-conforming advertising signs in residential zoning districts; the original text states that:

> [i]n all Residence Districts, a non-conforming advertising sign may be continued for eight years after the effective date of this resolution or such later date that such sign becomes non-conforming, provided that after the expiration of that period such non-conforming advertising sign shall terminate; and

WHEREAS, DOB notes that on August 22, 1963, the original ZR § 52-731 was amended to allow a ten-year, rather than an eight-year, amortization period; the 1963 version of the text, allowing for a ten-year amortization period remains in effect today; and

WHEREAS, DOB states that in order to maintain the Sign, the Appellant must demonstrate that: (1) the Sign is non-conforming (a lawful pre-existing non-conforming use, as defined at ZR § 12-10) and (2) it has been less than ten years since the Sign became non-conforming; and

WHEREAS, DOB asserts that the Appellant has failed to provide adequate evidence to demonstrate that the advertising sign has ever been "non-conforming" in the sense that it was lawfully established per ZR § 12-10 as "[a]ny lawful use…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, DOB states that the lawful use must have been established on December 15, 1961 or at the time of a relevant zoning amendment; and

WHEREAS, DOB notes that the Appellant has submitted proof of a permit issued by DOB in 1937 for a sign structure and states that if it were to assume that the sign existed lawfully on December 15, 1961, based on the 1937 permit, on December 15, 1961, it would have become "non-conforming;" and

WHEREAS, DOB states that even if the Sign existed lawfully on December 15, 1961, such a sign would have become non-conforming on that date when the site was zoned R7-2 and the 1963/current version of ZR § 52-731 requires that the Sign be removed within ten years of it becoming non-conforming, which was on December 15, 1971; and

WHEREAS, accordingly, DOB asserts that its rejection of the sign registration is appropriate because the Sign does not comply with ZR § 52-731; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the language of ZR § 52-731 is clear and requires that because any advertising sign at the site became a non-conforming use on December 15, 1961 when it was mapped to be within an R7-2 zoning district, such use should have been terminated by December 15, 1971; and

WHEREAS, as to the Appellant's assertion that DOB has improperly changed its position on the legality of the signs, the Board supports DOB's position that it may correct the erroneous issuance of its permits; and

WHEREAS, further, the Board notes that the presence of a permit does not render a use lawful, when the permit was issued erroneously; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing a permit in 1937, but it does note that the Appellant has enjoyed the benefit of the Sign for more than 40 years past the December 15, 1971 date when any sign at the site should have been terminated; and

WHEREAS, the Board agrees with DOB that even if the Appellant were to establish that the Sign was lawfully non-conforming at relevant dates, the question is moot since even a lawfully non-conforming sign would have to have been terminated on or before December 15, 1971; and

WHEREAS, accordingly, the Board finds that the advertising sign use should have been terminated on or before December 15, 1971, pursuant to ZR § 52-731; and

WHEREAS, the Board notes that the ZR § 12-10 definition of non-conforming use and ZR § 52-731 contemplate prospective enforcement in that uses that were rendered non-conforming on December 15, 1961 (like the subject Sign) were able to remain for ten years so long as they were lawful on December 15, 1961 (per ZR § 12-10); and

WHEREAS, the Board notes that the adoption of the 1961 Zoning Resolution did not prohibit the continuance of non-conforming uses, but rather newly non-conforming uses were able to exist in derogation of the Zoning Resolution, but only for a specified period; and

WHEREAS, as to the applicability of statutes adopted after a use has been established, the Board notes that per the Court of Appeals, municipalities may adopt laws regarding previously existing nonconforming uses. 550 Halstead Corp., 1 N.Y.3d at 562; Matter of Toys "R" Us v Silva, 89 N.Y.2d 411, 417, (1996); and

WHEREAS, specifically, the Board notes that the Court of Appeals has held that, "[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual

elimination[,]" and "municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them." 550 Halstead Corp., 1 N.Y.3d at 562; and

WHEREAS, further, the Board notes that in Off Shore Restaurant Corp., the Court stated, "the courts do not hesitate to give effect to restrictions on non-conforming uses . . . It is because these restrictions flow from a strong policy favoring the eventual elimination of nonconforming uses" 30 N.Y.2d at 164; and

WHEREAS, the Board finds that, despite the Appellant's attempt to distinguish the facts of 550 Halstead Corp. and Off Shore Restaurant Corp. from those of the subject case, the cited cases are relevant with regard to the above-mentioned holdings pertaining to the regulation of non-conforming uses; and

WHEREAS, the Board notes that ZR § 52-731 is not contrary to ZR § 52-11, which states that "a nonconforming use may be continued, except as otherwise provided in [Chapter 2]" because the Board notes that non-conforming uses are protected by Article V, but, as anticipated at ZR § 52-11, there are limiting conditions; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that its purported satisfaction of the Sign Registration requirement supersedes the clear, undisputed text of the Zoning Resolution; and

WHEREAS, as to the Appellant's assertion that the application of ZR § 52-731 would amount to a regulatory taking, the Board disagrees with the Appellant that the application of zoning regulations constitutes a taking; however, the Board finds that to the extent ZR § 52-731 does constitute an unconstitutional takings action, any such claim is properly directed against the statute itself, rather than DOB's enforcement of the statute, and such a claim is more appropriately addressed in a different forum; and

WHEREAS, the Board disagrees with the Appellant's reliance on the Federal Highway Beautification Act, which regulates advertising signs located within 660 feet of federal roads or controlled highways, and distinguishes that statute from ZR § 52-731, which prohibits advertising signs in residential districts regardless of the proximity of such signs to an arterial or highway; and

WHEREAS, the Board notes that the purpose of ZR § 52-731, to eliminate prior non-conforming advertising signs from residential districts in which such commercial uses are incompatible, has no relationship to the stated purpose for the Federal Highway Beautification Act's regulation of advertising signs, which is "to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty"; thus, the Board finds the Appellant's reliance on the Federal Highway Beautification Act to be misguided; and

WHEREAS, the Board further notes that the Appellant has provided no evidence that the Federal Highway Beautification Act should apply to the regulation of the Sign, where DOB's enforcement results from the location of the Sign in a residential districts and not its proximity to any federal roads or controlled highways; and

WHEREAS, as noted above, in addition to the ten-year amortization period provided under ZR § 52-731, the Appellant has enjoyed the benefit of the Sign for more than 40 years past the December 15, 1971 date when any sign at the site should have been terminated; and

WHEREAS, accordingly, the Board finds that DOB properly rejected the Sign from registration.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated May 9, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, February 5, 2013.

169-12-A & 170-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES – 26-28 Market Street, Inc.

SUBJECT – Application June 7, 2012 – Appeal from Department of Buildings' determination that signs are not entitled to continued non-conforming use status as advertising signs, pursuant to Z.R. §52-731. R7-2 zoning district.

PREMISES AFFECTED – 24-28 Market Street, southeast intersection of Market Street and Henry Street, Block 275, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez 4

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to Notice of Sign Registration Rejection letters from the Manhattan Borough Commissioner of the Department of Buildings ("DOB"), dated May 9, 2012, denying Application Nos. 10039802 and 10039701 from registration for two signs at the subject site (the "Final Determinations"), which read, in pertinent part:

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, and then to decision on February 5, 2013; and

WHEREAS, the premises and surrounding area had a

site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is located at the southeast corner of Market Street and Henry Street, in an R7-2 zoning district; and

WHEREAS, the site was previously within a C8-4 zoning district which was rezoned to the current R7-2 zoning district pursuant to a rezoning on August 20, 1981; and

WHEREAS, the site is occupied by a building with a rooftop sign structure supporting two advertising signs with dimensions of 14'-0" high by 48'-0" wide (672 sq. ft.) each; one sign faces southeast, and one sign faces northwest (the "Signs"); and

WHEREAS, the Signs are located approximately 27 feet from and within view of the Manhattan Bridge and approach, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the owner of the Sign (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registrations based on its assertion that (1) ZR § 52-731 has no application to lawful, non-conforming uses that predate its adoption; and (2) the application of ZR § 52-731 would result in an unconstitutional taking of property; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

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

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 guidance document provided by DOB sets forth the instructions for filing under Rule 49 and asserts 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, the parties agree that prior to September 29, 2011, the Appellant submitted Sign Registration Applications for the Signs; and

WHEREAS, on September 29, 2011, DOB notified the Appellant that its Sign Registration Applications failed to establish any basis for the sign to remain, and requested proof that the Signs complied with ZR § 52-731; and

WHEREAS, on February 29, 2012, the Appellant responded that the Signs were legal non-conforming uses which pre-dated the adoption of ZR § 52-731 and therefore it was not applicable to the Signs; and

WHEREAS, by letter dated May 9, 2012, DOB issued the determination which forms the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

> ZR § 52-11
> General Provisions
> A #non-conforming use# may be continued, except as otherwise provided in this Chapter.
> * * *
> ZR § 52-731
> Advertising signs
> In all #Residence Districts#, a #non-conforming advertising sign# may be continued for ten years after December 15, 1961, or such later date that such #sign# becomes #non-conforming#,

providing that after the expiration of that period such #non-conforming advertising sign# shall terminate.

* * *

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…

* * *

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 the 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; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) ZR § 52-731 has no application to lawful, non-conforming uses that predate its adoption; and (2) the application of ZR § 52-731 would result in an unconstitutional taking of property; and

1. Legal Precedent Supports the Continuation of Pre-Existing Non-Conforming Uses

WHEREAS, the Appellant asserts that the Signs were lawfully established prior to the adoption of ZR §52-731, and therefore such section does not apply to the Signs; and

WHEREAS, the Appellant notes that a permit for the Signs was issued by DOB in 1934; and

WHEREAS, the Appellant cites to Toys-R-Us v. Silva, 89 N.Y.2d 411, 421 (1996) for the principle that "zoning restrictions, being in derogation of common law property rights, [are] strictly construed and any ambiguity [is] resolved in favor of the property owner"; and

WHEREAS, the Appellant asserts that the Zoning Resolution protects the continued use of non-conforming signs since "[i]t is the law of this state that non-conforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding contrary provisions of the [zoning] ordinance." Costa v. Callahan, 41 A.D. 3d 1111, 1113 (3d Dept. 2007), citing Matter of Rudolf Steiner Fellowship Found v. DeLuccia, 90 N.Y.2d 453, 463 (1997); and

WHEREAS, the Appellant argues that statutes are to be construed prospectively and not retrospectively unless otherwise provided (See In re Town of Islip v. Caviglia, 73 N.Y.2d 544, 560-61 (1989)), and that unlike the statute at issue in Caviglia, the Appellant asserts that ZR § 52-731 is not content-neutral since it is exclusively directed to advertising signs and not any other manner of signs, and, accordingly, the general rule of prospective construction of statutes should apply; and

WHEREAS, the Appellant claims that the subject case is distinguishable from the authorities previously relied upon by the Board in upholding the applicability of ZR § 52-731; and

WHEREAS, specifically, the Appellant asserts that (1) in 550 Halstead Corp. v. Zoning Bd. of Appeals, 1 N.Y.3d 561, 562 (2003) the non-conforming use was expanded and extended contrary to the local ordinance, whereas in this case the use as advertising signs pursuant to permits has remained constant, and (2) in Off Shore Restaurant Corp. v. Linden, 30 N.Y.2d 160 (1972), there was a clear change in use from a delicatessen to a cocktail lounge, thus requiring

compliance with the municipal off-street parking requirement; and

WHEREAS, accordingly, the Appellant contends that since the statute at issue was adopted in 1963, after the non-conforming use status of the Signs, permitted in 1934, were established, it cannot be applied with respect to the Signs; and

2. DOB's Enforcement of the Signs would be an Unconstitutional Taking

WHEREAS, the Appellant asserts that the application of ZR § 52-731 would result in an unconstitutional taking of property in violation of the Fifth Amendment; and

WHEREAS, the Appellant contends that amortization provisions, such as the one set forth in ZR § 52-731, do not provide just compensation for the taking of a lawful advertising sign use consistent with the taking clause of the Fifth Amendment, which states: "…nor shall private property be taken for public use without just compensation;" and

WHEREAS, the Appellant argues that the Federal Highway Administration ("FHWA") has provided clear guidance on this issue, and has expressly determined that the removal of legal advertising signs (such as those at issue on these appeals) located on federal roads or controlled highways pursuant to the Highway Beautification Act, 23 U.S.C. 131, requires the payment of just compensation to the owner of such advertising signs; and

WHEREAS, the Appellant asserts that Congress has repeatedly rejected the amortization of lawful advertising sign uses and amended the Highway Beautification Act in 1978 to clarify that "just compensation shall be paid upon the removal" of such advertising signs; and

WHEREAS, the Appellant further asserts that, as recently as 2006, FHWA confirmed as part of a national assessment of advertising sign control programs that amortization of sign uses is no longer an issue because of the settled principle that cash compensation must be paid in connection with such takings, and that in response to efforts by those seeking the removal of non-conforming advertising signs, FHWA noted: "some continue to advocate amortization as a means to accomplish this, but widespread use of this approach was effectively prohibited by Federal legislation;" and

WHEREAS, the Appellant argues that DOB is relying on a statute that merely provided the owners and operators of lawfully established signs a period of years to continue such operations, without regard for any cash compensation for such takings; and

WHEREAS, accordingly, the Appellant asserts that ZR § 52-731 is inconsistent with Federal guidance on this issue and, if applied as DOB intends, will impose a significant deprivation of the Appellant's constitutional rights; and

DOB'S POSITION

WHEREAS, DOB asserts that zoning regulations prohibit the Signs in the subject R7-2 zoning district, as set forth at ZR § 22-30, which does not include advertising signs among the permitted uses; and

WHEREAS, DOB states that non-conforming advertising signs are permitted in residential zoning districts only when they comply with Chapter 2 of Article 5 of the Zoning Resolution; and

WHEREAS, specifically, DOB cites to ZR § 52-11, which states that "a non-conforming use may be continued, except as otherwise provided in this Chapter;" and

WHEREAS, DOB continues by citing ZR § 52-731, which expressly provided a limitation on the use of non-conforming advertising signs in residential zoning districts; the original text states that:

> [i]n all Residence Districts, a non-conforming advertising sign may be continued for eight years after the effective date of this resolution or such later date that such sign becomes non-conforming, provided that after the expiration of that period such non-conforming advertising sign shall terminate; and

WHEREAS, DOB notes that on August 22, 1963, the original ZR § 52-731 was amended to allow a ten-year, rather than an eight-year, amortization period; the 1963 version of the text, allowing for a ten-year amortization period remains in effect today; and

WHEREAS, DOB states that in order to maintain the Signs, the Appellant must demonstrate that: (1) the Signs are non-conforming (a lawful pre-existing non-conforming use, as defined at ZR § 12-10) and (2) it has been less than ten years since the Signs became non-conforming; and

WHEREAS, DOB states that the lawful use must have been established on December 15, 1961 or at the time of a relevant zoning amendment; and

WHEREAS, DOB notes that the Appellant has submitted proof of a permit issued by DOB in 1933 for a roof sign structure and for electric sign permits issued by DOB in 1979, two years prior to the date the site was rezoned from C8-4 to R7-2; and

WHEREAS, DOB asserts that even assuming that the Signs existed lawfully on August 20, 1981, they became "non-conforming" on that date since the site was rezoned to R7-2; therefore, on August 20, 1981, the ten-year amortization period set forth in ZR § 52-731 began to run and the Signs were required to be removed no later than August 20, 1991; and

WHEREAS, accordingly, DOB asserts that its rejection of the sign registrations are appropriate because the Signs do not comply with ZR § 52-731; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the language of ZR § 52-731 is clear and requires that because any advertising sign at the site became a non-conforming use on August 20, 1981 when it was mapped to be within an R7-2 zoning district, such use should have been terminated by August 20, 1991; and

WHEREAS, the Board agrees with DOB that even if the Appellant were to establish that the Signs were lawfully non-conforming at the relevant dates, the question is moot since even a lawfully non-conforming sign would have to have been

terminated on or before August 20, 1991; and

WHEREAS, accordingly, the Board finds that the advertising sign use should have been terminated on or before August 20, 1991, pursuant to ZR § 52-731; and

WHEREAS, the Board notes that the ZR § 12-10 definition of non-conforming use and ZR § 52-731 contemplate prospective enforcement in that uses that were rendered non-conforming on December 15, 1961 (like the subject Sign) were able to remain for ten years so long as they were lawful on December 15, 1961 (per ZR § 12-10); and

WHEREAS, the Board notes that the adoption of the 1961 Zoning Resolution did not prohibit the continuance of non-conforming uses, but rather newly non-conforming uses were able to exist in derogation of the Zoning Resolution, but only for a specified period; and

WHEREAS, as to the applicability of statutes adopted after a use has been established, the Board notes that per the Court of Appeals, municipalities may adopt laws regarding previously existing nonconforming uses. 550 Halstead Corp., 1 N.Y.3d at 562; Matter of Toys "R" Us v Silva, 89 N.Y.2d 411, 417, (1996); and

WHEREAS, specifically, the Board notes that the Court of Appeals has held that, "[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination[,]" and "municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them." 550 Halstead Corp., 1 N.Y.3d at 562; and

WHEREAS, further, the Board notes that in Off Shore Restaurant Corp., the Court stated, "the courts do not hesitate to give effect to restrictions on non-conforming uses . . . It is because these restrictions flow from a strong policy favoring the eventual elimination of nonconforming uses" 30 N.Y.2d at 164; and

WHEREAS, the Board finds that, despite the Appellant's attempt to distinguish the facts of 550 Halstead Corp. and Off Shore Restaurant Corp. from those of the subject case, the cited cases are relevant with regard to the above-mentioned holdings pertaining to the regulation of non-conforming uses; and

WHEREAS, the Board notes that ZR § 52-731 is not contrary to ZR § 52-11, which states that "a nonconforming use may be continued, except as otherwise provided in [Chapter 2]" because the Board notes that non-conforming uses are protected by Article V, but, as anticipated at ZR § 52-11, there are limiting conditions; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that its purported satisfaction of the Sign Registration requirement supersedes the clear, undisputed text of the Zoning Resolution; and

WHEREAS, as to the Appellant's assertion that the application of ZR § 52-731 would amount to a regulatory taking, the Board disagrees with the Appellant that the application of zoning regulations constitutes a taking; however, the Board finds that to the extent ZR § 52-731 does constitute an unconstitutional takings action, any such claim is properly directed against the statute itself, rather than DOB's enforcement of the statute, and such a claim is more appropriately addressed in a different forum; and

WHEREAS, the Board disagrees with the Appellant's reliance on the Federal Highway Beautification Act, which regulates advertising signs located within 660 feet of federal roads or controlled highways, and distinguishes that statute from ZR § 52-731, which prohibits advertising signs in residential districts regardless of the proximity of such signs to an arterial or highway; and

WHEREAS, the Board notes that the purpose of ZR § 52-731, to eliminate prior non-conforming advertising signs from residential districts in which such commercial uses are incompatible, has no relationship to the stated purpose for the Federal Highway Beautification Act's regulation of advertising signs, which is "to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty"; thus, the Board finds the Appellant's reliance on the Federal Highway Beautification Act to be misguided; and

WHEREAS, the Board further notes that the Appellant has provided no evidence that the Federal Highway Beautification Act should apply to the regulation of the Signs, where DOB's enforcement results from the location of the Signs in a residential districts and not their proximity to any federal roads or controlled highways; and

WHEREAS, the Board notes that in addition to the ten-year amortization period provided under ZR § 52-731, the Appellant has enjoyed the benefit of the Signs for more than 20 years past the August 20, 1991 date when any sign at the site should have been terminated; and

WHEREAS, accordingly, the Board finds that DOB properly rejected the Signs from registration.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated May 9, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, February 5, 2013.

190-12-A, 191-12-A & 192-12-A

APPLICANT – Davidoff Hutcher & Citron, LLP, for Fuel Outdoor LLC.

OWNER OF PREMISES – JRR Realty Co., Inc.

SUBJECT – Application June 13, 2012 – Appeals from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 zoning district.

PREMISES AFFECTED – 42-45 12th Street, north of Northeast corner of 12th Street and 43rd Street, Block 458, Lot 83, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Ottley-Brown……..1

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for decision, hearing closed.

197-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for Interstate Outdoor Advertising.

OWNER OF PREMISES – Hamilton Plaza Associates.

SUBJECT – Application June 21, 2012 –Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign. M1-2/M2-1 zoning district.

PREMISES AFFECTED – 1-37 12th Street, east of Gowanus Canal between 11th Street and 12th Street, Block 10007, Lot 172, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Ottley-Brown……..1

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for decision, hearing closed.

203-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for CBS Outdoor, Inc.

OWNER OF PREMISES – Gemini 442 36th Street H LLC.

SUBJECT – Application June 28, 2013 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign. C2-5 /HY Zoning District

PREMISES AFFECTED – 442 West 36th Street, east of southeast corner of 10th Avenue and 36th Street, Block 733, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Ottley-Brown……..1

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 5, 2013
1:30 P.M.

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

Absent: Commissioner Ottley-Brown.

ZONING CALENDAR

147-11-BZ
CEQR #12-BSA-025Q

APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.

SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.

PREMISES AFFECTED – 24-47 95th Street, east side of 95th Street, between 24th and 25th Avenues, Block 1106, Lot 44, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez 4

Negative:.....0

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 15, 2012, and acting on Department of Buildings Application No. 4809110 reads, in pertinent part:

1. Proposed floor area ratio exceeds maximum permitted under ZR Section 23-141; and
2. Proposed side yard does not comply with ZR Section 23-461; and
3. Proposal does not comply with parking requirements under ZR Section 25-22; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district, the construction of a new single-family semi-detached home that exceeds the permitted floor area and floor area ratio ("FAR") and does not provide the required side yards or parking, contrary to ZR §§ 23-141, 23-461, and 25-22; 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 14, 2012, September 11, 2012, October 23, 2012, November 27, 2012, and January 8, 2013, and then to decision on February 5, 2013; 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, Queens, recommends approval of this application; and

WHEREAS, the adjacent neighbor to the north, represented by counsel, provided oral and written testimony raising concerns with the improper grading and drainage problems on the subject site and the poor condition of the site, and requesting that the proposed home align with the adjacent home to avoid negative impacts on the neighbor's light and air; and

WHEREAS, the site is located on the east side of 95th Street between 24th Avenue and 25th Avenue; and

WHEREAS, the site has a width of approximately 19'-6", a depth of 95'-0", a total lot area of approximately 1,847 sq. ft., and is located within an R3-2 zoning district; and

WHEREAS, the site is currently vacant but was previously occupied by a semi-detached house, which the applicant states is believed to have been destroyed by a fire; and

WHEREAS, the applicant proposes to construct a two-story single-family semi-detached home with the following parameters: a floor area of 1,263 sq. ft. (0.68 FAR) (0.50 FAR is the maximum permitted); a side yard with a width of 5'-0" along the southern lot line (a minimum side yard width of 8'-0" is required for semi-detached homes); and no parking spaces (a minimum of one parking space is required); and

WHEREAS, the applicant initially proposed to construct a home with a parking space located in the front yard, which resulted in the proposed home not being aligned with the adjacent home to the north; and

WHEREAS, at the direction of the Board, and in response to concerns raised by the adjacent neighbor, the applicant revised its proposal to align the proposed home with the adjacent home to the north; and

WHEREAS, because the proposed home does not comply with the underlying R3-2 district regulations, a variance is requested; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations: the site's narrow width; and

WHEREAS, the applicant states that the lot has a width of approximately 19'-6"; and

WHEREAS, the applicant states that providing a complying side yard of 8'-0" would result in a 11'-6" wide home, with even narrower interior dimensions given the widths of the walls, which would not be viable; and

WHEREAS, the applicant further states that, given the size of the lot, the maximum FAR of 0.50 would result in a single-family home with 920 sq. ft. of floor area, and small, inefficient floor plates of 460 sq. ft.; and

WHEREAS, therefore, the applicant requires a side yard waiver to allow for a new home with a width of 14'-6" and a floor area waiver to allow for a home with a floor area of 1,263 sq. ft. (0.68 FAR), to provide a floor plate that results in a habitable home; and

WHEREAS, the applicant states that due to the narrow width of the lot it cannot provide an accessory parking space in what would normally be a side lot ribbon; and

WHEREAS, as to the uniqueness of the lot, the applicant states that the site is the narrowest tax lot on either side of 95th Street between 24th Avenue and 25th Avenue, where all other parcels are 20 feet or wider; and

WHEREAS, the applicant represents that the typical separation between the other semi-detached homes in the surrounding area is 8'-0", often shared between the two adjacent parcels, while the subject site will have a proposed separation between homes of approximately 14'-5" because the adjacent detached home has a side yard/driveway ribbon with a width of 9'-8"; and

WHEREAS, the applicant also provided an analysis of lots within 400 feet of the site with a width of 20'-0" or less, which reflects that of the 124 lots within 400 feet, 47 have a width of 20'-0" or less; and

WHEREAS, the lot study provided by the applicant further shows that the FARs of the homes with a width of 20'-0" or less range from 1.62 to 0.46, and the 40 of these lots (or 82 percent) are improved with residential buildings that have FARs greater than 0.68; and

WHEREAS, the applicant concludes that the requested waivers of floor area, FAR and side yard requirements are necessary to develop the site with a habitable home; 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 Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; 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 notes that the proposed bulk is compatible with nearby residential development and that the height complies with zoning regulations; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the surrounding area is characterized by single-family detached and semi-detached homes; and

WHEREAS, the applicant states that the proposed variance only seeks to (1) permit a modest increase in the building's bulk (0.18 FAR), (2) allow a slight reduction in the required side yard from 8'-0" to 5'-0", and (3) waive the one required parking space; and

WHEREAS, the applicant notes that the adjacent building to the south of the site has a side yard of 9'-8", which when combined with the proposed side yard of 5'-0" creates 14'-8" of separation between buildings which exceeds the typical amount of separation between homes on the subject block; and

WHEREAS, as noted above, the lot study submitted by the applicant reflects that of the approximately 47 lots with

widths of less than 20'-0" in the surrounding area, 40 of these lots (or 82 percent) are improved with residential buildings that have FARs greater than 0.68; and

WHEREAS, the applicant notes that most homes along 95th Street, including the subject site, have a pre-existing chain linked fence, extending the actual front yards approximately 5'-5" into the mapped street; however, the proposed home will not utilize the 5'-5" of mapped street for any zoning calculation purposes, and the home will comply with the front yard requirements as per the dimensions of the deeded lot, exclusive of the mapped street section; and

WHEREAS, as noted above, at the direction of the Board and in response to the concerns raised by the adjacent neighbor, the applicant revised the proposal to align the proposed home with the adjacent home to avoid negative impacts on the adjacent neighbor's light and air; and

WHEREAS, in response to the concerns raised by the adjacent neighbor regarding the drainage problems at the site, the applicant submitted a letter from the architect stating that the rainwater runoff at the site will be directed to the drywell to be located in the rear yard of the site, that minimal water will find its way between the homes, and that the applicant is prepared to implement a water diversion system to guide any such rainwater runoff between the homes to the rear yard drywell; and

WHEREAS, the applicant also provided photographs reflecting that the site has been cleaned of all debris and excessive growth; and

WHEREAS, the applicant states that the proposed home will align with the adjacent houses and the height of the home has been reduced to align with the future adjacent house; 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 historic lot dimensions; and

WHEREAS, the applicant notes that the proposed home complies with all requirements of the underlying R3-2 zoning district, with the exception of FAR, side yard, and parking; and

WHEREAS, accordingly, 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.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II 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, within an R3-2 zoning district, the construction of a new single-family semi-detached home that exceeds the permitted FAR and does not provide the required side yards or parking, contrary to ZR §§ 23-141, 23-461, and 25-22; *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 24, 2013"–(7) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 1,263 sq. ft. (0.68 FAR); a side yard of with a minimum width of 5'-0" along the southern lot line; a front yard with a depth of 15'-0"; a rear yard with a depth of 35'-11 3/8"; a total height of 26'-6", and no parking spaces, as per the BSA-approved plans; THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to 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;

THAT significant construction shall 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, February 5, 2013.

12-12-BZ
CEQR #12-BSA-068M

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, 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 Hinkson and Commissioner Montanez 4
Negative:.....0
Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 5, 2012, acting on Department of Buildings Application No. 120084719, reads, in pertinent part:

1. ZR 42-10 – Proposed residential use within manufacturing (M1-6) zoning district is not permitted.
2. ZR 43-43 – Proposed building does not comply with front wall heights and setback

requirements, hence is not permitted.

3. ZR 44- – Proposed curb cut is located within 50 feet of the intersection of two streets, hence is not permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-6 zoning district, a 13-story residential building, with 96 dwelling units, commercial use on the first floor, and a curb cut within 50 feet of the intersection, which is contrary to ZR §§ 42-10, 43-43, and 44-582; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in the *City Record*, with continued hearings on August 7, 2012, September 11, 2012, and October 30, 2012, and then to decision on February 5, 2013; 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 disapproval of the initial iteration of this application with the suggestion that the development of the site be addressed after the pending the Department of City Planning's Hudson Square Rezoning is finalized and that any plans substantively comply with the new zoning; and

WHEREAS, The Door Youth Development Services submitted testimony in opposition to the proposal, citing concerns about (1) the placement of the curb cut, (2) poor site maintenance, and (3) a decision before the Rezoning being premature; and

WHEREAS, the neighbor at 64 Watts Street provided written and oral testimony in opposition to the proposal, citing concerns about whether (1) the hardship had been established and all premium costs are justified, (2) the site conditions are unique, (3) a lesser variance (7.2 FAR) would be sufficient to overcome any hardship, (4) the scale of the proposal is compatible with neighborhood character, and (5) sufficient measures will be performed during and after construction to protect the adjacent building; and

WHEREAS, the subject premises is located on the east side of Varick Street between Watt and Broome streets, across the street from the Hudson Tunnel entry plaza, and is comprised of four tax lots - Lots 35, 42 (1999 acquisitions), 44, and 76 (2006 and 2007 acquisitions); the assembled site has frontage of 171.41 feet along Varick Street, 56'-3 ¾" along Broome Street and 55 feet along Watts Street, with a total lot area of 9,576 sq. ft.; and

WHEREAS, under the prior application, the site is the subject of a prior variance, dated August 8, 2006, under BSA Cal. No. 151-05-BZ for an eight-story building with 7.97 FAR and a height of 78'-9"; and

WHEREAS, the site before the Board was only lots 35 and 42 and was subject to a private agreement, with 125 Varick Street (and another nearby property) which restricted the building height to 80 feet above the level of the sidewalk of Varick Street (the "Height Limitation Agreement"); and

WHEREAS, the applicant states that subsequent to the Board's 2006 grant, it reached an agreement with its neighbors to eliminate the height agreement and, separately, purchased Lots 44 and 76; and

WHEREAS, the applicant then applied to DOB in 2009 and was approved to construct a hotel at the site as-of-right, but determined that such a proposal was not economically feasible; and

WHEREAS, the current application began with the applicant proposing a 14-story building with a total floor area of 95,760 sq. ft. (10 FAR) including residential 9.19 FAR, with a base that fully occupied the lot and would have risen without setback to the roof over the twelfth floor, at an elevation of 145 feet; it would then have set back 12 feet on Watts Street and 13 feet on Broome Street at that level and would have achieved a partial setback along the Varick Street frontage of 8 feet; the top two floors of the building would have achieved the final building height of 169 feet; the original proposal penetrated the sky exposure plane and encroached on the required setback at 85 feet on all three street frontages; and it included parking on a portion of the first floor (and a curbcut within 50 feet of an intersection, which was non-compliant with ZR § 44-43); and

WHEREAS, the applicant also originally sought in a companion application (BSA Cal. No. 110-12A) pursuant to Multiple Dwelling Law (MDL) § 310(2)(c) to permit certain rooms in dwelling units in the new building to obtain their light and air from windows that do not face upon a legal yard, court or area above a setback on the same zoning lot, contrary to MDL §§ 26(7)(a) and 30(2); and

WHEREAS, during the public hearing process, in response to comments received from the Board indicating that it would not support a new residential building with a total 10 FAR the applicant redesigned the proposed building to reduce its proposed FAR and to reorganize the configuration of the building; as modified, the proposal reflects 13 stories in a total height of 154 feet, with 96 dwelling units ranging in size from 530 sq. ft. to 1,030 sq. ft.; and two retail stores on the ground floor; and

WHEREAS, at the Board's direction, the applicant redesigned the building to comply with MDL requirements and ultimately withdrew the companion MDL application; and

WHEREAS, the new building has a total floor area of 76,608 sq. ft. with a resulting FAR of 8, of which 4,600 sq. ft. will be commercial (0.48 FAR) and 72,008 sq. ft. (7.52 FAR) will be residential; and

WHEREAS, the revised proposal provides a 17-ft. wide outer court along the Watts Street frontage, running north/south a distance of approximately 116 feet; the building rises without setback to the roof over the eleventh floor, at an elevation of 132 feet along both the Varick Street and Broome Street frontages; the building provides setbacks of 15 feet from the street line on each of Watts and Broome Streets and seven feet from the street line along the Varick Street frontage; the new building penetrates the existing sky exposure plane and encroaches on the required setback at 85 feet on all three street frontages; and

WHEREAS, the applicant now seeks relief in the form of a use and several bulk variances pursuant to ZR § 72-21 to permit: (1) residential use in the building, which is contrary to ZR §§ 42-11, 42-12 and 42-13; (2) encroachment on the setback that would ordinarily be required at 85'-0" and penetration of the sky exposure plane, contrary to ZR § 43-43; and (3) a curb cut that is within 50 feet of the corner of the intersection of Broome and Varick Streets, contrary to ZR § 44-582 for the proposed loading berth, rather than for parking; and

WHEREAS, accordingly, the owner now seeks a use variance from the Board, which would permit the construction of the proposed residential building; 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 size and shape of the site and the presence of an alley easement along the eastern lot line; (2) poor soil conditions, a high water table, and the existence of rubble stone foundations on the adjacent property; (3) the presence of the Seventh Avenue subway along the Varick Street frontage; and (4) the testing and potential remediation of a buried gasoline tank; and

WHEREAS, as to the site's size and shape, the applicant states that the dimensions are 171 feet by 55 feet, with an alley easement along the eastern lot line which constrain as of right construction; and

WHEREAS, the applicant states that the presence of the historic alley, entered from Watts Street and wrapped around behind the four remaining three-story buildings fronting on Watts and terminating at a point inside the site, distorts what would otherwise have been a nearly rectangular lot; and

WHEREAS, the applicant states that the alley projects a distance of approximately 7'-6" into the interior of the lot at the rear and that it does not appear from the available records that the alley is owned by any one property owner on the block and, barring litigation to quiet title, must be maintained for the use of all property owners whose land touches the alley; and

WHEREAS, the applicant states that these conditions only allow for a single-loaded corridor (resulting in an inefficient floor plate) and a building aspect ratio in excess of 3 (creating significant engineering difficulties for shear wall design); and

WHEREAS, further, the applicant states that the narrowness of the site and the existence of the notch along the eastern property line, along with the subsurface conditions which the engineers for the project are required to manage (including the adjacency of the subway and rubble wall foundation) and the high building aspect ratio collectively result in significant inefficiencies in the building layout and in significant premium costs for the design and construction of foundations and superstructure; and

WHEREAS, the applicant asserts that it analyzed two options when considering constructing a complying hotel: the first was a standard complying scenario setting back above the sixth story and the second was a tower, as reflected in the conforming and complying scenario plans; in both scenarios, in order to achieve the most efficient possible layout, taking into account the presence of the notch, the elevators for the building were placed along the eastern property line; and

WHEREAS, as to the subsurface conditions, the applicant states that its engineers confronted several hardship conditions: (1) the geotechnical engineer discovered an unstable layer of peat located 17 feet to 21 feet below curb level, which led the structural engineers, to recommend drilled piles to support the structure, in order to reach stable bedrock; and (2) due to the presence of the subway tunnel along Varick Street, standard driven piles would not be viable; accordingly, a system of drilled piles, taken to bedrock at 100 feet, was initially considered but ultimately deemed cost prohibitive; and

WHEREAS, the applicant states that rather than using driven piles, the engineers designed a fully excavated foundation that required removal of the peat layer in its entirety and creation of a new stable substrata with three to four feet of crushed rock, compacted to achieve sufficient bearing capacity; the applicant states that this design necessitated excavation to a depth that was five feet greater than the depth that would have been required to accommodate a standard cellar and the four feet thick concrete mat slab that the engineers designed as the foundation alterative; and

WHEREAS, the applicant asserts that the deep excavation would be complicated by placement of the building's elevators along the eastern property line; the applicant states that the condition of the foundation of at least one of the adjacent properties is poor, because its foundations are not deep and one of the buildings has a rubble stone foundation (64 Watts Street); and

WHEREAS, the applicant asserts that special foundational requirements are necessary to protect the adjacent property on the east from the deep excavation, consisting of a secant wall system, which will act as a retaining wall at the site; and

WHEREAS, the applicant asserts that as excavation proceeds, the secant wall supports will require modification, soil compaction grouting will also be required, and in order to maneuver in the narrow site, portions of the secant wall will have to be removed as the foundation progresses, which increases the time required to pour the foundation, the number of steps in construction of each phase and, consequently, the foundation cost; and

WHEREAS, the applicant asserts that all of these elements impose a cost premium on the construction of the foundation; and

WHEREAS, further, the applicant asserts that the high water table complicates foundation construction as it is above the peat layer and at the level of the mat slab; and

WHEREAS, the applicant asserts that the high water table precludes the use of standard underpinning of the adjacent rubble wall foundation and necessitates the secant

wall system; and that dewatering operations will also be required during excavation and foundation construction, all of which must meet the MTA's specifications; and

WHEREAS, the applicant asserts that the presence of water complicates the construction of the temporary shoring and permanent support for the adjacent building; the finished basement will require permanent drainage and waterproofing to maintain a water free environment for the life of the building, and that these factors add more premium to the cost of foundation construction; and

WHEREAS, the applicant asserts that the building aspect ratio also imposes significant additional costs as a complying building on the site is a taller building, resulting in a building aspect ratio of more than 3.8; and

WHEREAS, the applicant asserts that a building designed to comply with setback requirements would present significant problems for shear and wind loads, adding to both engineering and superstructure costs; the original tower design had two shear walls built into it: one at the elevator core and a second at the eastern wall, along the building's single corridor; and

WHEREAS, the applicant asserts that building a shorter building, in the form proposed, allows a single exterior wall to function as the shear wall for wind loading purposes; and

WHEREAS, further, the applicant asserts that if a building were to conform to required setbacks and the sky exposure plane along Varick Street, the resulting width of the building would produce a floor plate that is 40 feet deep at the point of initial setback, with additional setbacks required at the top of the building to comply with the sky exposure plane; and

WHEREAS, the applicant asserts that simultaneously, the building would be pinched in the middle by the seven-ft. incursion of the notch representing the vestigial remainder of the alley; and

WHEREAS, accordingly, the applicant asserts that the site's conditions mandate that the building have a single-loaded corridor (which is necessary even with the relief requested on this application), resulting in an inefficient floor layout; and

WHEREAS, the applicant asserts that a complying building would have a net useable to gross floor area ratio of 72.19 percent with a loss factor of nearly 28 percent while the proposed building would have a net useable to gross floor area ratio of 83 percent, reducing the loss factor to 17 percent; and

WHEREAS, the applicant asserts that the proposed building reduces premium costs, by reducing the height, the location and size of setbacks, and increasing the size of upper floors for a more efficient floor layout; and

WHEREAS, the applicant performed an analysis of the area in order to evaluate the uniqueness of its site conditions and identified all sites that would be considered soft sites for future development (including potential assemblages) in the study area, as well as sites of recent construction within the past 30 years that are within or at the edge of the 400-ft. radius of the site; and

WHEREAS, the applicant assert that its study reflects that only the subject site was burdened by the combination of factors that give rise to the owner's claim of uniqueness in this case; none of the buildings within the radius and constructed within the past 30 years shared all of these factors; for example, the Trump Soho site, at 246 Spring Street, is outside the historic marshland shown on the Viele Map; the Hampton Hotel at 52 Watts Street is not irregular and has a building aspect ratio of only 2.5; the building at 57 Watts Street is on a large lot with a 25-story tower completed in 1992, that shares the characteristics of the site, except irregularity, but has a building aspect ratio of only 2.23; 80 Varick Street was a building constructed in the 1920's but converted to residential use pursuant to a variance granted in 1978; and 66 Charlton, at the northern edge of the Study Area, shares none of the characteristics with the site; and

WHEREAS, the applicant asserts that, similarly, none of the potential development and assemblage sites in the study area have the same combination of former marshland subsurface adjacencies with the subway on one side and a fragile rubble wall on the other, a high building aspect ratio and an irregular lot; and

WHEREAS, the applicant asserts that with respect to the request for waiver to the regulations prohibiting curb cuts within 50 feet of a corner, the owner has no option to provide an alternative, given the shallow depth from Varick Streeet; and

WHEREAS, the applicant represents that DOB approved the curbcut associated with the as-of-right hotel project, under its authority and that it could seek DOB's authority to do so for the proposed residential building, but has included the waiver request as part of the variance application; and

WHEREAS, finally, the applicant asserts that there is likely but unknown mitigation associated with the underground storage tanks that have never been removed and may have been affected by the high water table; no record exists that these tanks, installed long before either the state or federal government imposed any significant regulation on underground storage tanks, were ever closed or removed when the site was redeveloped (without a basement or cellar) in the early 1960's; and

WHEREAS, the applicant states that the environmental consultant estimates that remediation costs associated with these tanks could run from as low as $50,000 to study and remove (if there have been no leaks) to $1,000,000, if the tanks leaked into the water table and the plume migrated off-site; and

WHEREAS, the Board does not view the foundation conditions on the adjacent site to be a unique condition and it cannot credit the supposition that there is contamination at the site, without any evidence; and

WHEREAS, however, the Board does view the configuration of the site, the subsurface conditions (including high water table), and the presence of the subway as legitimate

unique physical conditions, in the aggregate; and

WHEREAS, based upon its review of the submitted radius diagram and its site and neighborhood inspection, the Board observes that the conditions in the aggregate are relatively unique within the area; and

WHEREAS, based upon the above, the Board finds that the site conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing: (1) an as-of-right hotel, (2) a complying residential scenario, and (3) the original proposal for a 10 FAR residential building; and

WHEREAS, the applicant determined that only the original proposal for a 10 FAR residential building would realize a reasonable rate of return; and

WHEREAS, the applicant asserts that although all of its proposed scenarios assumed that the Height Limitation Agreement had been extinguished, none included the actual cost paid to other parties to extinguish the agreement; and

WHEREAS, at hearing, the Board directed the applicant to analyze an 8.0 FAR and 7.52 FAR lesser variance alternative for a residential building; and

WHEREAS, after revising its methodology, at the Board's direction, to consider a comparison of capitalized net operating income to development costs, rather than a return on equity, the feasibility study reflected that the proposed 8.0 FAR alternative would realize a reasonable rate of return, but the 7.52 FAR alternative would not; and

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

WHEREAS, the applicant represents that 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 immediate area surrounding the site contains significant residential use, notwithstanding the manufacturing zoning classification; and

WHEREAS, the applicant specifically cites to lots on the subject block occupied by residential use, as well as residential uses on Blocks 491 and 578, located to the north and west of the site; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, as to the subject site, itself, the applicant states that two of the lots incorporated in the zoning lot were historically used primarily for residential use, with only ground floor commercial use; and

WHEREAS, the applicant asserts that many of the buildings on Varick Street and in the vicinity of the New Building are substantial in size, including 75 Varick Street, southwest of the New Building, at 20 stories, to Trump Soho at the north end of the study area, with 42 stories; and

WHEREAS, the applicant asserts that the existing built fabric of the neighborhood is dense, consistent with its 10 FAR and printing house history; and

WHEREAS, the applicant asserts that on the subject block, there is an 18-story hotel, completed in 2008, and in the block immediately south of the site is a 23-story commercial building that was constructed between 1989 and 1992; and

WHEREAS, the applicant asserts that the mixed character and dense bulk of the surrounding area are recognized in the proposed Rezoning; and

WHEREAS, the applicant notes that the Rezoning proposes to permit residential use throughout the rezoning area, which will reach from Canal Street to West Houston Street, Avenue of the Americas to the east side of Greenwich Street, and that most of the Rezoning area will be zoned to permit an FAR of 10 for non-residential uses and 9 (bonusable to 12 for inclusionary housing) for residential use; and

WHEREAS, the applicant notes that, under the Rezoning, the anticipated maximum building height will be 320 feet with base heights of between 125 and 150 feet on wide streets and 60 and 125 feet on narrow streets more than 100 feet from a wide street; the required setback distance above the base height would be 10 feet on a wide street and 15 feet on a narrow street; and

WHEREAS, the applicant notes that a subdistrict has been proposed to maintain the smaller buildings in the area, but asserts that the purpose of the subdistrict is to address preserving the existing smaller scale buildings and not limiting the height for vacant sites, like the subject one; and

WHEREAS, the applicant states that it is expected that the Rezoning, which was certified into ULURP in August 2012, is expected to become final before the end of March 2013, and the revised form of the application, without the downzoning subdistrict component, which the Community Board rejected, will be approved; and

WHEREAS, the applicant asserts that the proposal is mostly consistent with the proposed Rezoning regulations, although it is of lesser bulk and does not maintain the street wall along Watts Street due to structural requirements; and

WHEREAS, the applicant asserts that the curb cut is necessary, even without parking at the site, in order to accommodate drop offs and loading and unloading to the site given the heavily-trafficked area, where such required vehicle access would otherwise be infeasible and onstreet drop off would hinder the flow of traffic; and

WHEREAS, the applicant asserts that its proposed construction plan reflects a sensitivity to the conditions on adjacent sites; and

WHEREAS, the Board agrees that the area is best characterized as mixed-use, and that the proposed residential use is compatible with the character of the community and the proposed Rezoning; and

WHEREAS, the Board finds that the proposal, with the

noted setbacks, FAR reduction, and first floor commercial use are compatible with the neighborhood context and result in a use and building form that is consistent with the proposed rezoning; and

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

WHEREAS, as noted above, the applicant originally proposed a 14-story, 10 FAR building with 95,760 sq. ft. of floor area and parking on the first floor; and

WHEREAS, the Board expressed its dissatisfaction with this proposal at the first hearing, given that it reflected a degree of relief not consonant with the amount of hardship on the site; and

WHEREAS, as noted above, the Board recognized that the 8 FAR scheme was compatible with the context of the neighborhood; and

WHEREAS, the Board has reviewed the revised feasibility analysis and agrees that the 8.0 FAR scenario represents the degree of relief necessary to overcome the site's inherent hardship; 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 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. 12BSA068M, dated January 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, the New York City Landmarks Preservation Commission ("LPC") reviewed the project for potential archaeological impacts and requested that an archaeological documentary study (Phase IA) be submitted for review and approval; and

WHEREAS, based on LPC's review and approval of the Phase IA Report, a Phase IB Archaeological Field Investigation Report was requested; and

WHEREAS, based on LPC's review of the Phase IB Archaeological Field Investigation Report, the proposed project is not anticipated to result in significant archaeological impacts; 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 January 2013 Remedial Action Work Plan and site-specific 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 November 2012 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, DEP reviewed the results of noise monitoring and determined that a minimum of 35 dBA window-wall noise attenuation and an alternate means of ventilation should be provided in the proposed building's residential units in order to achieve an interior noise level of 45 dBA; and

WHEREAS, DEP determined that, with these noise measures, the proposed project is not anticipated to result in significant noise 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 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 M1-6 zoning district, a 13-story residential building, with 96 dwelling units, commercial use on the first floor, and a curb cut within 50 feet of the intersection, which is contrary to ZR § 42-10, 43-43, and 44-582, *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, 2013" – twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a total floor area of 76,608 sq. ft., a total FAR of 8 (residential FAR of 7.52 and commercial FAR of 0.48), 13 stories, 154'-0" building height, 96 residential units, and setbacks, all as illustrated on the BSA-approved plans;

THAT all residential units shall comply with all Multiple Dwelling Law requirements as to provision of light and air;

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 the sound attenuation measures in the proposed building will be maintained 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, February 5, 2013.

150-12-BZ
CEQR #12-BSA-133M
APPLICANT – Goldman Harris LLC, for Roseland/Stempel 21st Street, owner; TriCera Revolution, Inc., lessee.
SUBJECT – Application May 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Flywheel Sports*). C6-4A zoning district.
PREMISES AFFECTED – 39 West 21st Street, north side of West 21st Street, between 5th and 6th Avenues. Block 823, Lot 17. 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 Montanez 4
Negative:.....0
Absent: Commissioner Ottley-Brown.....1
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 8, 2012, acting on Department of Buildings Application No. 104339182, reads in pertinent part:

> Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; 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 operation of a physical culture establishment (PCE) on a portion of the ground floor of a 15-story residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, with a continued hearing on December 4, 2012, and then to decision on February 5, 2013; 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, submitted a letter stating it has no objection to this application; and

WHEREAS, the subject site is located on the north side of West 21st Street between Fifth and Sixth Avenues, in a C6-4A zoning district within the Ladies' Mile Historic District; and

WHEREAS, the site has 99'-4" feet of frontage on West 21st Street, a depth of 197'-9", and a total lot area of 12,117 sq. ft.; and

WHEREAS, the site is occupied by a 15-story residential building; and

WHEREAS, the proposed PCE will occupy 5,820 sq. ft. of floor area on a portion of the ground floor; and

WHEREAS, the PCE will be operated as Flywheel Sports; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be: Monday through Sunday, from 6:00 a.m. to 9:30 p.m.; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission (LPC), dated January 17, 2013, approving the proposed signage and other modifications under its jurisdiction; 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 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 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 PCE has been in operation since February 2010, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant will be reduced for the period of time equivalent to the period between February 2010 and the date of this grant; 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, CEQR No.12BSA133M, dated May 9, 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 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 located within a C6-4A zoning district and the Ladies' Mile Historic District, the operation of a physical culture establishment on a portion of the ground floor of a 15-story residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 22, 2013"- Three (3) 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 physical culture establishment 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 will be limited to Monday through Sunday, from 6:00 a.m. to 9:30 p.m.;

THAT soundproofing will be installed and maintained as reflected on the BSA-approved plans;

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

Adopted by the Board of Standards and Appeals, February 5, 2013.

275-12-BZ
CEQR #13-BSA-030K
APPLICANT – Law Office of Fredrick A. Becker, for Fayge Hirsch and Abraham Hirsch, owners.
SUBJECT – Application September 6, 2012 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141), and side yard (§23-461) regulations. R2 zoning district.
PREMISES AFFECTED – 2122 Avenue N, southwest corner of Avenue N and East 22nd Street, Block 7675, Lot 61, 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 Montanez 4
Negative:.....0
Absent: Commissioner Ottley-Brown.....1
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 11, 2012, acting on Department of Buildings Application No. 320493131, reads in pertinent part:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the open space ratio and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in 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 side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2013, and then to decision on February 5, 2013; 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 southwest corner of Avenue N and East 22nd Street, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 3,106 sq. ft. (0.52 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 3,106 sq. ft. (0.52 FAR) to 5,129 sq. ft. (0.85 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 65 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a side yard with a width of 11'-0" along the southern lot line and a side yard with a width of 5'-0" along the western lot line (two side yards with widths of 20'-0" and 5'-0", respectively, are 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, 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, in 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 side yards, contrary to ZR §§ 23-141 and 23-461; *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 22, 2012"-(11) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 5,129 sq. ft. (0.85 FAR); a minimum open space ratio of 65 percent; a side yard along the southern lot line with a minimum width of 11'-0" and a side yard along the western lot line with a minimum width of 5'-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, February 5, 2013.

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-Brown……..1

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Ottley-Brown……..1

ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for decision, hearing closed.

241-12-BZ
APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new mixed residential and retail building, contrary to use regulations (§42-10 and 42-14D(2)(b)). M1-5B zoning district.
PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for deferred decision.

50-12-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building contrary to use regulations, ZR 22-00. R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.
COMMUNITY BOARD #12Q
ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for continued hearing.

57-12-BZ
APPLICANT – Eric Palatnik, P.C., for Mykola Volynsky, owner.
SUBJECT – Application March 13, 2012 – 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 (§23-461); less than the required rear yard (§23-37). R4 zoning district.
PREMISES AFFECTED – 2670 East 12th Street, between Shore Parkway and Gilmore Court, Block 7455, Lot 85, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for continued hearing.

161-12-BZ
APPLICANT – Francis R. Angelino, Esq., for Soly D. Bawabeh, for Global Health Clubs, LLC, owner.
SUBJECT – Application May 31, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Retro Fitness*) on the ground and second floor of an existing building. C8-2 zoning district.
PREMISES AFFECTED – 81 East 98th Street, corner of East 98th Street and Ralph Avenue, Block 3530, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #16BK
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown……..1
ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for decision, hearing closed.

195-12-BZ
APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.
SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.
PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.
COMMUNITY BOARD #10Q
ACTION OF THE BOARD – Laid over to March 12, 2013, at 1:30 P.M., for adjourned hearing.

235-12-BZ
APPLICANT – Slater & Beckerman, LLP, for NBR LLC, owner.
SUBJECT – Application July 30, 2012 – Special Permit (§73-242) to allow a one-story building to be used as four eating and drinking establishments (Use Group 6), contrary to use regulations (§32-00). C3 zoning district.
PREMISES AFFECTED – 2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north. Block 8839, Lots 33, 38, 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-Brown……..1
ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for decision, hearing closed.

238-12-BZ
APPLICANT – Harold Weinberg, for Stuart Ditchek, owner.
SUBJECT – Application August 1, 2012 – Special Permit (§73-622) for the enlargements of single family home contrary floor area and lot coverage (ZR §23-141); side yards (ZR 23-461) and less than the required rear yard (ZR §23-47). R 3-2 zoning district.
PREMISES AFFECTED – 1713 East 23rd Street, between

Quentin Road and Avenue R, Block 6806, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 12, 2013, at 1:30 P.M., for continued hearing.

257-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Birta Hanono and Elie Hanono, owners.

SUBJECT – Application August 29, 2012 – 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 yard (§23-461) and less than the required rear yard (§23-47). R4 (OP) zoning district.

PREMISES AFFECTED – 2359 East 5th Street, east side of East 5th Street between Avenue W and Angela Drive, Block 7181, Lot 44, 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-Brown……..1

ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for decision, hearing closed.

280-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sheila Weiss and Jacob Weiss, owners.

SUBJECT – Application September 21, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1249 East 28th Street, east side of 28th Street, Block 7646, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Ottley-Brown……..1

ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for decision, hearing closed.

296-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 2374 Concourse Associates LLC, owner; Blink 2374 Grand Concourse Inc., lessee.

SUBJECT – Application October 16, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within existing building. C4-4 zoning district.

PREMISES AFFECTED – 2374 Grand Concourse, northeast corner of intersection of Grand Concourse and East 184th Street, Block 3152, Lot 36, Borough of Bronx.

COMMUNITY BOARD #5BX

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Ottley-Brown……..1

ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on January 8, 2013, under Calendar No. 156-12-BZ and printed in Volume 98, Bulletin Nos. 1-2, is hereby corrected to read as follows:

156-12-BZ
CEQR #12-BSA-137K
APPLICANT – Sheldon Lobel, for Prospect Equities Operating, LLC, owner.
SUBJECT – Application May 17, 2012 – Variance (§72-21) to permit construction of a mixed-use residential building with ground floor commercial use, contrary to minimum inner court dimensions (§23-851). C1-4/R7A zoning district.
PREMISES AFFECTED – 816 Washington Avenue, southwest corner of Washington Avenue and St. John's Place, Block 1176, Lot 90, Borough of Brooklyn.
COMMUNITY BOARD #8BK
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 17, 2012, acting on Department of Buildings Application No. 320373742, reads in pertinent part:

> Proposed inner court for the residential portion of proposed 'mixed building' does not comply with minimum required dimensions; contrary to ZR 23-851; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an C1-4 (R7A) zoning district, a five-story mixed-use commercial/residential building with UG 6 on the ground floor and eight affordable housing units, which does not comply with the requirements for inner courts, contrary to ZR § 23-851; and

WHEREAS, a public hearing was held on this application on November 27, 2012, after due notice by publication in the *City Record*, and then to decision on January 8, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

WHEREAS, Councilmember Letitia James submitted a letter in support of the application; and

WHEREAS, the subject premises is a corner lot bounded by Washington Avenue to the east and St. John's Place to the north, within an C1-4 (R7A) zoning district; and

WHEREAS, the site is irregular in shape with approximately 22'-6" of frontage on Washington Avenue and 87'-10" of frontage on St. John's Place, with a total lot area of 3,972 sq. ft.; and

WHEREAS, the site is currently vacant, as a fire in June 2011 destroyed the mixed-use four-story building previously on the site; and

WHEREAS, the applicant proposes to construct a five-story and cellar mixed-use building, with Use Group 6 commercial use on the first floor and Use Group 2 affordable housing units on the second through fifth floors; and

WHEREAS, the proposed building will measure approximately 15,700 sq. ft. in floor area, with an FAR of 3.95 (the zoning district permits 15,888 sq. ft. and a maximum allowable FAR of 4.0), and will contain a total of eight residential units; and

WHEREAS, however, ZR § 23-851 requires a minimum inner court dimension of 30 feet and a minimum area of 1,200 sq. ft.; and

WHEREAS, the applicant proposes an inner court with dimensions of 23'-10" by 19'-5½" and 730 sq. ft. of area, a reduction of 7'-0" and approximately 10'-0" in dimensions, and 472 sq. ft. of area; and

WHEREAS, the applicant asserts that the irregular shape of the lot and the history of the site contribute to the unique physical condition, which creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the applicant states that the site has an irregular trapezoid shape, with a depth ranging from 22'-6" along Washington Avenue to 63'-3" at the rear of the site; and

WHEREAS, the applicant's land use map reflects that due to the angle at which Washington Avenue intersects St. John's Place and other parallel streets within the 400-ft. radius, there are approximately seven sites within the area that are of similar shape and size, but only the subject site is vacant; and

WHEREAS, as to the history of the site, in June 2008, the applicant purchased the mixed-use four-story building on the site in foreclosure as part of the Department of Housing Preservation and Development's (HPD) Third Party Transfer Program; and

WHEREAS, the applicant states that the program requires developers to temporarily relocate existing tenants while the building is being rehabilitated and reinstall the tenants in units of the same size once the restoration of the building is complete; and

WHEREAS, further, the applicant states that the owner entered into a regulatory agreement with the City of New York which requires compliance with certain restrictions for a 30-year period, including mandated residential rent levels and minimum household sizes; and

WHEREAS, the applicant submitted a letter from HPD reflecting that it supports the proposal and has given the applicant a low-interest rate loan through the Third Party Transfer Program, which dictates unit sizes and number of dwelling units for each proposed project; and

WHEREAS, the applicant states that the former building was occupied by three four-bedroom units with floor areas of 1,223 sq. ft. each and three three-bedroom units with floor

area of 1,007 sq. ft. each; and

WHEREAS, the proposed building will have four four-bedroom units with floor area of 1,286 sq. ft. each and four three-bedroom units with floor area of 1,040 sq. ft. each; and

WHEREAS, the applicant's analysis reflects that the complying building can accommodate units with 998 sq. ft. and 1,185 sq. ft., which can accommodate two and three bedrooms, respectively, rather than three and four bedrooms in the former building; and

WHEREAS, accordingly, the applicant states that a fully complying building would only accommodate smaller units with fewer bedrooms or fewer units and would not satisfy the requirement to replace the former units; and

WHEREAS, the applicant notes that a complying building may be able to accommodate more units, but they would not be able to replace the existing ones without creating duplexes which are impractical and inefficient for such a small building due to the introduction of individual circulation space; and

WHEREAS, the applicant states that to reflect the conditions of the prior building on the site, to be re-occupied by former tenants, the proposal includes four three-bedroom units and four four-bedroom units, similar in size to the prior units; and

WHEREAS, the applicant represents that due to the irregular shape of the lot and the court requirements, no complying building can be accommodated that would meet both inner court and HPD requirements regarding restoration of former tenants to dwelling units with identical room counts; and

WHEREAS, further, the applicant provided an analysis of a similar sized lot that is regular and rectangular in shape that showed that a conforming building accommodates and satisfies all HPD requirements regarding restoration of former tenants to dwelling units with former sizes and room counts; and

WHEREAS, the applicant states that the analysis confirms that the irregular shape of the site, which is a unique condition, creates a hardship for a conforming proposal to comply with zoning regulations and meet the programmatic needs established by HPD; and

WHEREAS, the applicant represents that the proposed inner court dimensions are the minimum needed to create units that meet HPD requirements; and

WHEREAS, the Board notes that the floor plate is dictated by the prior conditions and irregular lot and, thus there is little flexibility in satisfying the required quantity and size of units, but that because additional floor area was available, it allowed for another floor in the same footprint as the required floors; and

WHEREAS, further, the Board notes that it is not feasible to create duplex units to replace existing single floor units in such a small building; and

WHEREAS, the Board agrees that the unique shape, and history of the building on the site, with related HPD requirements, creates practical difficulties and unnecessary hardship in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) an as-of-right scenario with mixed-use and a complying inner court; (2) an as-of-right scenario with mixed-use and a side yard with a width of eight feet; (3) an as-of-right scenario with an outer court; and (4) the proposed scenario; and

WHEREAS, the study concluded that the only scenario which would result in a reasonable return is the proposed; 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 and history, 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 variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the court is not required on the ground floor, which will be occupied by commercial use, thus, the waiver only applies to floors two through five; and

WHEREAS, the applicant states that on both the Washington Avenue and St. John's Place sides of the building, a fully complying court would result in the building abutting the adjacent buildings for a greater depth than they do in the proposed scenario; and

WHEREAS, the applicant notes that the new building will replace the former building, which was constructed in approximately 1920 and did not provide a complying inner court, or required egress or fire safety measures; and

WHEREAS, accordingly, the applicant asserts that the proposed building will comply with all egress and fire safety requirements and will therefore provide increased safety to residents of the building as well as adjacent buildings; and

WHEREAS, the applicant represents that the impacts of the proposed waiver of inner court regulations on adjacent properties will be negligible when compared to available as-of-right scenarios; 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 applicant represents that the hardship was not created by the owner or a predecessor in title, but that the irregular shape of the lot is a historic condition; and

WHEREAS, based on the above, the Board agrees that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant states that the proposal complies with all bulk regulations except inner court dimensions and that it is 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 Unlisted action pursuant to Section 617 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. 12BSA137K, dated May 17, 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 within an C1-4 (R7A) zoning district, a five-story mixed-use commercial/residential building with UG 6 on the ground floor and eight affordable housing units, which does not comply with the requirements for inner courts, contrary to ZR § 23-851; *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 3, 2013"– eleven (11) sheets; and *on further condition*:

THAT the parameters of the building will be: five stories, a total height of 52'-1/2" without bulkhead, a total floor area of 15,700 sq. ft. (3.95 FAR), an inner court with the minimum dimensions of 23'-10" by 19'-5½", and a lot coverage of 79 percent, as illustrated on the Board-approved plans;

THAT the internal floor layouts on each floor of the proposed building 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) only;

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

THAT substantial 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, January 8, 2013.

***The resolution has been amended. Corrected in Bulletin No. 6, Vol. 98, dated February 13, 2013.**

BULLETIN

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60-13-A
71 & 75 Greene Avenue, northwest corner of Greene and Clermont Avenues., Block 2121, Lot(s) 44,41,36,39,105, Borough of **Brooklyn, Community Board: 2**. Appeal seeking to revoke Certificate of OccupancyNos. 147007 & 172308 as they were issued in error .

61-13-BZ
1385 Broadway, west side Broadway between West 37th and West 38th Streets, Block 813, Lot(s) 55, Borough of **Manhattan, Community Board: 5**. This application seeks a special permit under Section 73-36ZR to legalize the operation of a physical culture establishment.

62-13-BZ
2703 East Tremont Avenue, property fronts on St. Raymond's Avenue to the northwest, Williamsbridge Road to the northeast, and East Tremont Avenue to the southwest., Block 4076, Lot(s) 12, Borough of **Bronx, Community Board: 10**. Application is filed pursuant to ZR§73-243, as amended, seeking to legalize the existing Wendy's eating and drinking establishment with an accessory drive-through facility at the premises. C1-2/R6 zoning district.

63-13-BZ
11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street., Block 447, Lot(s) 13, Borough of **Queens, Community Board: 2**. Application filed pursuant to ZR§§42-31 and 73-36, as amended, seeking a special permit to allow the operation of rock climbing gymnasium, which is considered a physical culture establishment, within the building at the premises.

64-13-BZ
712 Avenue W, south side of Avenue W between East 7th Street and Coney Island Avenue., Block 7184, Lot(s) 5, Borough of **Brooklyn, Community Board: 15**. Application filed pursuant to ZR§73-622, as amended, to request a special permit to allow the enlargement of a single family residence located in a residential (R4) zoning district in the Special Ocean Parkway District.

65-13-BZ
123 Franklin Avenue, between Park and Myrtle Avenues., Block 1899, Lot(s) 108, Borough of **Brooklyn, Community Board: 3**. Variance pursuant to ZR§72-21 to permit a residential development, contrary to use regulations, ZR§42-00. M1-1 zoning 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 5, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 5, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

364-82-BZ
APPLICANT – Troutman Sanders LLP, for Little Neck Commons LLC, owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application December 13, 2012 – Extension of term of a previously granted Variance (§72-21) for the continued operation of a physical culture establishment (Bally's Total Fitness) which expired on January 18, 2013. C1-2/R3-2 zoning district.
PREMISES AFFECTED –245-24 Horace Harding Expressway, Horace Harding Expressway, 140' west of Marathon Parkway, Block 8276, Lot 100, Borough of Queens.
COMMUNITY BOARD #11Q

62-99-BZ
APPLICANT – Akerman Senterfitt LLP, for Starlex LP, owner; Bliss World LLC, lessee.
SUBJECT – Application June 19, 2012 –Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a physical cultural establishment (Bliss) which expired on January 31, 2009; Extension of Time to obtain a Certificate of Occupancy which which expired on February 1, 2004; Waiver of Rules. C6-6 zoning district.
PREMISES AFFECTED – 541 Lexington Avenue, east side of Lexington Avenue, between E. 49th Street and E. 50th Streets, Block 1304, Lot 20, Borough of Manhattan.
COMMUNITY BOARD #6M

APPEALS CALENDAR

292-12-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marie & Kenneth Fuchs, lessees.
SUBJECT – Application October 10, 2012 –Proposed reconstruction and enlargement of the existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. The proposed upgrade of the existing private disposal system in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. R4 zoning district.
PREMISES AFFECTED – 19 Marion Walk, east side of Marion Walk, 125' north of Breezy Point, Block 16350, Lot p/o400, Borough of Queens.
COMMUNITY BOARD #14Q

326-12-A thru 337-12-A
APPLICANT – Gibson Dunn, for Contest Promotions-NY LLC by Jessica Cohen
OWNER OF PREMISES: Lily Fong, Michael A. Maidman, Thomas Young, George Aryeh, Lily Fong,Vincent J. Ponte, Hung Ling Yung, David R. Acosta, James B. Luu, Fred G. Eng.
SUBJECT – Applications December 11, 2012 – Appeals challenging the Department of Buildings determination to revoke 12 permits previously issued permitting business accessory signs on the basis that they are appear to be advertising signs.
PREMISES AFFECTED –

52 Canal Street, Block 294, Lot 22, C6-2 zoning district, Manhattan
1560 2nd Avenue, Block 1543, Lot 49, C1-9 zoning district, Manhattan
2061 2nd Avenue, Block 1655, Lot 28, R8A zoning district, Manhattan
2240 1st Avenue, Block 1709, Lot 1, R7X zoning district, Manhattan
160 East 25th Street, Block 880, Lot 50, C2-8 zoning district, Manhattan
289 Hudson Street, Block 594, Lot 79, C6-2A zoning district, Manhattan
127 Ludlow Street, Block 410, Lot 17, C4-4A zoning district, Manhattan
1786 3rd Avenue, Block 1627, Lot 33, R8A zoning district, Manhattan
17 Avenue B, Block 385, Lot 1, R7A zoning district, Manhattan
173 Bowery, Block 424, Lot 12, C6-1 zoning district, Manhattan
240 Sullivan Street, Block 540, Lot 23, R7-2 zoning district, Manhattan
361 1st Avenue, Block 927, Lot 25, C1-6A zoning district, Manhattan

COMMUNITY BOARD #2/3/6/8/9/11M

CALENDAR

ZONING CALENDAR

284-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Jack Cayre, owner.
SUBJECT – Application September 25, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area (ZR 23-141) and perimeter wall height (ZR 23-631) requirements. R2X (OP) zoning district.
PREMISES AFFECTED – 2047 East 3rd Street, eastern side of East 3rd Street, between Avenue S and Avenue T, Block 7106, Lot 122, Borough of Brooklyn.
COMMUNITY BOARD #15BK

313-12-BZ
APPLICANT – Troutman Sanders LLP, for Flatbush Delaware Holding LLC, owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application November 20, 2012 – Special permit (§73-36) to permit the continued operation by Bally's Total Fitness of the existing physical culture establishment. C4-2/C4-4A zoning district.
PREMISES AFFECTED – 1009 Flatbush Avenue, block bounded by Flatbush Avenue, Albermarle Road, Bedford Avenue and Tilden Avenue, Block 5126, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #14BK

314-12-BZ
APPLICANT – Troutman Sanders LLP, for New York Communications Center Associates, L.P. c/o George Comfort & Sons Inc., owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application November 20, 2012 – Special permit (§73-36) to permit the continued operation by Bally's Total Fitness of Greater New York of the existing physical culture establishment. C6-4 (CL) zoning district.
PREMISES AFFECTED – 350 West 50th Street, block bounded by West 49th Street, Ninth Avenue, West 50th Street and Eighth Avenue, Block 1040, Lot p/1 Condo Lot 1003, Borough of Manhattan.
COMMUNITY BOARD #4M

325-12-BZ
APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Royal Charter Properties, Inc., for New York Presbyterian Hospital, owner.
SUBJECT – Application December 10, 2012– Variance (§72-21) to permit a modification of height and setback, lot coverage, rear yard, floor area and parking to facilitate development of a Use Group 4 maternity hospital and ambulatory diagnostic or treatment health care facilities (*New York Presbyterian Hospital*). R10/R9/R8 zoning districts.
PREMISES AFFECTED – 1273-1285 York Avenue, west side of York Avenue bounded by East 68th and 69th Streets, Block 1463, Lot 21, 31, Borough of Manhattan.
COMMUNITY BOARD #8M

341-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 403 Concord Avenue, Inc., owner.
SUBJECT – Application December 17, 2012 – Special Permit (§73-19) to permit a Use Group 3 school to occupy an existing building contrary to §42-00 of the zoning resolution. M1-2 zoning district.
PREMISES AFFECTED – 403 Concord Avenue, southwest corner of the intersection formed by Concord Avenue and East 144th Street, Block 2573, Lot 87, Borough of Bronx.
COMMUNITY BOARD #1BX

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, FEBRUARY 12, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

173-99-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.
SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Matrix Fitness Club*) which expired on March 6, 2011; Amendment for an increase in floor area at the cellar level; waiver of the Rules. M-1 zoning district.
PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43rd Avenue, Block 782, Lot 1, 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 Montanez 5
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 of a previously granted special permit for a physical culture establishment (PCE), which expired on March 6, 2011, and an amendment to expand the PCE use at the cellar level; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with continued hearings on October 23, 2012, November 20, 2012 and January 15, 2013, and then to decision on February 12, 2013; 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, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Ditmars Boulevard and 43rd Street, within an M1-1 zoning district; and

WHEREAS, the zoning lot has a total area of approximately 110,000 sq. ft. and is occupied by a shopping mall; and

WHEREAS, the PCE occupies approximately 17,960 sq. ft. of floor space located in the cellar of a portion of the 60,666 sq. ft. commercial building on the site; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 6, 2001 when, under the subject calendar number, the Board granted a special permit for the establishment of a PCE in the subject building for a term of ten years, to expire on March 6, 2011; and

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

WHEREAS, the applicant also requests an amendment to permit a 2,635.72 sq. ft. expansion of the PCE at the cellar level, from a total of 17,960 sq. ft. of floor space to a total of 20,595.72 sq. ft. of floor space; and

WHEREAS, at hearing, the Board raised concerns about the impact of the proposed expansion of the PCE on the parking spaces at the cellar level of the subject building; and

WHEREAS, in response, the applicant states that while the certificate of occupancy and approved plans indicate that there is accessory parking for 150 spaces on the site (84 spaces on the first floor and 66 spaces at the cellar level), the applicant states that the parking layout was never constructed pursuant to the proposed plans and the actual existing parking layout consists of a total of 136 parking spaces (84 spaces on the first floor and 52 spaces at the cellar level); and

WHEREAS, the applicant further states that the proposed expansion of the PCE floor space at the cellar will not affect the existing parking layout or the existing number of parking spaces; and

WHEREAS, additionally, the applicant represents that the parking provided at the site is not required parking, and therefore complies with the Zoning Resolution, because the original manufacturing building at the site was constructed prior to 1961, and pursuant to ZR § 44-21 there is no parking required for conversions that do not increase the floor area of the building; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on March 6, 2001, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from March 6, 2011, to expire on March 6, 2021, and to permit the noted modifications to the site; *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 9, 2012'-(3) sheets and 'January 7, 2013'-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on March 6, 2021;

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 above conditions will appear on the

certificate of occupancy;

THAT a new certificate of occupancy will be obtained by February 12, 2014;

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."

(DOB Application No. 400913302)

Adopted by the Board of Standards and Appeals, February 12, 2013.

189-03-BZ

APPLICANT – Eric Palatnik, P.C., for 830 East 233rd Street Corp., owner.

SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expires on October 21, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.

PREMISES AFFECTED – 836 East 233rd Street, southeast corner of East 233rd Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to March 12, 2013, at 10 A.M., for deferred decision.

551-37-BZ

APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.

SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of approved variance for the continued operation of an automobile repair shop (*Red's Auto Repair*) which expired on July 15, 2012; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, between 234th and 233rd Street, Block 8166, Lot 20, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for continued hearing.

68-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application August 24, 2012 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on May 19, 2012; Amendment §11-412) to permit the legalization of certain minor interior partition changes and a request to permit automotive repair services on Sundays; Waiver of the Rules. R5D/C1-2 & 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 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 12, 2013, at 10 A.M., for decision, hearing closed.

18-02-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 8610 Flatlands Realty, LLC, owner.

SUBJECT – Application August 17, 2012 – Extension of Term (§11-411) of an approved variance for the continued operation of an automotive laundry (UG 16B) which expired on August 13, 2012. C2-3/R5D zoning district.

PREMISES AFFECTED – 8610 Flatlands Avenue, southwest corner of intersection of Flatlands Avenue and 87th Street, Block 8023, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to March 12, 2013, at 10 A.M., for continued hearing.

141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.

SUBJECT – Application August 7, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) permitting the construction of a three-story synagogue (*Congregation Tefiloh Ledovid*) which expired on June 19, 2011; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60th Street, corner of 21st Avenue and 60th Street, Block 5521, Lot 42, 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 March 12, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

145-12-A
APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.
SUBJECT – Application May 3, 2012 – Appeal challenging the determination of the Department of Buildings requiring the owner to obtain approval from the Landmarks Preservation Commission, prior to reinstatement and amendments of the permits. R8B zoning district.
PREMISES A.FFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #4M
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 Montanez 5
THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a determination, dated April 3, 2012, signed by the Borough Commissioner of the Department of Buildings (DOB) with respect to DOB Application No. 103907337 (the "Final Determination"); and

WHEREAS, the Final Determination states, in pertinent part:

> Because the permit has already been revoked pursuant to the letter dated December 22, 2010, any reinstatement and amendment must comply with all current laws, including the requirement to obtain Landmarks Preservation Commission approval; and

WHEREAS, a public hearing was held on this appeal on September 25, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2012, and then to decision on February 12, 2013; 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, State Assembly Member Richard Gottfried, State Senator Tom Duane, New York City Council Speaker Christine Quinn, and Manhattan Borough President Scott Stringer provided testimony or made submissions in opposition to the appeal asserting that the permit was invalid, and that the construction was performed illegally and in bad faith; specifically, the officials assert that the permits were obtained, in part, based on inaccurate self-certified plans and that they were properly revoked and work continued despite violations and stop-work orders prior to Landmarks Preservation Commission (LPC) historic district designation; and

WHEREAS, the Historic Districts Council, the Society for Architecture of the City, the West 29th Street Block Association, several historians, and other community members provided written and oral testimony in opposition to the appeal, citing primary concerns about the historic significance of the building; and

WHEREAS, Friends of the Hopper-Gibbons Underground Railroad and Lamartine Place Historic District provided written and oral testimony raising primary concerns that: (1) the building is subject to the jurisdiction of the LPC because the 2005 permit is not valid; (2) the permit cannot be cured; and (3) the Appellant does not have any vested rights to continue construction because it has misrepresented the amount of work performed; and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the Appellant filed a companion Multiple Dwelling Law (MDL) waiver application under BSA Cal. No. 144-12-A, which is scheduled for decision April 23, 2013, pending LPC approval; and

WHEREAS, the site is located on the north side of West 29th Street, between Eighth Avenue and Ninth Avenue, within an R8B zoning district within the Lamartine Place Historic District; and

WHEREAS, the site has been occupied by a four-story and basement converted dwelling with ten units (two per floor); and

WHEREAS, the Appellant's proposal reflects the enlargement of the building to include extensions at the third and fourth floors, and a new fifth floor; an earlier iteration of the plans reflected a partial sixth floor (penthouse), which is no longer proposed; and

WHEREAS, the construction has been partially completed; and

WHEREAS, the enlargement required several waivers of MDL regulations; and

Procedural History

WHEREAS, in June 2004, the Appellant filed plans at DOB to vertically and horizontally enlarge the building – to horizontally enlarge the third and fourth floors and to construct a fifth floor and partial sixth floor; and

WHEREAS, on March 25, 2005, DOB issued a permit pursuant to the Professional Certification process; and

WHEREAS, the Appellant asserts that the alterations have not been completed but that the structural work for the horizontal and vertical enlargements was largely completed by 2006; the Appellant states that no structural work has been performed since 2009; and

WHEREAS, on May 29, 2007, DOB granted approval for plans that reflect MDL measures and include the partial sixth floor (which was later subject to an objection for failure to comply with the "Sliver Law" at ZR § 23-692); and

WHEREAS, on October 21, 2008, DOB issued a letter of intent to revoke because several outstanding objections had not been resolved; and

WHEREAS, on November 25, 2008, the Board decided companion appeals, pursuant to BSA Cal. Nos. 81-08-A and 82-08-A, which concluded that the Board, not DOB, has jurisdiction to waive requirements of the MDL (the "MDL Appeal"); and

WHEREAS, on March 11, 2009, DOB approved plans

for an enlargement with a fifth floor, but without the partial sixth floor; this proposal also requires MDL waivers; and

WHEREAS, on March 13, 2009, DOB issued a bulletin related to MDL issues, in light of the MDL Appeal; and

WHEREAS, on May 27, 2009, DOB issued a letter of intent to revoke based on MDL non-compliance; and

WHEREAS, on July 23, 2009, DOB revoked the permit based on MDL non-compliance; and

WHEREAS, on October 13, 2009, the LPC designated the site and the area surrounding the site as the Lamartine Place Historic District; and

WHEREAS, on March 24, 2010, DOB approved revised plans, which address the MDL issues, but did not issue the permit; and

WHEREAS, on April 6, 2010, DOB rescinded its permit revocation; DOB later stated the rescission of the revocation was erroneous as the basis for the rescission was an application for a post approval amendment to remove the fifth floor and partial sixth floor, which was never issued and does not reflect the current proposal; and

WHEREAS, on December 22, 2010, DOB revoked the permit based on MDL non-compliance; and

WHEREAS, on May 30, 2011, DOB audited the permit and issued objections including those related to MDL non-compliance, the requirement for obtaining LPC approval, and Sliver Law non-compliance; and

WHEREAS, on April 3, 2012, DOB reissued the May 2011 objections which form the basis of the appeal; and

WHEREAS, additionally, throughout the DOB review process, DOB issued a series of violations including those related to construction safety, construction contrary to plan, and work without a permit; and

The Landmarks Law

> Administrative Code § 25-305(b)(1) Landmarks Preservation and Historic Districts - Regulation of construction, reconstruction, alterations and demolition
>
> Except in the case of any improvement mentioned in subdivision a of section 25-318 of this chapter and except in the case of a city-aided project, no application shall be approved and no permit or amended permit for the construction, reconstruction, alteration or demolition of any improvement located or to be located on a landmark site or in an historic district or containing an interior landmark shall be issued by the department of buildings . . . until the commission shall have issued either a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed pursuant to the provisions of this chapter as an authorization for such work; and

The Appellant's Position

WHEREAS, the Appellant appeals DOB's decision that the permit was improperly revoked because LPC approval is not required and requests that the Board direct reinstatement of the 2005 permit, last renewed on April 30, 2009, based upon plans approved on March 11, 2009, which allowed for the enlargement of the building; and

WHEREAS, the Appellant's primary arguments are that (1) because the permit was issued prior to LPC's designation of the Lamartine Place Historic District, the proposal is not subject to LPC approval; (2) DOB improperly revoked the permit in 2009 and in 2010; (3) the absence of MDL waivers is a curable error that does not impair the permit's validity; (4) DOB and, in the alternate, the Board can reinstate the permit not subject to LPC approval; and (5) the amount of construction performed and expenditures satisfies the criteria for common law vested rights and allows for the continuation of construction; and

- LPC Approval is Not Required and DOB Improperly Revoked the Permit

WHEREAS, the Appellant asserts that LPC approval is not required because the permit was issued in 2005, before the LPC designation; and

WHEREAS, the Appellant asserts that the Landmarks Law is clear and that the issuance of a permit prior to landmark designation is the only requirement for exempting a site, that is later designated by LPC, from LPC review; and

WHEREAS, the Appellant asserts that the undisputed fact that its permit was first issued in 2005, prior to the October 13, 2009 date that the designation of the Lamartine Place Historic District was finalized, is controlling and satisfies the Landmarks Law exemption; and

WHEREAS, the Appellant asserts that LPC did not designate the historic district until October 13, 2009, four and one-half years after the issuance of the permit; and

WHEREAS, the Appellant asserts that, per the Administrative Code (AC), even if the permit had been issued one day prior to LPC designation, that would be sufficient to exempt the project from LPC jurisdiction; and

WHEREAS, the Appellant asserts that permit issuance prior to LPC designation alone establishes the right to continue construction without LPC review, and the amount of work performed is irrelevant; and

WHEREAS, further, the Appellant asserts that DOB improperly revoked the permit on July 23, 2009 for failure to obtain MDL approval and on December 22, 2010 for failure to obtain LPC approval in accordance with AC § 25-305(b)(1) because (1) it had other remedies than revocation and (2) the permit was issued in 2005, before the LPC designation; and

WHEREAS, the Appellant asserts that the permit revocation was an abuse of discretion and DOB could have issued a Stop Work Order rather than a revocation; and

- Permit Validity and Reinstatement

WHEREAS, the Appellant asserts that the permit was valid as it can be corrected consistent with prior examples of permits being corrected; and

WHEREAS, the Appellant contends that DOB has been inconsistent with regard to its position on what is a correctable error in the context of permit validity and that DOB, within the scope of its powers and consistent with its prior positions, may deem the permit cured by the Board's

grant of waivers under MDL § 310, and allow for its reinstatement; and

WHEREAS, the Appellant asserts that the failure to obtain MDL waivers from the Board prior to permit issuance is a correctable error and that permit issuance prior to designation establishes the right to continue without LPC review, even if no work is performed pursuant to the permit; and

WHEREAS, the Appellant asserts that DOB took a different position about permit validity and correctable errors in BSA Cal. No. 125-11-A ("East 6th Street"), a common law vesting case for a site that had been the subject of an earlier MDL waiver case (under BSA Cal. No. 217-09-A); and

WHEREAS, specifically, the Appellant cites to a DOB letter associated with East 6th Street in which DOB said that "such reinstatement would not present a correctable error issue for DOB as long as the Board also granted the applicant vested rights under the old R7-2 zoning"; and

WHEREAS, the Appellant asserts that DOB's analysis in East 6th Street is applicable here in that if the Board were to approve the companion MDL § 310 application, the error of the permit would be correctable; and

WHEREAS, the Appellant asserts that the intervening rezoning at issue in East 6th Street is analogous to the intervening LPC designation here in that both are changes in law that can be resolved subsequent to a retroactive MDL approval; and

WHEREAS, the Appellant asserts that the infirmity caused by DOB's prior policy of granting MDL waivers is correctable by application to the Board pursuant to MDL § 310, which the Appellant is pursuing by companion application (BSA Cal. No. 144-12-A); and

WHEREAS, the Appellant cites to the Board's decision in East 6th Street for the point that it was "within DOB's and the Board's authority to determine that the corrected permit is valid;" and

WHEREAS, the Appellant also cites to the Board's decisions in two vested rights cases, which went on to litigation – BSA Cal. No. 85-06-BZY/Menachem Realty v. Srinivasan, Index No. 9054/07 (2d Dept. 2009) and BSA Cal. No. 17-05-A/GRA V v. Srinivasan, 12 N.Y.3d 863 (2009); and

WHEREAS, the Appellant asserts that in Menachem, the court reversed the Board's decision, which had supported DOB's determination that certain permit errors were not correctable and in GRA, the Board accepted DOB's position that plans can be amended to correct zoning defects after zoning changes; and

WHEREAS, the Appellant asserts that DOB may reinstate the revoked permit and that, in the alternate, the Board may reinstate the permit *nunc pro tunc*, without requiring LPC approval; and

WHEREAS, the Appellant asserts that DOB's position that reinstatement of the permit, after a successful MDL waiver application before the Board still triggers LPC review is erroneous; and

WHEREAS, the Appellant states that DOB's position is not supported by the AC, is contrary to fundamental fairness, and inconsistent with the litigation associated with 515 East 5th Street v. Board of Standards and Appeals, Index No. 117203/08; and

WHEREAS, the Appellant asserts that the Board's position is that if an MDL application is granted, the original permit is "reinstated" and a new permit is neither requested nor necessary; and

WHEREAS, specifically, the Appellant cites to the City's answer in East 5th Street, which stated that:

> Pursuant to MDL § 310 Petitioners [site owners] may appeal this determination [to issue objections relating to the MDL] to the BSA and seek a hardship waiver from the BSA that would allow them to use the fire safety mechanisms they have installed or plan to install. If the BSA grants the hardship waivers, Petitioners' permits may be reinstated, their construction will be deemed lawful, and the instant proceeding will be deemed moot; and

WHEREAS, the Appellant concludes that once the MDL waivers are granted, the permit will become valid and DOB and the Board can both reinstate without the requirement for LPC review; and

WHEREAS, further, the Appellant asserts that Charter § 666(7) gives the Board authority to modify the application "of the strict letter of the law, so that the spirit of the law shall be observed" and to do "substantial justice" and, thus, the Board can direct the reinstatement; and

- A Common Law Vested Right to Continue Construction

WHEREAS, the Appellant asserts that the permit should be reinstated under the theory of substantial justice and the common law doctrine of vested rights; and

WHEREAS, the Appellant cites to the criteria set forth in New York State case law that the Board has followed in common law vested rights cases: (1) substantial construction has been completed; (2) substantial expenditures have been made; and (3) serious loss to the owner would result under the new requirements; and

WHEREAS, the Appellant submitted an analysis and evidence in support of its claim that the amount of construction it completed satisfies the three elements of the common law vested rights analysis including a description of the amount of work performed, expenditures, and the loss that would be incurred to remove the enlargement to the building; and

WHEREAS, finally, the Appellant asserts that the vested rights doctrine applies to sites subject to landmark designation, and cites to the Court of Appeals for the 9th Circuit's decision in R.C. Hedreen Co. v. the City of Seattle, 74 F.3d 1246 (1996) for the point that the vested rights doctrine applies in the landmark designation context; and

The Department of Buildings' Position

WHEREAS, DOB asserts that (1) reinstatement of the permit is subject to LPC approval because the permit, issued

prior to LPC designation, was invalid; (2) it appropriately exercised its authority by revoking the permit; and (3) it does not have the authority to reinstate the permit without LPC approval; and

- The Requirement for LPC Approval

WHEREAS, DOB finds that because the permit was invalid, LPC approval is required; and

WHEREAS, DOB asserts that it has not been inconsistent or arbitrary and capricious as to what constitutes a correctable error; and

WHEREAS, as to the Appellant's assertion that DOB's actions are inconsistent with the prior decision in East 6th Street, DOB notes that as in the subject case, it issued a vertical extension permit for East 6th Street despite MDL violations; and

WHEREAS, DOB states that shortly before the Board directed the revocation of the East 6th Street permit for MDL noncompliance, a rezoning occurred that further prohibited the enlargements that were the subject of the revoked permits; and

WHEREAS, DOB notes that the Appellant for East 6th Street then successfully obtained an MDL waiver under MDL § 310 from the Board, which allowed part of the extension to be built (BSA Cal. No. 217-09-A) and then sought relief again (BSA Cal. No. 125-11-A) to secure the common law vested right to complete construction under the revoked permit (as amended by BSA's decision in BSA Cal. No. 217-09-A) under the old zoning regulations; and

WHEREAS, DOB states that during the proceedings of the East 6th Street common law vested rights application, it informed the Board that:

> if this Board directs DOB to reinstate permit 104744877 with the plans and MDL waiver previously approved in BSA Cal. No. # 217-09-A, such reinstatement would not present a correctable error issue for DOB as long as this Board also granted the applicant vested rights under the old R7-2 zoning
> (DOB January 10, 2012 submission in Cal. No. 125-11-A)(emphasis added); and

WHEREAS, DOB asserts that the quoted language is consistent with DOB's position in the subject case and that without a ruling in BSA Cal. No. 125-11-A granting vested rights to continue construction under old zoning, the Appellant in that case was in a position analogous to Appellant in this case (i.e., having a permit revoked for MDL errors with a subsequent change in law); and

WHEREAS, DOB states that in both cases, the MDL error would not be deemed correctable, and new construction would have to comply with current law (i.e., new zoning in 125-11-A and LPC designation in the instant case); however, as per the above BSA Cal. No. 125-11-A quote, if the Board granted vested rights under old zoning (which it ultimately did), then the Appellant was restored to a position before the change in law, thus making the MDL error correctable; DOB made an analogous statement in its September 11, 2012 submission in this case, saying:

> If, however, the Board finds good faith reliance and reverses [rather than simply reinstating] the permit revocation, then LPC approval would be necessary only to the extent that a new Post Approval Amendment ("PAA") needs to be filed to address deviations from the last approved PAA prior to LPC designation; and

WHEREAS, accordingly, DOB concludes that it has not been inconsistent regarding its policies of correctable and non-correctable errors in the above-referenced cases; and

WHEREAS, DOB states that if the Board finds good faith reliance and reverses the permit revocation, then LPC approval would be necessary only to the extent that a new PAA needs to be filed to address deviations from the last approved PAA prior to LPC designation; and

WHEREAS, therefore, in determining whether to grant the MDL waiver and to rescind the permit revocation, DOB respectfully requests that the Board review the plans submitted in connection with the PAA issued on or about March 11, 2009, the last approved PAA prior to LPC designation as any deviations from these previously approved plans will require a new PAA and the requisite LPC approval prior to DOB's renewal of the permit; and

- DOB Properly Revoked the Approval at Issue

WHEREAS, DOB asserts that it properly revoked the approval because it was, undisputedly, not in compliance with the MDL; and

WHEREAS, DOB states that there was ample notice to the Appellant of the MDL deficiency before the revocation took place; and

WHEREAS, specifically, DOB asserts that the Appellant was on notice that DOB improperly waived the MDL as a necessary precondition to the approval as of November 25, 2008, when the Board decided the MDL Appeal, finding that DOB did not have the authority to so waive the MDL; and

WHEREAS, DOB notes that more than six months after the Board's decisions on appeal, the Appellant had not addressed the MDL violations, and, thus, DOB issued objections and an intent to revoke letter dated May 27, 2009 (the "May Intent Letter") and the Appellant had still failed to remedy the MDL objections for an additional two months when DOB finally revoked the approval and permit on July 23, 2009 (the "July Revocation"); and

WHEREAS, DOB states that even after the revocation, the Appellant could have obtained the MDL waiver and reinstated the permit without being affected by any change in law, as the district in which the premises is located was not designated by LPC until October 13, 2009; and

WHEREAS, DOB states that, however, the Appellant did not even get plans approved to remedy the MDL issues until about March 24, 2010 (and the PAA based on these plans was never issued), 16 months after the MDL Appeal was decided, and approximately ten months after the notice of intent to revoke; and

WHEREAS, DOB asserts its position that it has the

authority to revoke approval of construction documents that it issued in error; and

WHEREAS, DOB cites to AC § 28-104.2.10, which provides, in relevant part:

> Revocation of approval. The commissioner may, on notice to the applicant, revoke the approval of construction documents for failure to comply with the provisions of this code *or other applicable laws or rules …; or whenever an approval has been issued in error and conditions are such that approval should not have been issued.* Such notice shall inform the applicant of the reasons for the proposed revocation and that the applicant has the right to present to the commissioner or his or her representative within 10 business days of personal service or 15 calendar days of the posting of service by mail, information as to why the approval should not be revoked. (emphasis added); and

WHEREAS, DOB also states that it is undisputed that it issued the approval in error and that significantly more notice was provided to Appellant between the May Intent Letter and the July Revocation than was required by Code; and

WHEREAS, DOB states that it is under no obligation to refrain from revoking the Approval for more than 15 days after the notification required by Code and that because it waited approximately two months after this notification (and about eight months after the MDL Appeal) to revoke the Approval, DOB's revocation in this case was clearly proper; and

- Buildings May not Reinstate the Revoked Permit

WHEREAS, DOB asserts that because: (1) it properly revoked the approval because of MDL violations; and (2) the building was subsequently designated to be within a historic district subject to LPC's jurisdiction, it may not properly reinstate the approval and permit (either on equitable grounds or otherwise) without LPC approval; and

WHEREAS, DOB asserts that as of October 13, 2009, LPC designated the historic district, and thus, any new permit, or change from an existing permit, would require LPC approval (see AC § 25-305(b)(1)); and

WHEREAS, DOB states that it cannot "reinstate" the permit in the sense of the term used in AC § 28-105.9 as such reinstatement triggers compliance with all laws at the time application for reinstatement is made; and

WHEREAS, DOB asserts that, with respect to the job at the subject premises, this means that the Appellant would need to obtain LPC approval for all construction, including the extension on the third and fourth floors and the addition of the fifth floor; and

WHEREAS, accordingly, DOB asserts that because the approval had been properly revoked, DOB could not reinstate and allow the Appellant to avoid the construction regulations imposed by its new designation within a historic district; and

WHEREAS, DOB states that while DOB allows correction of minor construction document deficiencies after a change in applicable law (e.g., LPC designation), such correction is only allowed *before* permit revocation, or when the permit revocation was in error; and

WHEREAS, DOB states that furthermore, and as explained at the hearing on these matters, its position is that failure to obtain a discretionary approval from another agency as a necessary precondition to a permit (e.g., the Board's MDL waiver) is considered a major deficiency and renders the permit invalid and such deficiency cannot be corrected without compliance with the new law; and

WHEREAS, DOB states that it does not have the authority to change its position on revocation in this case by considering factors of equity, such as its original erroneous waiver of the MDL; and

WHEREAS, DOB asserts that an exclusive list of the Commissioner of Buildings' powers and duties is set forth in NYC Charter § 645(b), and while this list covers such technical matters as the examination of plans, issuance of certificates of occupancy, and enforcement of construction laws, it does not grant the Commissioner equitable powers; and

WHEREAS, finally, DOB states that in the exercise of its technical power under the Charter, it properly revoked the Approval, and it has no powers to reinstate after a change in law, either on equitable grounds or otherwise; and

Conclusion

WHEREAS, the Board upholds DOB's determination for the following primary reasons (1) the AC requires LPC approval for reinstated permits; (2) the AC supports DOB's decision to revoke the permit; (3) there is no basis for DOB or the Board to reinstate the permit without LPC approval; and (4) a vested rights analysis is not applicable; and

WHEREAS, the Board finds that the language of AC § 25-305(b)(1), which states that LPC approval is required for a proposal on a site within LPC jurisdiction prior to DOB's issuance of a permit, is clear and unambiguous; and

WHEREAS, the Board also agrees with DOB that the AC requires a revoked permit to follow the code and laws at the time of reinstatement and, therefore, the permit is subject to LPC approval prior to reissuance; and

WHEREAS, in the context of a case subject to the Landmarks Law, the Board concludes that there is no basis for it to direct DOB to reinstate the permit, contrary to the AC, after a potential approval of MDL waivers; and

WHEREAS, the Board states that although the basis for DOB to revoke the permits is not the issue on appeal, if it were, the basis for the revocation is clear in that DOB issued its notice of intent to revoke in July 2009, the Board rendered its decision in the MDL Appeal in November 2008, and DOB issued its MDL bulletin in March 2009; and

WHEREAS, accordingly, the Board notes that the Appellant had time to pursue an MDL waiver, prior to the revocation, and failed to do so; and

WHEREAS, the Board notes that, instead, the Appellant pursued an MDL cure and received approval and a rescission

of the revocation based on MDL reliant drawings in February and April 2010, but still did not pursue the MDL waiver or correct any illegalities on the site based on the permit, and thus the permit was again revoked in December 2010; and

WHEREAS, the Board agrees with DOB that the permit was properly revoked in December 2010 (one and one-half years prior to the filing of this appeal) and therefore the appeal of the revocation is untimely; however even if the permit revocation is considered, the basis for such revocation is grounded in law since the MDL waiver was erroneous, and therefore the permit was not valid when issued; and

WHEREAS, the Board does not take a position regarding DOB's policy on what is a correctable error; however, it notes that the Appellant has not established that precedent requires that it correct the failure to secure the required MDL waiver on equitable grounds; and

WHEREAS, the Board also accepts DOB's assertion that cures to permits that require discretionary actions are not considered correctable unless the agency correcting them instructs DOB to reinstate the permit, which the Board finds to be consistent with DOB's position in East 6th Street; and

WHEREAS, the Board distinguishes the facts in Menachem and GRA, which both involved vested rights in a zoning context; and

WHEREAS, the Board accepts DOB's position that certain errors in certain contexts are not correctable, such as in BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard), in which it upheld DOB's determination that the sequencing of permits including demolition was not a correctable error; and

WHEREAS, the Board also notes that the Appellant has not cited any cases that involve the requirement of sequencing or another agency's discretionary approval to discredit DOB; and

WHEREAS, although the Board does not find that the vested rights criteria applies to the subject case, it does note that a valid permit prior to the rezoning date is a threshold element for a vesting application, similar to the requirement that a valid permit be issued prior to landmark designation; and

WHEREAS, the Board cites to the Zoning Resolution and case law for the prerequisite of a valid permit: "[t]he provisions of this Section shall apply to minor developments, major developments or other construction authorized by building permits lawfully issued before the effective date of an applicable amendment of this Resolution" (ZR § 11-33) and New York State courts which repeat that vested rights can only be obtained where there is reliance on a valid permit (See Perrotta v. Department of Buildings, 107 A.D.2d 320, 325 (N.Y. App. Div. 1st Dept. 1985); Village of Asharoken v. Pitassy, 119 A.D.2d 404, 417 (N.Y. App. Div. 2nd Dept. 1986); and Natchev v. Klein, 41 N.Y.2d 834, 834 (1977)); and

WHEREAS, the Board notes that in Perrotta, DOB erroneously issued a permit due to its own initial failure to notice that a builder's plans did not comply with zoning regulations, and the court agreed with DOB that the permit was not valid and stated that "[a] determination as to whether [a] petitioner had vested rights under [its] building permit must, of necessity, involve an examination of the validity of the permit, as well as compliance with technical provisions of the Zoning Resolution, and this is clearly an appropriate inquiry for agency expertise" (107 A.D.2d at 324); and

WHEREAS, the Board notes that the courts have upheld agencies' determinations regarding permit validity on the principle that they were reasonable and based on substantial evidence, without evaluating the criteria for assessing permit validity; and

WHEREAS, the Board notes that only Menachem questions DOB's and the Board's conclusion on permit validity as DOB ultimately conceded in GRA that minor zoning non-compliance was curable; Menachem, similarly involved minor non-compliance not associated with the rezoning (the absence of a ramp and tree pits); and

WHEREAS, the Board distinguishes the MDL Appeal as a case where the Board actually directed DOB to revoke the permit, which is not the case here (the Board also notes that in the MDL Appeal, the permit had actually lapsed by operation of law prior to the Board's decision and, thus, the revocation took place after the rezoning); and

WHEREAS, the Board notes that in the MDL Appeal, the revocation was by the Board in the context of an interpretive appeal, rather than by DOB during the course of remedying its error; and

WHEREAS, the Board finds that the only relevant questions are those associated with whether the permit was issued prior to the historic district designation and the Board agrees with DOB that permit issuance must mean issuance of a *valid* permit; and

WHEREAS, the Board accepts DOB's determination that the permit is not valid since it was issued absent the Board's MDL waivers and thus was MDL non-compliant; and

WHEREAS, further, the Board notes that there was not a permit in place at the time of the historic district designation; and

WHEREAS, the Board agrees with DOB that the Appellant misreads the Board's answer in the East 5th Street litigation to say that once an MDL is granted, such permit will become valid; and

WHEREAS, the Board finds that the Appellant's arguments regarding vesting are misplaced as there is not any precedent, which extends the vesting doctrine to landmarking as neither the Zoning Resolution nor New York State case law have set forth findings for allowing a property owner to establish a vested right to continue construction on a site not affected by a zoning change but, rather affected by an LPC designation; and

WHEREAS, the Board distinguishes zoning changes and LPC designation in that in the rezoning context, the work being performed would not be allowed under the new zoning scheme, whereas the proposal and work in the landmark context may ultimately be allowed, but is just subject to LPC review and approval so the standard may be different; and

WHEREAS, the Board finds that the Appellant's

reliance on the Seattle case Hedreen is misplaced in that it involved a moratorium on landmarking a historic theater to allow for construction, was decided against the developer who sought to extend the moratorium on landmarking, and did not involve New York State laws or statutes; further, against the Appellant's case, the court actually said: "Hedreen asks us to broaden the scope of the vesting doctrine to cover the proceedings and designating ordinances authorized by the landmarks ordinance. The Washington Supreme Court has recently expressed its unwillingness to expand the doctrine, which is one of the most protective of developers' rights in the country. [Erickson, 872 P.2d at 1096-97] We too are unwilling to expand it and we decline Hedreen's invitation"; and

WHEREAS, the Board notes that the AC clarifies that a continued right to construct on a site affected by an LPC designation is achieved by establishing the issuance of the permit prior to designation and not through the showing of work done and expenditures as in a rezoning action; and

WHEREAS, accordingly, the Board finds that the Appellant's analysis regarding work performed and expenditures is irrelevant in the context of seeking exemption from LPC review post-designation; and

WHEREAS, the Board concludes that, contrary the Appellant's contention, questions of fairness are beyond the scope of its administrative appeals and that, instead, it relies on the text of the AC; and

WHEREAS, accordingly, the Board has not considered questions of fairness; and

WHEREAS, as to the Board's Charter authority regarding hardship, the Board does not find that LPC review and approval constitutes a hardship to be remedied by its general Charter authority; the Board asserts that the Appellant has the ability to obtain approval from LPC; further, the Board cannot make the finding that the spirit of the law is preserved and substantial justice is done; and

WHEREAS, the Board finds that if it were to instruct DOB to reinstate the permit, it would be tantamount to waiving the AC related to permit reinstatement under current law and the basis would be in equity; and

WHEREAS, the Board finds that the Appellant has mischaracterized the Board's statements in the East 5th Street litigation and that the meaning of the Board's statement was that there would be a potential for reinstatement after an MDL approval, not that a reinstatement was guaranteed or even warranted; and

WHEREAS, based on the above, the Board agrees with DOB that LPC approval is required and the permit should not be reinstated without it.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination, dated April 3, 2012, determining that *inter alia* LPC approval is required, is hereby denied.

Adopted by the Board of Standards and Appeals, February 12, 2013.

103-12-A

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for deferred decision.

144-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f). R8B zoning district.

PREMISES AFFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, 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 April 23, 2013, at 10 A.M., for decision, hearing closed.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application September 5, 2012 – Reopening for a court remand to review the validity of the permit at issue in a prior vested rights application.

PREMISES AFFECTED – 1882 East 12th Street, west side of East 12th Street approx. 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 12, 2013
1:30 P.M.

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

ZONING CALENDAR

9-12-BZ
CEQR #12-BSA-065K
APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.
SUBJECT – Application January 17, 2012 – 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 – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 15, 2012, acting on Department of Buildings Application No. 320396308, reads in pertinent part:

Proposed floor area ratio is contrary to ZR 23-141(a); and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, 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 July 17, 2012, after due notice by publication in *The City Record*, with continued hearings on August 21, 2012, September 25, 2012, October 30, 2012 and January 29, 2013, and then to decision on February 12, 2013; 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Girard Street and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 10,800 sq. ft., and is occupied by a single-family home with a floor area of 2,978 sq. ft. (0.28 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 2,978 sq. ft. (0.28 FAR) to 9,388 sq. ft. (0.86 FAR); the maximum permitted floor area is 5,400 sq. ft. (0.50 FAR); 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, at hearing, the Board questioned which portions of the original home were being retained, and whether the proposed home fits within the permitted building envelope in the underlying R3-1 zoning district; and

WHEREAS, in response, the applicant submitted revised plans which reflect that portions of the floors and walls at the cellar, first, and second floors of the home will remain; and

WHEREAS, the applicant represents that the revised plans reflect a complying building envelope, and provided a Zoning Resolution Determination form that it submitted to DOB to request confirmation that the proposed roof design complies with the permitted building envelope, pursuant to ZR § 23-631; 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, in 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, 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 15, 2013"-(13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the

building: a maximum floor area of 9,388 sq. ft. (0.86 FAR), as illustrated on the BSA-approved plans;

THAT the envelope of the building will be reviewed by DOB for compliance with the underlying R3-1 district regulations;

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, February 12, 2013.

261-12-BZ
CEQR #13-BSA-027M
APPLICANT – Sheldon Lobel, P.C., for One York Property, LLC, owner; Barry's Bootcamp Tribeca LLC, lessee.
SUBJECT – Application August 31, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Barry's Bootcamp*) on the first and cellar floors of existing building. C6-2A (TMU) zoning district.
PREMISES AFFECTED – 1 York Street, south side of Laight Street between Avenue of Americas, St. John's and York Streets, Block 212, Lot 7503, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 27, 2012, acting on Department of Buildings Application No. 104220683, reads in pertinent part:

> The proposed Physical Culture Establishment is not permitted, as of right, in a C6-2A zoning district, per ZR 32-10 and, therefore, requires a special permit for the Board of Standards and Appeals per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-2A zoning district and the Special Tribeca Mixed-Use District, the operation of a physical culture establishment (PCE) on the cellar and first floor of a twelve-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in *The City Record*, and then to decision on February 12, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez, Commissioner Hinkson 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 Laight Street between Avenue of the Americas, St. John's Lane and York Street, in a C6-2A zoning district within the Special Tribeca Mixed-Use District; and

WHEREAS, the site has 184 feet of frontage on Avenue of the Americas, 100 feet of frontage on York Street, 66 feet of frontage on Laight Street, and a total lot area of 15,354 sq. ft.; and

WHEREAS, the site is occupied by a twelve-story mixed-use building; and

WHEREAS, the proposed PCE will occupy 2,197 sq. ft. of floor area on the first floor, with an additional 980 sq. ft. of floor space at the cellar; and

WHEREAS, the PCE will be operated as Barry's Bootcamp; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be seven days a week from 5:00 am to 11:00 pm; 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 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 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 and has documented relevant

information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA027M, dated August 31, 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 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 C6-2A zoning district and the Special Tribeca Mixed-Use District, the operation of a physical culture establishment (PCE) on the cellar and first floor of a twelve-story mixed-use building contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 7, 2013" - Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on February 12, 2023;

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 all massages must be performed by New York State licensed massage therapists;

THAT the hours of operation for the proposed PCE will be seven days a week from 5:00 a.m. to 11:00 p.m.;

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

Adopted by the Board of Standards and Appeals, February 12, 2013.

291-12-BZ
CEQR #13-BSA-042M
APPLICANT – Rothkrug Rothkrug & Spector, LLP for 301-303 West 125, LLC, owner; Blink 125th Street Inc., lessee.
SUBJECT – Application October 9, 2012 – Special permit (§73-36) to allow a physical culture establishment (*Blink*) within proposed commercial building. C4-4D zoning district.
PREMISES AFFECTED – 301 West 125th Street, northwest corner of intersection of West 125th Street and Frederick Douglas Boulevard, Block 1952, Lot 29, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 2, 2012, acting on Department of Buildings Application No. 120616057, reads in pertinent part:

> Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4D zoning district within the Special 125th Street District, the operation of a physical culture establishment (PCE) at the cellar floor and mezzanine level with a first floor lobby shared entrance area, in a four-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 5, 2013, after due notice by publication in *The City Record*, and then to decision on February 12, 2013; and

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

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

WHEREAS, the subject site is located on the

northwest corner of West 125th Street and Frederick Douglass Boulevard, in a C4-4D zoning district within the Special 125th Street District; and

WHEREAS, the site is occupied by a partially constructed four-story commercial building; and

WHEREAS, the proposed PCE will occupy 1,581.12 sq. ft. of floor area on the first floor for an entrance and lobby and 1,195.22 sq. ft. of floor area at the mezzanine for storage, with an additional 16,021 sq. ft. of floor space at the cellar; and

WHEREAS, the site has 100 feet of frontage on West 125th Street, 199.83 feet of frontage on Frederick Douglass Boulevard, and 100 feet of frontage on West 126th Street, and a total lot area of 19,983 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 instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed 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, 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA042M, dated October 5, 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 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 C4-4D zoning district within the Special 125th Street District, the operation of a PCE at the cellar floor and mezzanine level, with a shared first floor lobby entrance area in 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, 2013" - Seven (7) sheets and *on further condition*:

THAT the term of this grant will expire on February 12, 2023;

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 all massages must be performed by New York State licensed massage therapists;

THAT the hours of operation for the proposed 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

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

Adopted by the Board of Standards and Appeals, February 12, 2013.

42-10-BZ
APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.
SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.
PREMISES AFFECTED – 2170 Mill Avenue, 116' west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.
COMMUNITY BOARD #18BK
ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for continued hearing.

1-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Harran Holding Corp., owner; Moksha Yoga NYC LLC, lessee.
SUBJECT – Application January 3, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Moksha Yoga*) on the second floor of a six-story commercial building. C4-5 zoning district.
PREMISES AFFECTED – 434 6th Avenue, southeast corner of 6th Avenue and West 10th Street, Block 573, Lot 6, 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 12, 2013, at 1:30 P.M., for decision, hearing closed.

16-12-BZ
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 – Laid over to March 12, 2013, at 1:30 P.M., for adjourned hearing.

55-12-BZ
APPLICANT – Eric Palatnik, P.C., for Kollel L'Horoah, owner.
SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based, non-profit school (*Kollel L'Horoah*), contrary to use regulations (§42-00). M1-2 zoning district.
PREMISES AFFECTED – 762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot 19, 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 March 12, 2013, at 1:30 P.M., for decision, hearing closed.

56-12-BZ
APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.
SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.
PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.
COMMUNITY BOARD #4BK
ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for continued hearing.

67-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 1442 First Avenue, LLC, owner.
SUBJECT – Application March 21, 2012 – Variance (§72-21) to allow for the extension of an eating and drinking establishment to the second floor, contrary to use regulations (§32-421). C1-9 zoning district.
PREMISES AFFECTED – 1442 First Avenue, southeast corner of the intersection formed by 1st Avenue and East 75th Street, Block 1469, Lot 46, 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 March 19, 2013, at 1:30 P.M., for decision, hearing closed.

75-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.
SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of retail use (UG 6) on the first floor and expand the use into the cellar and sub-cellar, contrary to use regulations (§42-14 (D)(2)(b)). M1-5B zoning district.
PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for deferred decision.

82-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.
SUBJECT – Application April 5, 2012 – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 2011 East 22nd Street, between Avenue S and Avenue T, Block 7301, Lot 55, 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 12, 2013, at 1:30 P.M., for decision, hearing closed.

149-12-BZ
APPLICANT – Alexander Levkovich, for Arkadiv Khavkovich, owner.
SUBJECT – Application May 9, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141(b)) and less than the required rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED – 154 Girard Street, between Hampton Avenue and Oriental Boulevard, Block 8749, Lot 265, 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 12, 2013, at 1:30 P.M., for decision, hearing closed.

153-12-BZ
APPLICANT – Harold Weinberg, for Ralph Bajone, owner.
SUBJECT – Application May 10, 2012 – Special Permit (§73-36) to legalize a physical culture establishment (*Fight Factory Gym*). M1-1/OP zoning district.
PREMISES AFFECTED – 23/34 Cobek Court, south side, 182.0' west of Shell Road, between Shell Road and West 3rd Street, Block 7212, Lot 59, Borough of Brooklyn.
COMMUNITY BOARD #13BK
ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

199-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.
SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.
PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #4BK
ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

298-12-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.
SUBJECT – Application October 17, 2012 – Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university use (*New York University*), contrary to use regulations. M1-5B zoning district.
PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4th Street, Block 545, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for deferred decision.

306-12-BZ
APPLICANT – Eric Palatnik, P.C., for Vincent Passarelli, owner; 2 Roars Restored Inc aka La Vida Massage, lessee.
SUBJECT – Application November 5, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*La Vida Massage*). M1-1 zoning district.
PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets Tyrellan Avenue and W Shore Expressway, Block 7511, Lot 1, Borough of Staten Island.
COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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67-13-A
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76-13-BZ
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ZR§42-14(D)(2)(b), to permit 1,803 gsf of retail (Use Group 6) below the level of the second floor.

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 12, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 12, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

APPEALS CALENDAR

310-12-A
APPLICANT – Mitchell A. Korbey, Esq./Herrick, Feinstein, for 141 East 88th Street LLC, owners.
SUBJECT – Application December 12, 2012 – Variance pursuant to the State Multiple Dwelling Law (MDL) section 310(2)(a) to permit the reclassification of a partially occupied Building, a rehabilitation and a small addition. C1-8X zoning district.
PREMISES AFFECTED – 141 East 88th Street, south-east corner of East 88th Street and Lexington Avenue, Block 1517, Lot 20, 50, Borough of Manhattan.
COMMUNITY BOARD #8M

15-13-A thru 49-13-A
APPLICANT – Eric Palatnik, P.C., for Block 7094 Associates, LLC, owners.
SUBJECT – Application January 25, 2013 – This is an appeal of the decisions of the Staten Island Borough Commissioner denying the issuance of building permits to construct thirty five (35) one and two-family dwellings, within an R3-1(SRD) zoning district, as the development is contrary to General City Law 36.
PREMISES AFFECTED –

16, 20, 24, 28, 32, 36, 40, 44, 48, 52, 56, 60, 64, 68, 78, 84, 90, 96, 102, 108, 75, 79, 85, 89, 93, 99, 105, 109, 115, 119 Berkshire Lane. Block 7094, Lot 70, 69, 68, 67, 66, 65, 62, 61, 60, 59, 54, 53, 52, 51, 43, 44, 45, 46, 47, 48, 41, 40, 39, 38, 37, 36, 35, 34, 33, 32.

19, 23, 27, 31, 35, Wiltshire Lane. Block 7094, Lot 57, 56, 55, 50, 49. Borough of Staten Island.

COMMUNITY BOARD #3SI

ZONING CALENDAR

312-12-BZ
APPLICANT – Jay A. Segal, Esq./Greenberg Traurig LLP, for 33 Beekman Owner LLC c/o Naftali Group, owners; Pace University, lessee.
SUBJECT – Application November 19, 2012 – Variance (§72-21) to increase the maximum permitted floor area to facilitate the construction of a new 34-story, 760-bed dormitory for Pace University in a C6-4 district in the Special Lower Manhattan District.
PREMISES AFFECTED – 29-37 Beekman Street aka 165-169 William Street, northeast corner of block bound by Beekman, William, Nassau and Ann Streets, Block 92, Lot 1,3,37,38, Borough of Manhattan.
COMMUNITY BOARD #1M

316-12-BZ
APPLICANT – Eric Palatnik, P.C. for Prince Plaza LLC, owner; L'Essence de Vie LLC d/b/a Orient Retreat, lessee.
SUBJECT – Application November 21, 2012 – Special Permit (§73-36) to allow proposed physical culture establishment (*Orient Retreat*). C4-2 zoning district.
PREMISES AFFECTED – 37-20 Prince Street, west side of Prince Street between 37th Avenue and 39th Avenue, Block 4972, Lot 43, Borough of Queens.
COMMUNITY BOARD #7Q

323-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 25 Broadway Office Properties, LLC, owner; 25 Broadway Fitness Group LLC, lessees.
SUBJECT – Application December 7, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C5-5LM zoning district.
PREMISES AFFECTED – 25 Broadway, southwest corner of the intersection formed by Broadway and Morris Street, Block 13, Lot 27, Borough of Manhattan.
COMMUNITY BOARD #1M

324-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Taxiarnis Davanelos, Georgia Davanelos, Andy Mastoros, owners.
SUBJECT – Application December 7, 2012 – Special permit (§73-622) for the enlargement of an existing single family home contrary to ZR §23-141(b) for the maximum permitted floor area. R3-1 zoning district.
PREMISES AFFECTED – 45 76th Street, north side of 76th Street between Narrows Avenue and Colonial Road, Block 5937, Lot 69, Borough of Brooklyn.
COMMUNITY BOARD #10BK

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, FEBRUARY 26, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

20-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich LLC, owners.
SUBJECT – Application January 3, 2013 – Extension of Time to Complete Construction of approved Special Permit (§75-53) for the vertical enlargement to an existing warehouse (UG17) which expired on January 13, 2013. C6-2A zoning district.
PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street between Greenwich Street and Collister Street, Block 214, Lot 1, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted special permit to permit the vertical enlargement of an existing warehouse building, which expired on January 13, 2013; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, with a continued hearing on February 5, 2013 and then to decision on February 26, 2013; 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 subject site is located on the northwest corner of Beach Street and Collister Street in a C6-2A zoning district within the Special Tribeca Mixed Use District and the Tribeca West Historic District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 2003, when, under BSA Cal. No. 359-02-BZ, the Board granted a variance authorizing the ground floor and cellar of the building to be occupied by a Use Group 3 pre-school; and

WHEREAS, the variance was subsequently amended on two occasions to allow the pre-school use on the second and third floors; and

WHEREAS, on January 13, 2009, under the subject calendar number, the Board granted a special permit under ZR § 73-53 to allow the proposed enlargement of the Use Group 16 warehouse (which was erroneously identified as Use Group 17 in the original application); and

WHEREAS, substantial construction was to be completed by January 13, 2013, in accordance with ZR § 73-70; and

WHEREAS, the applicant notes that since the 2009 approval, the area around the site has been rezoned from an M1-5 zoning district to a C6-2A zoning district; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant represents that the owner is now prepared to proceed with 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 January 13, 2009, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on January 13, 2017; *on condition*:

THAT construction will be completed by January 13, 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) 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. 104415571)

Adopted by the Board of Standards and Appeals, February 26, 2013.

135-46-BZ
APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.
SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment (§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.
PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8555, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for adjourned hearing.

410-68-BZ

APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of approved variance which permitted the operation of (UG16B) automotive service station (*Citgo*) with accessory uses, which expired on November 26, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.

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

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for continued hearing.

103-91-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.

SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

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 – Laid over to April 23, 2013, at 10 A.M., for continued hearing.

374-04-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., owner.

SUBJECT – Application December 5, 2012 – Extension of Time to complete construction of a previously-granted Variance (§72-21) for the development of a seven-story residential building with ground floor commercial space, which expired on October 18, 2009; Amendment to approved plans; and waiver of the Rules. C6-2A zoning district/SLMD.

PREMISES AFFECTED – 246 Front Street, fronting on Front and Water Streets, 126' north of intersection of Peck Slip and Front Street, Block 107, Lot 34, 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 19, 2013, at 10 A.M., for decision, hearing closed.

197-08-BZ

APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.

PREMISES AFFECTED – 341-349 Troy Avenue, aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

108-12-A & 109-12-A

APPLICANT – Davidoff Malito & Hutcher LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES – Kehley Holding Corp.

SUBJECT – Application April 18, 2012 – Appeal challenging Department of Buildings' determination that signs are not entitled to non-conforming use status as accessory business or non-commercial signs, pursuant to Z.R.§§42-58 and 52-61.

PREMISES AFFECTED – 46-12 Third Avenue, between 46th and 47th Streets, Block 185, Lot 25, Borough of

Brooklyn.
COMMUNITY BOARD #7BK
ACTION OF THE BOARD – Appeal Denied.
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez ……...5
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to two Notice of Sign Registration Rejection letters from the Brooklyn Borough Commissioner of the Department of Buildings ("DOB"), dated April 4, 2012, denying registration for signs at the subject site (the "Final Determination"), which read, in pertinent part:

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and, as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on February 26, 2013; and

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

WHEREAS, the subject appeal concerns two signs located on the west side of Third Avenue between 46th Street and 47th Street, within an M1-2D zoning district (the "Signs"); and

WHEREAS, this appeal concerns a site under the control of Lamar Advertising, an outdoor advertising company that is subject to registration requirements under Local Law 31 of 2005; and

WHEREAS, the Board notes that under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs as a means for DOB to enforce 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 (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 one-half acre (5,000 m) or more; and

WHEREAS, pursuant to the requirements of Article 502 and Rule 49 with respect to signs within 900 feet of arterial highways, the Appellant submitted an inventory of outdoor signs under its control and completed a Sign Registration Application for each sign and an OAC3 Outdoor Advertising Company Sign Profile; and

WHEREAS, DOB, by letters, dated April 4, 2012 issued the determination related to the Signs within Lamar's inventory, two of which form the basis of the appeal; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

BACKGROUND

WHEREAS, the Appellant has submitted a permit dated September 1, 1998 for each of the two subject signs, which reflects the following conditions of the sign and its location: (1) non-illuminated accessory business sign on ground structure, (2) with text reading: Yale Equipment, (3) with a surface area of 1,200 sq. ft., and (4) within 200 feet of an arterial highway; and

WHEREAS, the Appellant concedes that despite obtaining a permit for an accessory business sign, it maintained advertising signs at the site prior to and continuously from before December 13, 2000; and

WHEREAS, per ZR § 21-B (superseded by ZR §§ 42-53 and 42-55), advertising signs were not permitted within 200 feet of an arterial highway since 1940; and

WHEREAS, on February 27, 2001, the Zoning Resolution was amended and Local Law 14 was enacted to regulate the large number of illegal signs; and

WHEREAS, as adopted on February 27, 2001, ZR § 42-55 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) (a)(1) limits the size of non-advertising signage, within 200 feet of an arterial to a surface area of 500 sq. ft. and (a)(2) prohibits any advertising signs within 200 feet of an arterial; and

WHEREAS, as adopted on February 27, 2001, ZR § 42-58 (Signs Erected Prior to December 13, 2000) allows certain signs installed by December 13, 2000 to be grandfathered as "non-conforming" signs to the extent of the non-conformance on that date; and

WHEREAS, pursuant to current zoning regulations, only signs not used for advertising (such as an accessory or non-commercial sign) would be permitted within 200 feet of an arterial and only up to a size of 500 sq. ft., unless the conditions set forth at ZR § 42-58 are met to allow for a larger sign; and

WHEREAS, in 2002, DOB began enforcing against the Signs; and

WHEREAS, thereafter, the Appellant and other OACs commenced the Clear Channel Outdoor, Inc. v. City of New York (608 F. Supp 2d 477 [SDNY 2009], aff'd 594 Fed 94) litigation, contesting the constitutionality of the City's signage regulations and enforcement as related to signs throughout the City, including the subject Signs; and

WHEREAS, during the course of the litigation, three letters were introduced, which will be discussed in more detail below: (1) an April 17, 2002 DOB letter (the "April 2002 Letter"), (2) an October 17, 2006 letter agreement between the parties (the "October 2006 Letter"), and (3) an April 6, 2009 letter agreement between the parties (the "April 2009 Letter") (together, "the Letters"); and

WHEREAS, the Appellant and DOB describe additional history, set forth below, in the context of their arguments; and

WHEREAS, on March 31, 2009 the District Court upheld the City's regulations and on February 3, 2010 the Second Circuit affirmed; and

WHEREAS, by letter dated August 17, 2011, the Appellant sought to register its outdoor advertising inventory, including the Signs; and

WHEREAS, by letters dated April 4, 2012, DOB issued the determinations which form the basis of the appeal, stating that it found the "documentation inadequate to support the registration and, as such, the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10

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 § 42-58

Signs Erected Prior to December 13, 2000

M1 M2 M3

In all districts, as indicated, a #sign# erected prior to December 13, 2000, shall have #non-conforming use# status pursuant to Sections 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of #non-conformity# of such #sign# as of such date with the provisions of Sections 42-52, 42-53 and 42-54, where such #sign# shall have been issued a permit by the Department of Buildings on or before such date. In all such districts, as indicated, a #sign# other than an #advertising sign# erected prior to December 13, 2000, shall also have #non-conforming use# status pursuant to Section 52-82 with respect to the degree of #non-conformity# of such #sign# as of such date with the provisions of Section 42-55, paragraphs (a)(1) and (b), where such #sign# shall have been issued a permit by the Department of Buildings on or before such date. Nothing herein shall be construed to confer #non-conforming use# status upon any #advertising sign# located within 200 feet of an arterial highway or of a #public park# with an area of one-half acre or more, and within view of such arterial highway or #public park#, or where such #advertising sign# is located at a distance from an arterial highway or #public park# with an area of one-half acre or more which is greater in linear feet than there are square feet of #surface area# on the face of such #sign#, contrary to the requirements of Section 42-55, paragraph (b). The #non-conforming use# status of signs subject to Section 42-55, paragraphs (c)(1), (c)(2) and (d), shall remain unaffected by this provision. . .

* * *

ZR § 52-61

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

THE APPELLANT'S POSITION

WHEREAS, the Appellant identifies the issue on appeal as whether the Letters tolled ZR § 52-61's two-year limit on discontinuance of the non-conforming accessory sign use and whether the right to maintain non-conforming accessory signs was lost as a result of a discontinuance of their use for more than two consecutive years after the adoption of ZR § 42-58 on February 27, 2001; and

WHEREAS, the Appellant states that DOB introduced another argument which is beyond the scope of a stipulation between the parties regarding the issue on appeal, but if it is considered, it should be rejected; the Appellant contends DOB is incorrect that there is a requirement that non-conforming status can only be established if the Signs were legal on December 13, 2000; and

Effect of the Letters on ZR § 52-61's Two-Year Discontinuance Provision

WHEREAS, the Appellant asserts that the Letters should be read to toll ZR § 52-61's two-year discontinuance provision for "non-conforming use" and that there has not been a two-year discontinuance of the relevant sign types within the relevant periods; and

WHEREAS, first, the Appellant represents that there has never been a two-year discontinuance of advertising message from before May 1999 until approximately March 22, 2010; and

WHEREAS, now, the Appellant asserts that there has not been a two-year discontinuance in the non-commercial signs since March 22, 2010, so the non-conforming size and height existing on December 13, 2000 can continue pursuant to ZR § 42-48; and

WHEREAS, the Appellant asserts that Local Law 14, enacted on February 27, 2001, in tandem with the non-conforming use provisions of ZR § 42-48, allows an option to maintain the advertising copy under the voluntary compliance program until the signs are removed during the three-year takedown period; and

WHEREAS, the Appellant notes that the City began enforcement against the Signs in 2002, which the Appellant

found to be inconsistent with the allowance for three years to remove the signs pursuant to Local Law 14's voluntary compliance plan; and

WHEREAS, the Appellant asserts that in response to its concerns about the 2002 enforcement, DOB issued the April 2002 Letter, in which it agreed that the Zoning Resolution provisions prohibiting advertising signs would not be enforced; and

WHEREAS, the April 2002 Letter reads in pertinent part:

> At this time, the Department does not intend to issue further violations for similar signs unless the sign and/or sign structure is in a hazardous condition. However, please note that once a voluntary compliance plan is filed and a sign that the Department concludes is unlawful is not included in such compliance plan, it will be subject to appropriate enforcement action by the Department; and

WHEREAS, the Appellant asserts that advertising could be maintained on the Signs until a voluntary compliance plan was filed which included the Signs, in order to protect their value for ultimate inclusion in the voluntary compliance plan; and

WHEREAS, the Appellant asserts that the April 2002 Letter effectively terminated the running of the two-year period commencing on February 27, 2001, during which the Signs would have had to display accessory business or non-commercial copy to avoid discontinuance of their non-conforming use at their original size and height, since they were entitled to display advertising copy per the April 2002 Letter; and

WHEREAS, the Appellant asserts that the initial two-year period that would have commenced on February 27, 2001 was terminated on April 17, 2002 through the April 2002 Letter; and

WHEREAS, the Appellant asserts that per the April 2002 Letter, a new two-year period would not have commenced until a compliance plan is in effect and a sign is not protected by the plan; and

WHEREAS, the Appellant asserts that the intent of the April 2002 Letter was to preserve the value of signs as advertising signs and relies on a March 22, 2002 letter to then-DOB Commissioner Patricia Lancaster in support of the claim that there was a mutual intent to preserve maximum rights for the sign companies; and

WHEREAS, the Appellant asserts that on April 12, 2005, an amendment in Local Law 31 eliminated the voluntary compliance plan provisions of Local Law 14; and

WHEREAS, the Appellant asserts that a new two-year period within which accessory business or non-commercial copy would have to be displayed on the Signs in order for non-conforming status use to continue would be April 12, 2005; and

WHEREAS, the Appellant notes that DOB did not, however, begin enforcement against the Signs until after it adopted Rule 49 on July 19, 2006, which allowed for implementation of Local Law 14, as amended by Local Law 31; and

WHEREAS, the Appellant states that, on October 17, 2006, by agreement in the Clear Channel litigation, the City agreed to stay the enforcement of the Zoning Resolution and Administrative Code, which otherwise prohibited the maintenance of advertising on the Signs (the October 2006 Letter); and

WHEREAS, the October 2006 Letter states in pertinent part:

> We . . . want to confirm that [the stay] will cover (i) the portion of New York City's Zoning Resolution §§ 42-55 and 32-662 concerning the placement of outdoor advertising signs along the City's arterial highways and parks, (ii) the City of New York Local Laws 14 of 2001 and 31 of 2005 in their entirety (except, solely with respect to nonarterial signs, the provisions of Admin. Code §§ 26-127.3, 26-259, 26-262, and 27-177 [only with respect to new signs], shall not be stayed), and (iii) the entirety of the Department of Buildings ("DOB") Rule 49 (except, solely with respect to nonarterial signs . . .(collectively referred to in this letter as the "Regulations").
>
> * * *
>
> Other than as set forth above, enforcement of the Regulations shall be stayed industry-wide until ten (10) days after a decision by the Southern District on the preliminary injunction motions . . . The stay will not extend to any proceedings, pending or otherwise, based on provisions of law other than the Regulations, nor to any proceeding to enforce the requirement to register by November 27 as set forth above; and

WHEREAS, the Appellant asserts that assuming a new two-year period commenced for a second time on April 12, 2005, it terminated on October 17, 2006 (approximately 18 months later); and

WHEREAS, the Appellant notes that the District Court rendered a decision on March 31, 2009 and that, in light of the fact that an appeal was taken to the Second Circuit Court of Appeals, it entered another agreement, the April 2009 Letter, with the City to further extend the period in which enforcement activity was suspended until 15 days after a decision on the appeal; and

WHEREAS, the April 2009 Letter states in pertinent part:

> This letter is to confirm that [during any proceedings in the Second Circuit] the City will not enforce the provisions of New York City Zoning Resolution Sections 42-55 and 32-662 as to any signs that existed along an arterial highway prior to the commencement of this litigation on October 6, 2006, or enforce any provisions of City of New York Local Laws 14 of 2002 and 31 of 2005 that authorize the issuance of violations . . . for violating Sections 42-55 and 32-622 of the

Zoning Resolution; and

WHEREAS, the Appellant asserts that ZR § 52-61 was not included in any of the Letters because they dealt solely with advertising signs to which a stay of ZR § 52-61 was irrelevant since ZR § 52-61 would never apply to the use of signs for advertising purposes; and

WHEREAS, the Appellant notes that the Second Circuit's decision to uphold the District Court's decision in the City's favor was rendered on February 3, 2010 and, by further agreement, enforcement was suspended until March 22, 2010 when outdoor advertising companies were required to submit certifications as to those arterial highway signs for which they seek to claim non-conforming status; and

WHEREAS, accordingly, the Appellant asserts that March 22, 2010 is the relevant date for commencing the two-year period within which the display of accessory business or non-commercial messages was required in order for the non-conforming use status of the signs as accessory business or non-commercial signs at the dimensions existing on December 13, 2000 to be maintained; and

WHEREAS, the Appellant asserts that the Signs have displayed non-commercial messages since sometime before March 22, 2010 and, thus, have retained their status as non-conforming accessory business or non-commercial signs at the dimension and height on December 13, 2000; and

The Applicability of ZR § 42-58

WHEREAS, the Appellant asserts that DOB has exceeded the parameters of the appeal stipulation by pursuing arguments related to the requirements of establishing a non-conforming use pursuant to ZR § 42-58; and

WHEREAS, however, the Appellant addresses DOB's assertion that the sign must have been established as a non-advertising sign prior to December 13, 2000 in order to meet the requirements for a non-conforming use pursuant to ZR § 42-58; and

WHEREAS, in response to DOB's secondary argument, the Appellant states that DOB contemplated the conversion of the Signs from illegal advertising signs to accessory or non-commercial signs and such conversion is allowed by the text of ZR § 42-58 even when no legal use was established by December 13, 2000; and

WHEREAS, the Appellant asserts that ZR § 42-58 does not include a lawful establishment requirement and that having a sign, alone, of any kind, by December 13, 2000 satisfies the text; and

WHEREAS, the Appellant asserts that ZR § 42-58, which was adopted on February 27, 2001, conferred non-conforming use status to signs with permits for accessory business use issued prior to that date so that signs could be converted from advertising to accessory business or non-commercial copy at their size and height existing on December 13, 2000; and

WHEREAS, the Appellant asserts that the February 27, 2001 date of adoption is the first day on which a two-year period of discontinuance would have begun to run at the end of which the non-conforming use status would have been lost should advertising copy not have been replaced with accessory business or non-commercial copy; and

WHEREAS, the Appellant notes that the Signs were (1) installed prior to December 13, 2000, pursuant to DOB permits; (2) the dimensions of each sign is 20 feet vertically and 60 feet horizontally for a total surface area of 1,200 sq. ft.; and (3) parties agree that although the permit for the sign stated accessory/business sign, the copy for the signs was for advertising from before December 13, 2000 (approximately May 1999) until March 22, 2010; and

WHEREAS, the Appellant asserts that even though the Signs were installed impermissibly as advertising signs, because the signs were installed prior to December 13, 2000, they are eligible for the non-conforming use status set forth at ZR § 42-58 for the size of 1,200 sq. ft. as opposed to the 500 sq. ft. that would be permitted under current regulations; and

WHEREAS, the Appellant asserts that the use of the word "also" in ZR § 42-58 between the requirement for sign installation prior to December 13, 2000 and the conferring of "non-conforming use" status clearly conveys the intention that where a sign was permitted and in existence on December 13, 2000 it would have non-conforming use status as an accessory business sign or non-commercial sign if it carried such messages after that date; and

WHEREAS, the Appellant states that ZR § 42-48 would not have been necessary if accessory or non-commercial copy would have had to have been on the signs on December 13, 2000; and

WHEREAS, further, the Appellant asserts that DOB has changed its position on the ability to convert from an advertising sign to an accessory sign and that the doctrine of judicial estoppel precludes it from doing so; and

WHEREAS, the Appellant quotes to a reply memorandum of law from the Clear Channel litigation dated July 28, 2008, in which the City stated:

> Thus, to the extent that plaintiffs and other OACs have been continuously using their arterial signs as advertising signs in the six years since the 2001 zoning amendments, plaintiffs and other OACs have lost the right to rely on their previously issued permits to revert to non-advertising copy. In order to maintain signs with non-commercial or accessory copy along the arterial highways plaintiffs will have to re-apply for new sign permits and will be limited to displaying signs of no more than 500 square feet in size; and

WHEREAS, the Appellant notes that in its memorandum, the City did not mention the lawful establishment requirement; and

WHEREAS, the Appellant also asserts that when a non-conforming right is granted by statute, as is the case here, and as is the case when advertising signs existing in 1979 were accorded non-conforming use status, it is not necessary that a legal use be in existence when such status is conferred; and

WHEREAS, in the alternate, the Appellant asserts that

non-conforming use status should be granted because the conversion to accessory business or non-commercial copy was not required until March 22, 2010; and

WHEREAS, the Appellant asserts that no date by which accessory business or non-commercial copy was required to be posted on signs accorded non-conforming use status was provided in ZR § 42-58; and

WHEREAS, the Appellant asserts that the operative date for the commencement of ZR 52-61's two-year maximum discontinuance is March 22, 2010 and that that was the first day on which OACs were required to elect to install accessory business or non-commercial copy on arterial highway signs and claim their certified non-conforming use status; and

Estoppel Against the City

WHEREAS, the Appellant asserts that although as a general rule estoppel or laches cannot be used as a defense to City actions and is only allowed in the rarest circumstances, the City is estopped from enforcing its zoning regulations related to the Signs; and

WHEREAS, the Appellant states that two New York State court decisions – Town of Hempstead v. DeMasco, 2007 WL 4471362 (Sup. Ct. 2007), aff'd, 62 A.D.3d 692 (2d Dept. 2009) and Inner Force Econ. Dev. Corp. v. Dep't of Educ. Of the City of New York, 36 Misc.3d 758, 559 (Sup. Ct. 2012) – to support its conclusion that the City should be estopped; and

WHEREAS, the Appellant notes that in DeMasco, the Town sought to enforce its zoning ordinance against a metal salvage business which had existed for many years prior to a zoning change, and the Appellate Division affirmed that the Town was equitably estopped in part because it continued business with the junkyard and "gave an imprimatur to the businesses' continued operation"; and

WHEREAS, the Appellant notes that in Inner Force in which one City agency acknowledged receipt of a claim while another branch did not, the petitioner had been left with the understanding that it was proceeding properly and rested on its rights, thus, the court held that equitable estoppel may be used against the City "where the governmental subdivision acts or comports itself wrongfully or negligently, inducing reliance by a party who is entitled to rely and who changes his positions to his detriment or prejudice;" and

WHEREAS, the Appellant also asserts that it is an unreasonable departure for the City to now require that accessory or non-commercial copy have been installed during the stay in order to preserve non-conforming rights, when it did not earlier articulate that requirement; and

DOB'S POSITION

WHEREAS, in support of its position that the Board deny the appeal, DOB asserts that: (1) the letter agreements between the parties during litigation were limited to delaying enforcement against the advertising signs pursuant to ZR § 42-55 (and other specifically noted provisions) and did not toll the two-year discontinuation period set forth at ZR § 52-61 and (2) the Signs were not lawful on December 13, 2000 and thus, they failed to satisfy the requirements of ZR § 42-58; and

The Effect of the Letters on ZR § 52-61's Two-Year Discontinuance Period

WHEREAS, as to the Appellant's tolling arguments, DOB states that the Signs were authorized by permits issued on September 1, 1998 for non-illuminated accessory business signs each having a surface area of 1,200 sq. ft. and that as of February 27, 2001, the Zoning Resolution prohibited non-advertising signs larger than 500 sq. ft. of surface area, and signs entitled to non-conforming use status as of December 13, 2000 could continue subject to regulations governing non-conforming uses; and

WHEREAS, DOB states that, assuming for the purpose of this appeal that these signs were entitled to non-conforming use status, industry-wide stays of enforcement agreed to in litigation cannot be relied upon as a basis for resuming non-conforming accessory sign uses after a two-year period of discontinuance; and

WHEREAS, specifically, DOB rejects the Appellant's assertion that ZR § 52-61 continued to impose a two-year limitation on a discontinuance of the non-conforming non-advertising sign uses during the period that the City agreed to stay enforcement of ZR § 42-55 against the signs; and

WHEREAS, DOB notes that ZR § 52-61 states that if, for a continuous period of two years, active operation of substantially all of the non-conforming use is discontinued, the use must terminate; and

WHEREAS, DOB rejects the Appellant's claim that the Letters tolled ZR § 52-61's discontinuance period against the Signs; the April 2002 Letter stated that at that time DOB did not intend to issue violations against advertising signs; and the October 2006 and April 2009 letters stipulated to a stay during litigation proceedings challenging ZR § 42-55 and ZR § 36-662 as unconstitutional restrictions on commercial speech and none of these documents either expressly or impliedly provide that the DOB would toll ZR § 52-61; and

WHEREAS, DOB asserts that the owners of the subject signs could have no reasonable expectation of benefitting from the start of a new two-year discontinuance period once the stay was lifted; and

WHEREAS, rather, DOB asserts that during the time the City agreed to stay enforcement of ZR § 42-55, it could not enforce ZR § 42-55 to prohibit the advertising sign use even though the accessory sign use was discontinued for a continuous period of two years; and

WHEREAS, DOB contends that enforcement of ZR § 42-55 was *stayed* during the periods of time covered by the above-referenced letters, but the two-year discontinuance period of ZR § 52-61 was not *tolled* and continued to run; and

WHEREAS, DOB states that, therefore, when the last stay was lifted upon the conclusion of the Clear Channel litigation in 2010, DOB could immediately enforce ZR § 42-55 and the owner could not claim to have an additional two years following the conclusion of the litigation to resume the

non-advertising sign use since the two-year discontinuance period had already elapsed; and

WHEREAS, DOB asserts that the stay merely served as a temporary windfall by shielding the signs from violations under ZR § 42-55 but it did not stop the discontinuance clock under ZR § 52-61 and that during the time the stay of enforcement was in effect, the owner of the Signs assumed the risk of losing non-conforming use status under ZR § 42-58; and

WHEREAS, DOB notes that the Appellant asserts that the City's agreements tolled ZR § 52-61 for the duration of the stay of enforcement even though ZR § 52-61 is not explicitly mentioned in the Letters; and

WHEREAS, DOB rejects the Appellant's explanation that ZR § 52-61 was not referenced in the Letters because the stays dealt solely with advertising signs that are not entitled to non-conforming status and ZR § 52-61 was irrelevant to those signs regardless of the outcome of the litigation; and

WHEREAS, finally, DOB asserts that the Appellant's tolling arguments reveal the understanding that the stays and litigation concerned the lawfulness of the Zoning Resolution regulations with respect to advertising signs, not accessory signs and since regulations governing accessory signs were not in controversy, the Appellant had no reasonable expectation that the stay in connection with the litigation would preserve a right to an accessory sign; and

The Applicability of ZR § 42-58

WHEREAS, DOB states that ZR § 42-58 confers non-conforming status to a non-advertising sign erected prior to December 13, 2000 with respect to the extent of the degree of non-conformity of such sign as of such date with the provisions of ZR §§ 42-52, 42-53, 42-54 and 42-55(a)(1) and (b) where such sign has been issued a permit on or before December 13, 2000; and

WHEREAS, DOB states that the question of whether the applications to register these Signs actually included evidence per 1 RCNY § 49-15 (Sign inventory to be submitted with registration application) that non-conforming signs existed, and the size of the signs that existed, as of the relevant date set forth in ZR § 42-58 is moot because such non-conforming uses are required to cease under ZR § 52-61 but if the Board should not consider this issue moot, it requests the opportunity to address this issue at such time; and

WHEREAS, DOB states that the issue is whether it correctly determined that the Signs are not entitled to claim non-conforming accessory use status pursuant to ZR § 42-58 because the signs were advertising signs on December 13, 2000, the relevant date for establishing a non-conforming accessory sign use; and

WHEREAS, DOB states that to the extent the Board finds that the signs became non-conforming accessory signs on December 13, 2000, the non-conforming uses were discontinued for more than two years while the signs were used to display advertising copy and the uses must terminate per ZR § 52-61 (General Provisions, Discontinuance); and

WHEREAS, DOB states that since ZR § 42-58 confers non-conforming status on a sign "with respect to the degree of non-conformity of such sign as of December 13, 2000 and where such sign shall have been issued a permit on or before such date," the provision requires that the sign exist lawfully on December 13, 2000 in accordance with a permit received prior to December 13, 2000 and with the Zoning Resolution before the new regulations governing size, illumination, projection, height and use took effect on February 27, 2001; and

WHEREAS, DOB states that only a sign that is lawfully erected prior to December 13, 2000 and existing on that date in accordance with its permit has non-conforming status as to its surface area, illumination, projection, height and use as either a non-conforming sign other than an advertising sign or a non-conforming advertising sign; and

WHEREAS, DOB states that contrary to the Appellant's claim, a sign that was used in violation of its permit and the Zoning Resolution on December 13, 2000 is not entitled to non-conforming use status under ZR § 42-58; and

WHEREAS, further, DOB asserts that ZR § 42-58's phrase, "with respect to the degree of non-conformity of such sign as of December 13, 2000," makes clear that a sign must be non-conforming on December 13, 2000 in order for the sign's non-conformity as to ZR §§ 42-52, 42-53, 52-54 and 42-55 (a) (1) and (b) to be established; and

WHEREAS, DOB states that a non-conforming use is defined in ZR § 12-10 as "any lawful use… which does not conform to any one or more of the applicable use regulations of the district in which it is located," but that a sign used contrary to permit and contrary to the Zoning Resolution on December 13, 2000 does not have any degree of non-conformity because it is not a lawful use on that date; and

WHEREAS, accordingly, DOB states that the advertising signs displayed on December 13, 2000 were not lawful and therefore were not non-conforming signs on that date as is required by ZR § 42-58; and

WHEREAS, DOB states that as of June 28, 1940, advertising signs were prohibited within 200 feet of an arterial highway (see ZR § 21-B, superseded by ZR § 42-53 and ZR § 42-55), so no advertising sign was allowed at the premises on December 13, 2000; and

WHEREAS, further, DOB states that the ZR § 12-10 definition states that an "advertising sign" "is not accessory to a use located on the zoning lot;" and

WHEREAS, DOB states that both Signs were authorized by permits issued on September 1, 1998 for non-illuminated accessory signs each having a surface area of 1,200 sq. ft. and that according to the Appellant's affidavit by Frank Nataro, the chief operating officer of the former owner of the Signs, the Signs were being used for advertising on December 13, 2000; and

WHEREAS, DOB states that the affidavit is supported by outdoor advertising display contracts, including an agreement to advertise an AT&T Wireless product in November and December 2000; and

WHEREAS, therefore, DOB states that since the Signs were used for advertising contrary to their permits and the Zoning Resolution, the signs were unlawful and not non-conforming on December 13, 2000 and any claim for non-conforming status under ZR § 42-58 must fail; and

WHEREAS, DOB asserts that the statute would not make sense if, as the Appellant contends, it grants non-conforming use status to a sign for a different use than the use authorized by the permit; and

WHEREAS, specifically, DOB states that the repeated phrase "such sign" in ZR § 42-58 makes clear that the same sign for which non-conforming use status is sought must have a permit issued prior to December 13, 2000 and that permitted sign's degree of non-conformity on December 13, 2000 establishes its non-conformity with ZR §§ 42-52, 42-53, 42-54 and 42-55 (a) (1) and (b); and

WHEREAS, DOB states that it is clear that the Appellant held permits for accessory signs issued prior to December 13, 2000; however, the Appellant concedes that on December 13, 2000 different signs used for unlawful advertising were on display; and

WHEREAS, DOB states that given that the permitted accessory signs were not the same as the ones on display on December 13, 2000, the accessory signs are not entitled to non-conforming use status; and

WHEREAS, DOB distinguishes ZR § 42-58 from ZR § 42-55(c), in that the former does not grant non-conforming use status to unlawful sign use; and

WHEREAS, DOB acknowledges that, in contrast, ZR § 42-55(c) confers non-conforming use status on a sign in existence on a specified date, regardless of whether the sign is authorized by a permit or was used consistently with its permit on such date; and

WHEREAS, DOB notes that the purpose of ZR § 42-55(c) is to allow unlawful advertising signs to be legalized, thus, the text merely requires that the sign exist as of a specified date and 1 RCNY § 49-15(d)(15) accepts, but does not require, permits as evidence that a non-conforming advertising use existed on the relevant date; under ZR § 42-55(c), a permit for an accessory sign may be submitted as evidence of a non-conforming advertising sign on the relevant date provided sufficient proof demonstrates that the sign was used, albeit contrary to the accessory sign permit, for advertising; and

WHEREAS, DOB asserts that there would be no reason for ZR § 42-58 to require a permit issued for a sign erected prior to December 13, 2000 if the sign could have been used in violation of its permit on that date and still be entitled to lawful non-conforming use status; and

WHEREAS, DOB asserts that since ZR § 42-58 requires an accessory sign to be lawfully non-conforming on December 13, 2000 to obtain the benefits of being treated as a non-conforming accessory sign pursuant to ZR § 52-82 with respect to ZR §§ 42-52, 42-53, 52-54 and 42-55 (a) (1) and (b), there is no support in the text for Appellant's argument that accessory or non-commercial copy was not required to be posted on the signs until March 20, 2010 when Local Law 14's New York City Construction Code amendments were enacted; and

WHEREAS, DOB states that any sign that was used for advertising on December 13, 2000 was unlawful and cannot meet the definition of a "non-conforming" use and that there is no need for the statute to provide a date by which to post accessory or non-commercial copy because the right to do so is already determined by the degree of non-conformance of the sign on December 13, 2000 and the two-year discontinuance period of ZR § 52-61; and

WHEREAS, DOB states that the Zoning Resolution does not grant a right to be non-conforming as to size, illumination, projection, height and use for a sign used contrary to its permit on December 13, 2000; rather, the right to be non-conforming pursuant to ZR § 42-58 is determined by the sign's lawful permitted use on December 13, 2000; and

WHEREAS, DOB states that its position that ZR § 42-58 confers non-conforming use status on a sign used on December 13, 2000 consistent with the permit and with the Zoning Resolution does not contradict the City's prior statements; and

WHEREAS, DOB states that the Appellant references certain statements made in the litigation Clear Channel Outdoor, Inc. v. City of New York, 608 F. Supp. 2d 477 [SDNY 2009], aff'd 594 F3d 94, which do not support the claim that a sign is entitled to non-conforming use status where the sign existing on December 13, 2000 was being unlawfully used contrary to its permit and the Zoning Resolution; and

WHEREAS, specifically, DOB asserts that the City's statements referenced in the Appellant's letter merely explain that a sign that is lawfully established as a non-conforming accessory sign loses its right to return to its non-conforming use after such sign is used as an advertising sign for more than two years and that a sign that was never lawfully non-conforming has no non-conforming use to reactivate; and

WHEREAS, DOB states that to the extent the Signs were non-conforming accessory signs, ZR § 52-61 imposes a two-year limitation on a discontinuance of the non-conforming sign uses notwithstanding the City's agreements to stay enforcement of ZR § 42-55 against all signs during litigation proceedings challenging ZR § 42-55 and ZR § 36-662 as unconstitutional restrictions on commercial speech; and

CONCLUSION

WHEREAS, the Board agrees with DOB that there is no basis in the Letters, the Zoning Resolution, or the Administrative Code to allow for the Signs to remain as accessory or non-commercial signs at their existing parameters of 1,200 sq. ft.; and

WHEREAS, the Board's primary points are that (1) the Appellant has not provided any support for its assertion that the Letters staying enforcement of ZR § 42-55 also delayed the starting point for the two-year discontinuance provision at ZR § 52-61 and (2) the Board agrees with DOB that legal

establishment of an accessory or non-commercial sign use on December 13, 2000 is a requirement for ZR § 42-58 to allow for the 1,200 sq. ft. signs to remain; and

WHEREAS, the Board finds that the Appellant fails on both of its arguments and DOB has basis to reject the Signs for either discontinuing the accessory use for a period of greater than two years or for failing to be lawfully established on December 13, 2000; and

WHEREAS, however, if the Board considers the Letters, the Board is unconvinced that the stay was to be read broadly due to the precision of the defined term "Regulations," regulations which were not to be enforced, which establishes a finite universe to be temporarily suspended that does not include ZR § 52-61 or the ZR § 12-10 definition of non-conforming use; and

WHEREAS, the Board is not compelled by the Appellant's arguments that ZR § 52-61 was left out of the Letters for a purpose or that silence on it suggests it was intended not to be included; and

WHEREAS, the Board notes that the citywide sign enforcement and associated litigation involved many different situations, kinds of signs, and zoning districts, and among all the relevant and applicable provisions of the Zoning Resolution, the Letters only identified ZR §§ 42-55 and 36-622 as not being enforced; and

WHEREAS, the Board finds that the identification of just two sections necessarily limited what could have been a much broader and uncertain landscape given the multitude of signs and other applicable provisions, which may or may not have seemed relevant at the time the Letters were drafted; and

WHEREAS, the Board recognizes that the purpose of a stay, like that set forth in the Letters, preserves the status quo; it does not allow for the commonly understood and enforced non-conforming use provisions of the Zoning Resolution to be rewritten; and

WHEREAS, accordingly, the Board finds that there is not any basis for the two-year discontinuation period to begin on March 22, 2010, rather than the February 27, 2001 date of the text amendment; and

WHEREAS, putting aside the question of legal establishment, the Board concludes that because there was not any implicit or explicit directive to toll the two-year discontinuance period, and the ability to install accessory or non-commercial signs with surface area in excess of 500 sq. ft. was extinguished on February 27, 2003, two years subsequent to the date of the text change; and

WHEREAS, the Board agrees with DOB that the Appellant made the choice to continue the advertising use through March 22, 2010 rather than endeavor to resume its now non-conforming accessory or non-commercial use in 2001, 2002, or 2003; and

WHEREAS, although the Board has not read or considered the terms of the parties' stipulation about the scope of the appeal and acknowledges that the Appellant has contested that DOB's arguments about the ZR § 42-58 requirements are beyond the scope, it concludes that because the Appellant and DOB both pursued the discussion of ZR § 42-58 and legal establishment, that it will also address the issue; and

WHEREAS, further, the Board finds that it is not possible to consider the requirements of ZR § 52-61 in a vacuum without incorporating the provisions of ZR § 42-58 and the ZR § 12-10 definition of non-conforming use; and

WHEREAS, first, the Board finds that the Appellant's reliance on (and declaration that) the Signs have existed without interruption as advertising signs from prior to December 13, 2000 to approximately March 22, 2010 makes any consideration under ZR § 52-61 a nonstarter because it fails the ZR § 12-10 requirement that the non-conforming use be lawfully established; and

WHEREAS, the Board finds that ZR § 42-58 must be read to require that the non-conforming use be *lawfully* established by December 13, 2000, and that a lawful use must comply with bulk and use parameters, which could have included a surface area of 1,200 sq. ft. but was limited to accessory or non-commercial use; and

WHEREAS, the Board notes that there is not any dispute that on December 13, 2000, the use was not legal; and

WHEREAS, the Board agrees with DOB that ZR § 42-58, which relies on the defined term "non-conforming use," does not include an exception to the ZR § 12-10 requirement for lawful establishment; and

WHEREAS, the Board does not find that ZR § 42-58 contemplates conferring non-conforming rights that were never established; and

WHEREAS, the Board finds that certain of the Appellant's arguments including those related to the continuity of the advertising use without any two-year interruption are misplaced and confuse the issue about what non-conforming use ZR § 42-58 protects; and

WHEREAS, the Board notes that the Appellant chose to continue the advertising signs, which were safe from enforcement during the stays, at the detriment of preserving the right to an accessory or non-commercial sign under pre-February 27, 2001 parameters; and

WHEREAS, the Board agrees with DOB that ZR § 42-58, unlike ZR § 42-55, relies on the lawful establishment of the non-conforming use; and

WHEREAS, further, the Board notes that advertising signs had been illegal at the site within 200 feet of the arterial since 1940, whereas other sign provisions had more contemporary rezoning dates; and

WHEREAS, the Board notes that ZR § 52-61 does not address the notion of a time period to revert to a secondary non-conforming use (re: an accessory or non-commercial sign with dimensions in excess of zoning) and there is nothing about converting from one never legal use to another which was legal at the time of permitting but only installed for a brief period; and

WHEREAS, the Board finds that the Appellant distorts the non-conforming use provisions by asserting that advertising signs preserve the right of accessory use signs at a

certain size and other physical parameters as there is not any connection between the non-conformance of the advertising signs which relate to content and the physical parameters of signs with restricted (accessory/non-commercial) content; and

WHEREAS, accordingly the Board finds that the deciding factor is the Signs' content as accessory signs are permitted even today, at smaller dimension; and

WHEREAS, finally, the Board notes that the Appellant has enjoyed the benefit of the Signs, which were never legal and were installed contrary to permit, for more than ten years; and

WHEREAS, lastly, the Board is not persuaded by the Appellant's invocation of the equitable estoppel doctrine or reversal of position; and

WHEREAS, the Board distinguishes the Appellant's case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision on which the petitioner relied; and

WHEREAS, the Board does not find that DOB's lack of enforcement or participation in the Letters has any relationship to the cases; and

WHEREAS, the Board also does not find that DOB has reversed its position, as the Appellant suggests; and

WHEREAS, in fact, the Board finds that the Appellant's statements about DOB's position actually reflect that DOB has maintained its position about requiring lawful establishment and that nothing was introduced into the record to support a claim that a conversion back to accessory/non-commercial use within two years of the end of the stay had ever been contemplated; and

WHEREAS, the Board finds that the absence of stating a requirement to conform to certain zoning requirements does not lead to a change in position once those requirements are articulated; and

WHEREAS, accordingly, the Board finds that both of the Appellant's arguments fail and DOB properly rejected the Signs from registration.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated April 4, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, February 26, 2013.

89-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for continued hearing.

92-07-A thru 94-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for continued hearing.

95-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for continued hearing.

110-10-BZY

APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities LLC c/o Blake Partners LLC, owner.

SUBJECT – Application November 19, 2012 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which expired on October 19, 2012. R5A zoning district.

PREMISES AFFECTED – 123 Beach 93rd Street, western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot 11, Borough of Queens.

COMMUNITY BOARD #14Q

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 19, 2013, at 10 A.M., for decision, hearing closed.

201-10-BZY
APPLICANT – Kramer Levin Naftalis & Frankel, for 180 Orchard LLC., owner.
SUBJECT – Application January 18, 2013 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which will expire on March 15, 2013. C4-4A zoning district.
PREMISES AFFECTED – 180 Orchard Street, Orchard Street to Ludlow Street, Block 412, Lot 5, Borough of Manhattan.
COMMUNITY BOARD #3M
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 19, 2013, at 10 A.M., for decision, hearing closed.

103-12-A
APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.
SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.
PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.
COMMUNITY BOARD #2BK
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

288-12-A thru 290-12-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orin, Inc., owner.
SUBJECT – Application October 9, 2012 – Proposed construction of three two-family homes not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SRD) zoning district.
PREMISES AFFECTED – 319, 323, 327 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot 2, 3, 4, Borough of Staten Island.
COMMUNITY BOARD #3SI
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

304-12-A
APPLICANT –Eric Palatnik, P.C., for Success Team Development, LLC, owner.
SUBJECT – Application October 26, 2012 – Proposed seven-story residential development located within mapped but inbuilt portion of Ash Avenue, contrary to General City Law Section 35. R6A zoning district.
PREMISES AFFECTED – 42-32 147th Street, west side, south of the intersection of Sanford Avenue and 147th Street, Block 5374, Lot 59, Borough of Queens.
COMMUNITY BOARD #7Q
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 26, 2013
1:30 P.M.

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

ZONING CALENDAR

157-11-BZ
CEQR #12-BSA-029M
APPLICANT – Sheldon Lobel, P.C., for 1968 2nd Avenue Realty LLC., owner.
SUBJECT – Application October 5, 2011 – Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard (§33-261) and loading berth (§36-683) requirements. C1-5/R8A and R7A zoning districts.
PREMISES AFFECTED – 1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101st Street, Block 1673, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #11M
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
Adopted by the Board of Standards and Appeals, February 26, 2013.

61-12-BZ
CEQR #12-BSA-093M
APPLICANT – Sheldon Lobel, P.C., for Martha Schwartz, owner; Altamarea Group, lessee.
SUBJECT – Application March 15, 2012 – Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). M1-5B zoning district.
PREMISES AFFECTED – 216 Lafayette Street, between Spring Street and Broome Street, 25' of frontage along Lafayette Street, Block 482, Lot 28, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 15, 2012, acting on Department of Buildings Application No. 120960291, reads in pertinent part:

> Proposed work to create a new use –UG#6 below the floor level of second floor level in Zoning M1-5B is not permitted as per ZR 42-14/2b. Provide approval from BSA as per ZR 42-31; and

WHEREAS, this is an application under ZR § 72-21, to permit within an M1-5B zoning district, the conversion of a portion of the first floor of an existing two-story building to a Use Group 6 use (including eating and drinking establishment), contrary to ZR § 42-14; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in the *City Record*, with continued hearings on September 25, 2012, November 20, 2012, and January 29, 2013, and then to decision on February 26, 2013; 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 disapproval of this application; and

WHEREAS, New York State Assembly Member Deborah J. Glick provided testimony in opposition to this application; and

WHEREAS, the owners of the adjacent building at 57 Crosby Street and the building at 55 Crosby Street, represented by counsel, provided written and oral testimony in opposition to the application; and

WHEREAS, a representative of the Friends of Petrosino Square, and other community members, also provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the "Opposition"; and

WHEREAS, the Opposition raises the following primary concerns: (1) the intended size and scale of the combined restaurant is out of context with the surrounding area and would have a negative impact on the surrounding neighborhood; (2) the proposed expansion is not in the public interest; (3) the proposal will have detrimental impacts on traffic; (4) the proposal will exacerbate the negative impacts of the existing restaurant's ventilation system on the adjacent buildings and worsen the existing rodent problem near the site; (5) the claimed hardships are self-created due to the existence of the Joint Living-Work Quarters for Artists ("JLWQA") use in the rear portion of the building; and (6) a special permit from the City Planning Commission, pursuant to ZR § 74-781, rather than a variance, is the appropriate form of relief; and

WHEREAS, the subject site is located on the west side of Lafayette Street, between Broome Street and Spring Street, within an M1-5B zoning district; and

WHEREAS, the site has 25.59 feet of frontage on Lafayette Street, a depth of 100 feet, and a lot area of approximately 2,529 sq. ft.; and

WHEREAS, the site is occupied by a two-story building, with a total floor area of 4,344 sq. ft. (1.72 FAR); and

WHEREAS, the applicant states that the building is divided midway through the cellar, first, and second floors by a solid concrete masonry wall that divides the building into two portions (front and rear); and

WHEREAS, the applicant represents that the front portion of the building is currently vacant, though the front portion of the ground floor has been used for Use Group 6 retail uses for the past 15 years; the rear portion of the building is occupied by JLWQA use; and

WHEREAS, the applicant notes that in 1999 an easement was granted by the owner of Block 482, Lot 9, the adjacent property to the rear of the site, to permit ingress and egress by JLWQA tenants from the rear portion of the site to Crosby Street; and

WHEREAS, the applicant currently operates the restaurant located at 218 Lafayette Street (Block 482, Lot 27) on the first floor of the adjacent two-story building, and proposes to expand the existing restaurant into the cellar, ground floor, and second floor of the front portion of the subject building; and

WHEREAS, specifically, the applicant proposes to convert a total of 2,286 sq. ft. (0.53 FAR) of floor area of the subject building (1,265 sq. ft. on the first floor and 1,021 sq. ft. on the second floor), and an additional 985 sq. ft. of floor space at the cellar to a Use Group 6 eating and drinking establishment in conjunction with the existing restaurant at the adjacent 218 Lafayette Street; and

WHEREAS, the applicant notes that the second floor of the building is permitted to convert to restaurant use as-of-right, and therefore the proposed variance is only for the approximately 2,250 sq. ft. of floor space located at the front portion of the first floor and cellar of the subject building; and

WHEREAS, the rear portion of the cellar, first floor,

and second floor will remain as JLWQA space; and

WHEREAS, because the proposed Use Group 6 use is not permitted below the second floor in the subject M1-5B zoning district, the requested waiver is necessary; and

WHEREAS, the applicant states that 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 underbuilt nature of the existing building; (2) the obsolescence of the existing building for manufacturing use; and (3) the effective shallowness of the lot; and

WHEREAS, as to the underbuilt nature of the existing building, the applicant states that the subject building is one of the smallest buildings in the surrounding area; and

WHEREAS, the applicant submitted an area study of the blocks within an 800-ft. radius of the site which reflects that the subject building has the ninth smallest floor area and the eighth smallest FAR of the more than 130 lots within the study area; and

WHEREAS, the applicant represents that this small building condition presents difficulties to the owner, as a lack of available space limits the ability to generate income for the site, and the building is dwarfed by much larger buildings in the immediate area; and

WHEREAS, the area study submitted by the applicant further reflects that the subject building is also one of only 13 properties within the 800-ft. radius area improved with a building of two stories or less, and the applicant states that this condition creates practical difficulties for the owner as there are only two floors from which to generate income; and

WHEREAS, the applicant represents that the unique small floor area, underbuilt FAR and two-story condition at the building do not support the use of the ground floor for a conforming use, resulting in difficulties in generating a reasonable return absent the requested variance; and

WHEREAS, the applicant states that the presence of JLWQA space in the subject building creates an additional hardship in that the existing two-story building cannot be enlarged despite the permitted maximum 5.0 FAR because, pursuant to ZR § 43-17 (Special Provisions for Joint Living-Work Quarters for Artists in M1-5A and M1-5B Districts), "no *building* containing *joint living-work quarters for artists* shall be *enlarged*"; and

WHEREAS, the applicant states that of the 12 other small buildings in the area study, the subject building is the only site that contains JLWQA use and is therefore unable to enlarge; and

WHEREAS, the applicant further states that the building is obsolete for manufacturing uses due to the limited space available to install any equipment to accommodate such conforming use; and

WHEREAS, specifically, the applicant states that any manufacturing or wholesale tenant would have operational problems including (1) no loading docks; (2) an extremely small floorplate and (3) the lack of an elevator to move product between the ground and cellar floors; and

WHEREAS, the applicant represents that these factors, among others, have contributed to the historic inability to maintain a continued M1-5B conforming use on the ground floor of the building; and

WHEREAS, the applicant represents that the site suffers from an additional hardship due to the effective shallowness and undersized nature of the lot; and

WHEREAS, specifically, the applicant states that although the subject lot is 100 feet deep, the existing building is divided midway on the cellar, first, and second floors by a demising wall that effectively cuts the building in half; and

WHEREAS, the applicant further states that this feature results in effective lot dimensions for the non-JLWQA front portion of approximately 50 feet deep by 25 feet wide, or 1,250 sq. ft., and this effective floorplate of 50 feet deep makes the site one of the shallowest in the surrounding area; and

WHEREAS, the applicant represents that the shallow floorplate, which is part of a condition dating back 30 years in a building that is close to 100 years old, is a unique condition that gives rise to significant difficulties in using the space for an as-of-right use; and

WHEREAS, the Board disagrees with the applicant's arguments regarding the effective shallowness of the lot, as it considers the demising wall that divides the building in half to be a self-created hardship for which the applicant is not entitled to relief; and

WHEREAS, however, the Board finds that the other unique physical conditions cited by the applicant, specifically the underbuilt nature of the existing building and its obsolescence for manufacturing use, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, as to the financial feasibility of the site, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as-of-right scenario with ground floor warehouse/storage use; (2) an as-of-right scenario with ground floor business service use; (3) an as-of-right scenario with JLWQA use; and (4) the proposed scenario; and

WHEREAS, the applicant asserts that the three as of right scenarios would result in a negative rate of return and that the proposed use is the minimum necessary to achieve a reasonable return; and

WHEREAS, the Board directed the applicant to provide an analysis of a "stand-alone" restaurant at the site, without reference to the existing restaurant at 218 Lafayette Street, as well as an analysis of retail use of the site; and

WHEREAS, in response, the applicant provided a letter from its financial analyst stating that use of the building for a stand-alone restaurant or retail as opposed to an expansion of the existing restaurant at 218 Lafayette Street should not affect the financial feasibility of the project; thus, a stand-alone restaurant or retail use would realize a reasonable return; and

WHEREAS, at the Board's direction, the applicant also provided analyses of alternative variance scenarios, including:

(1) an enlarged five-story building with Use Group 7 use on the ground floor and Use Group 6 use above, which would be permitted as of right except for the need to waive ZR § 43-17 to permit enlargement of a JLWQA building; and (2) an enlarged seven-story building containing solely Use Group 17 JLWQA use, which would require a waiver of ZR § 43-17 to permit enlargement of a JLWQA building and ZR § 42-14 to permit new JLWQA use; and

WHEREAS, the applicant asserts that neither of the alternative variance scenarios would realize a reasonable return; and

WHEREAS, the Opposition submitted a letter from a real estate broker stating that a lesser variance for conventional retail use in the subject building would result in a rental value of $90 per sq. ft., which would provide a reasonable return; and

WHEREAS, in response, the applicant submitted a letter from its financial analyst which states that the Opposition's estimate that conventional retail use could garner a rental value of $90 per sq. ft. is unsupported, but that even if that $90 per sq. ft. price for conventional retail space claimed by the Opposition is substituted for the $105 per sq. ft. rent currently assumed by the applicant's analysis, then the project would not be economically feasible, as the capitalized value would be eight percent less than the project development cost; 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 variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity are used for Use Group 6 purposes on the first floor with residential or loft space above; and

WHEREAS, the applicant states that the immediately surrounding neighborhood maintains a distinctly commercial character, and the ground floors of all but one of the lots on the blockfront on which the site is located, Lafayette Street between Spring Street and Broome Street, are occupied by Use Group 6 uses; and

WHEREAS, the applicant further states that this portion of Lafayette Street is particularly characterized by ground floor restaurant use; there are six restaurants, together with a large bank, a large furniture store, and a lingerie boutique; and

WHEREAS, the applicant notes that Use Group 6 use, including an eating and drinking establishment, is permitted as of right on the building's second floor; and

WHEREAS, further, the applicant notes that the existing two-story building will remain and that it will not be enlarged and no bulk waivers are sought; and

WHEREAS, the Opposition argues that the proposed expansion of the restaurant at 218 Lafayette Street to the subject building would create a large restaurant that does not fit within context of community, and that the smaller restaurants which currently exist in the neighborhood do not result in the traffic, safety, noise, and congestion issues that larger restaurants will inevitably bring to the area, and the applicant has not presented any adequate plan for handling the increase in traffic, congestion, and noise that a larger restaurant would bring to the community; and

WHEREAS, in response, the applicant states that the character of the surrounding area is primarily Use Group 6 on the ground floor, and the character of this particular blockfront is primarily restaurant use, and while many of the eating and drinking establishments in the area are smaller, the proposed restaurant here will by no means be the "mega" restaurant alleged by the Opposition, but will instead be comparable in square footage and/or number of patrons to other neighborhood restaurants, including Balthazar and Spring Natural; and

WHEREAS, in light of the concerns raised by the Opposition regarding the expansion of the existing restaurant at 218 Lafayette Street to the subject building, and the fact that the applicant's financial analysis indicates that a smaller, stand-alone restaurant would realize a reasonable return on the site, the Board finds it appropriate to limit any Use Group 6 eating and drinking establishment on the site to the confines of the subject building and not permit any connection to or expansion of the existing restaurant at 218 Lafayette Street and the subject site; and

WHEREAS, the Opposition asserts that the existing restaurant at 218 Lafayette Street emits foul odors that negatively impact the surrounding neighbors and has created a rodent problem at the rear of the restaurant, and that expanding the restaurant use to the subject building would exacerbate these conditions; and

WHEREAS, in response, the applicant submitted a letter from the project architect stating that the ventilation system at the existing restaurant has recently been upgraded and now exhaust toward Lafayette Street in an effort to reduce any impact on the rear neighbors and the proposed ventilation at the subject building would be located toward the front half of the building; and

WHEREAS, as to the alleged rodent problem, the applicant states to the extent such a problem exists it is not related to the existing restaurant at 218 Lafayette Street, which does not have access to the rear of the building, does not store garbage receptacles at the rear of the building, received an "A" grade from the Department of Health, and has never been issued a violation for anything involving vermin; and

WHEREAS, in response to the concerns raised by the Opposition that the proposal would have a detrimental impact on traffic in the surrounding area, the applicant submitted a letter from an environmental consultant noting that the vast majority of the patrons of the existing restaurant arrive by foot or mass transit, and not by car, and the applicant notes that an as-of-right commercial or manufacturing use would generate delivery and/or patron traffic that would similarly affect the

surrounding neighborhood; and

WHEREAS, as to concerns regarding pedestrian traffic, the applicant states that the photographs submitted by the Opposition showing busy sidewalks in the Petrosino Square area all show establishments with sidewalk cafes and outdoor seating, which the existing restaurant does not currently maintain and is not proposed at the site, and the applicant notes that none of the submitted photographs are of the outside of the existing restaurant; 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 Opposition asserts that the alleged hardship is self-created due to the existence of the JLWQA use in the rear portion of the building; and

WHEREAS, in response, the applicant states that the unnecessary hardship encountered by a strict application of the zoning regulations to the site was not caused by the owner of the site nor a predecessor in interest, but is inherent in the (1) underdeveloped nature of the building, (2) existing building conditions, including (a) small floorplates, (b) the lack of a loading dock, and (c) the lack of elevators, and (3) use regulations which prohibit enlargement of the Building (with the exception of mezzanines within JLWQA units); and

WHEREAS, as noted above, the Board finds that the hardship alleged by the applicant with regard to the demising wall that creates a shallow lot condition in the building is a self-created hardship; however, the Board finds the remaining hardships cited by the applicant were not created by the owner or a predecessor in title, but are due to the unique conditions of the site; 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 unique conditions of the site; and

WHEREAS, the applicant asserts that the proposal for Use Group 6 use represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, the Opposition asserts that restricted Use Group 6 use, which would exclude an eating and drinking establishment would represent a lesser variance yet still be feasible; and

WHEREAS, as noted above, the Board finds it appropriate to limit any Use Group 6 eating and drinking establishment use of the site to the subject building and not permit any connection to the existing eating and drinking establishment at 218 Lafayette Street; and

WHEREAS, further, the Board notes that in cases where it restricted all eating and drinking use, the buildings were substantially larger and more fully developed and primarily with new residential use that it deemed to provide the required economic relief; the Board finds such cases to be distinguishable and directs its inquiry to the specific conditions of the subject site; and

WHEREAS, accordingly, the Board finds that the proposal, for the re-use of an existing building where the proposed use is permitted as of right on the second floor, without any enlargement of the building envelope, is the minimum necessary to afford relief, based on the analysis of the site and the economic feasibility; and

WHEREAS, the Opposition raised a supplemental argument that the applicant is required to seek a special permit from the City Planning Commission in lieu of a variance; and

WHEREAS, the Board finds that the variance process, with its five required findings, actually reflects the breadth of analysis that the Opposition seeks and that the Opposition's arguments that the special permit should be sought first are actually incompatible with the arguments that they request that the highest threshold be set for granting relief to allow the proposed Use Group 6 use throughout the building; 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 Section 617.4 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. 12BSA093M, dated March 16, 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, 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, within an M1-5B zoning district, the conversion of a portion of the first floor and cellar of an existing two-story building to a Use Group 6 use (including eating and drinking establishment); *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 25, 2013"– seven (7) sheets; and *on*

further condition:

THAT the term of this grant will expire on February 26, 2023;

THAT the use will be limited to Use Group 6 on the ground floor and cellar levels (with 1,265 sq. ft. of Use Group 6 floor area at the first floor and 985 sq. ft. of Use Group 6 floor space at the cellar), as shown in the BSA-approved plans;

THAT if the use of the ground floor and cellar is as a Use Group 6 eating and drinking establishment, the following conditions will apply: (1) the maximum seating capacity, including any accessory bar seating, will be limited to a maximum of 45 patrons on the first floor and 40 patrons on the second floor; (2) the closing time will be no later than 11:00 p.m., Sunday through Thursday, and 12:00 a.m., Friday and Saturday; (3) there will be no live music or DJs; (4) there will be no outdoor space for eating and drinking; and (5) there will be no interior connection between the eating and drinking establishment and the adjacent buildings, except for emergency ingress/egress in the cellar as reflected on the BSA-approved plans;

THAT the operation of the site will be in compliance with Noise Code regulations;

THAT any rooftop mechanical and ventilation equipment related to the Use Group 6 uses will be directed away from adjoining residential buildings;

THAT the above conditions will be noted on the Certificate of Occupancy;

THAT the internal floor layouts on each floor 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) only;

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

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

Adopted by the Board of Standards and Appeals, February 26, 2013.

75-12-BZ
CEQR #12-BSA-106M

APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.

SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of retail use (UG 6) on the first floor and expand the use into the cellar and sub-cellar, contrary to use regulations (§42-14 (D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 29, 2012, acting on Department of Buildings Application No. 120991150, reads in pertinent part:

> Proposed works to create a new use – UG#6 below the floor level of second floor level in Zoning M1-5B is not permitted as per ZR 42-12/2b. Provide approval from BSA as per ZR 42-12; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing six-story building to a commercial retail use (UG 6) with expansion into the cellar and accessory retail use in the subcellar, contrary to ZR § 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in the *City Record*, with a continued hearing on January 15, 2013, and then to decision on February 26, 2013; 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 approval of this application, with the condition that an eating and drinking establishment not be permitted; and

WHEREAS, the subject site is a through lot with frontage on Broadway and Mercer Street, between Prince Street and Spring Street, in an M1-5B zoning district within the SoHo-Cast Iron Historic District; and

WHEREAS, the site has 25 feet of frontage on Broadway and Mercer Street, a depth of 200.25 feet, and a lot area of 5,006.25 sq. ft.; and

WHEREAS, the site is currently occupied by a 26,058

sq. ft. (5.2 FAR) building with a five-story portion on Mercer Street and a six-story portion on Broadway, with ground floor retail use, commercial use on the second floor, and Joint Live Work Quarters for Artists ("JLWQA") units on the third through sixth floors; and

WHEREAS, on April 12, 1988, under BSA Cal. No. 1081-85-ALC, the Board granted an authorization pursuant to ZR § 72-30 to exclude floor area from the relocation incentive contribution relating to the building's change of use from commercial/manufacturing to JLWQA use on the third through sixth floors; and

WHEREAS, the applicant now seeks to legalize the 4,832 sq. ft. of retail floor area on the first floor, and to expand the retail use to 10,266 sq. ft. of floor space at the cellar and sub-cellar; and

WHEREAS, because Use Group 6 retail is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that 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 narrowness of the lot; and (2) the obsolescence of the existing building for manufacturing use; and

WHEREAS, as to the narrow width, the applicant states that the building has a width of 25'-0", which results in narrow floor plates that are ill-suited for manufacturing use or other conforming uses; and

WHEREAS, further, the applicant represents that the building has a light well which is along one lot line and measures 5'-10" by 29'-10", reducing the effective interior width of the building to 15'-5" at its narrowest point, which exacerbates the hardship by further limiting the floor plates for a conforming use; and

WHEREAS, the applicant represents that the configuration on the subject site is unique in the surrounding area; and

WHEREAS, the applicant provided a study which indicated that out of 500 lots on blocks zoned M1-5B or M1-5A within 1,000 feet of the site, there are only 182 lots that are 25'-0" or less in width; of these 182 lots, 75 lots have an effective width of less than 25'-0", and only five of these lots have conforming uses on the ground floor; and

WHEREAS, further, of these 75 lots, only six contain buildings with light wells other than the subject site; and only one building containing a light well is occupied by a conforming use (JLWQA) on the ground floor; and

WHEREAS, the applicant concludes that the lack of conforming uses occupying buildings with narrow widths reinforces the fact that such narrow widths are unable to reasonably accommodate conforming uses; and

WHEREAS, as to the obsolescence of the building, the applicant identifies the following conditions: (a) the absence of a loading dock and the inability to install a loading dock, (b) limited street access at the site, (c) severely limited space to install any equipment to accommodate light manufacturing uses and (d) the lack of a working freight elevator; and

WHEREAS, the applicant states that other narrow properties within 400 feet of the site may have similar characteristics, however, none are occupied by a conforming use; and

WHEREAS, the applicant states that, further, the ground floor tenant is severely limited in its access to the building since the upper floor JLWQA tenants have street access through both Broadway and Mercer Street; and

WHEREAS, based on the above arguments and analyses, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) conforming use at the first floor and cellar; and (2) the proposed ground floor and cellar retail use; and

WHEREAS, the study concluded that the conforming scenario would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, the applicant represents that the first floor and the cellar were listed with a real estate broker for a period of 120 days, however the broker was unable to secure a tenant to occupy the space for light manufacturing use; 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 compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity contain ground floor retail uses with residential space above, particularly along both Broadway, a major retail street, and along Mercer Street between Prince and Spring Streets; and

WHEREAS, further, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, approving the proposal on February 13, 2013; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant has agreed to not allow any eating or drinking establishments to occupy the ground floor space; 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

WHEREAS, the applicant notes that there is no proposed increase in the bulk of the building; and

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

WHEREAS, the project is classified as a Type I 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. 12BSA106M, dated October 3, 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, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing building to a commercial retail use (UG 6) with expansion into the cellar and accessory retail use in the sub-cellar, contrary to ZR § 42-14(d)(2)(b); *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 7, 2013"– seven (7) sheets; and *on further condition*:

THAT no eating and drinking establishment will be permitted on the site;

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 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, February 26, 2013.

159-12-BZ
CEQR #12-BSA-138Q

APPLICANT – Eric Palatnik, P.C., for Joseph L. Musso, owner.

SUBJECT – Application May 22, 2012 – Variance (§72-21) to allow for the enlargement of a Use Group 4 medical office building, contrary to rear yard requirements (§24-36). R3-2 zoning district.

PREMISES AFFECTED – 94-07 156th Avenue, between Cross Bay Boulevard and Killarney Street, Block 11588, Lot 67, 69, 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 Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 4, 2012, acting on Department of Buildings Application No. 420294568, reads in pertinent part:

Second floor extension in rear yard is contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the proposed extension of the existing second floor of the subject building, which does not comply with zoning regulations for the minimum required rear yard, contrary to ZR § 24-36; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in the *City Record*, with a continued hearing on January 29, 2013, and then to decision on February 26, 2013; 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 10, Queens, recommends approval of this application; and

WHEREAS, New York State Senator Joseph P. Addabbo, Jr., and New York State Assembly Member Phillip Goldfeder provided written testimony in support of this application; and

WHEREAS, the subject site is located on the north side of 156th Avenue, between Killarney Street and Cross Bay

Boulevard, within an R3-2 zoning district; and

WHEREAS, the subject lot has approximately 51.5 feet of frontage on 156th Avenue, a depth ranging from 96 feet to 108 feet, and a total lot area of 5,215 sq. ft.; and

WHEREAS, the site is occupied by a two-story medical office building (Use Group 4) with a floor area of 3,881 sq. ft. (0.75 FAR); and

WHEREAS, the applicant states that the subject building was originally constructed as a two-story multi-family home, and in 2006 an as-of-right addition was constructed at the rear of the building, including the construction of a new foundation system for the rear enlargement (the "2006 Enlargement"), and the building was converted to medical office use; and

WHEREAS, the applicant notes that the first floor of the building is constructed to the rear lot line, but the second floor of the building is currently situated at the front of the building and does not extend to the rear lot line; and

WHEREAS, the applicant now proposes to enlarge the building by extending the second story to the rear lot line, directly above the existing first floor; and

WHEREAS, the proposed building will have the following complying parameters: 4,948 sq. ft. of floor area (0.95 FAR); a lot coverage of 47 percent; a total height of 19'-8"; a side yard with a width of 8'-0" along the eastern lot line; a side yard with a width of 7'-6" along the western lot line; and a front yard with a depth of approximately 26'-0"; and

WHEREAS, however, the applicant proposes to provide a rear yard with a depth of 1'-10" (the minimum required rear yard is 30'-0"); 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 poor sub-surface soil conditions at the site; (2) the high water table at the site; and (3) the existing building structure; and

WHEREAS, the applicant submitted a report from an engineer stating that soil borings at the site reflect that (1) the site has poor soil conditions with a fill layer that is approximately 9'-0" thick, (2) the fill layer is underlain by loose to moderately dense sandy soil, and (3) natural groundwater was encountered at a depth of approximately 6'-11" below existing grade; and

WHEREAS, the applicant states that the subject site is also underbuilt for community facility use and any enlargement of the building must be constructed above grade because the existing building on the site in conjunction with the poor soil conditions and high water table preclude the applicant from enlarging the building below grade; and

WHEREAS, the applicant further represents that the existing building structure, which was originally constructed as a wood-frame home, impedes the viability of a complying enlargement of the building; and

WHEREAS, specifically, the applicant analyzed an as-of-right scenario consisting of a 1,160 sq. ft. addition above the second floor level at the front of the building; and

WHEREAS, the applicant also submitted an engineer's report which states that the foundation for the existing two-story building cannot support the additional third floor loads, and new foundation elements would be required to support the addition; and

WHEREAS, however, the engineer's report notes that the proposed enlargement, consisting of the extension of the existing second story of the building to the rear lot line, directly above the existing first floor, can be supported by the new foundation system that was constructed for the rear portion of the building in association with the 2006 Enlargement, and therefore the proposed addition would only require the construction of a new floor level and roof using engineered wood joists; and

WHEREAS, the applicant notes that while a new foundation system capable of accommodating an additional story was constructed at the rear of the building in association with the 2006 Enlargement, the front of the building maintains the prior foundation system which is not capable of accommodating a third story without the addition of new foundation elements; and

WHEREAS, the applicant states that these foundation elements include the installation of new helical piles and pile caps, a steel frame, and metal floor joists that support a concrete slab; and

WHEREAS, the applicant further states that the as-of-right addition of a third story at the front of the building would also be too heavy for the existing framing to support, and new structural framing would have to be installed to accommodate the addition; and

WHEREAS, the engineer's report provided a cost estimate for the aforementioned premium costs associated with the as-of-right scenario, which indicates that the construction of a third floor at the front of the building will result in approximately $215,400 in additional costs as compared to the proposed enlargement, due to the additional foundation, framing, and elevator costs associated with the work; and

WHEREAS, accordingly, 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 compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) the existing medical office building without any enlargement; (2) an as-of-right enlargement to the medical office building, consisting of a 1,160 sq. ft. third floor addition at the front of the building; and (3) the proposed 1,067 sq. ft. enlargement of the medical office building consisting of an extension of the second floor to the rear lot line; and

WHEREAS, the applicant concluded that the existing and as-of-right scenarios would not result in a reasonable return due to the unique physical conditions of the site, but that the proposed building would realize a reasonable return and has submitted evidence in support of that assertion; 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 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; and

WHEREAS, the applicant states that the area to the east and south of the site is comprised primarily of two-story one- and two-family homes, with a few multiple dwellings and community facilities interspersed; and

WHEREAS, the applicant submitted an analysis of the surrounding neighborhood character which notes that, with the exception of the four-story building located adjacent to the west of the site, no other building in the study area exceeds two stories in height, and the effect of extending the bulk of the second floor, which will not increase the existing height of the building, would be minimal; and

WHEREAS, the neighborhood analysis submitted by the applicant states that the neighborhood character in the study area is mainly perceived from the street, and because the proposed second floor extension will not be clearly visible from the street it will not have a negative impact on the neighborhood character; and

WHEREAS, the neighborhood analysis further states that the consistent form of the neighborhood is two-story buildings without setbacks, and therefore, the second floor extension will arguably result in a building that is more consistent with the neighborhood character than the existing building; and

WHEREAS, the neighborhood analysis indicates that the proposed second floor extension will have no meaningful impact on the four-story building to the north and west of the site that is additionally buffered from the site by a parking lot, and will similarly not impact the neighboring properties to the east and northeast, as the footprint of the building is aligned with adjacent lot to the rear for just three feet at the very rear of the adjacent lot and will not result in the loss of light and air or in the crowding of the buildings; and

WHEREAS, the analysis submitted by the applicant concludes that the proposed second floor extension is more consistent with the surrounding neighborhood character, which includes a very uniform building height of two stories, than the as-of-right addition of a third story at the front of the building; and

WHEREAS, the applicant notes that the proposed extension of the community facility use at the second floor would be allowed as a permitted obstruction in the rear yard up to a height of one-story or 23'-0"; thus, the proposed extension, with a height of approximately 19'-8", is within the permitted rear yard obstruction height of 23'-0" and is only non-complying because it is two stories; 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 unique subsurface soil conditions; 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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II 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 proposed horizontal enlargement to the existing second floor of the subject building, which does not comply with zoning regulations for the minimum required rear yard, contrary to ZR § 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 February 14, 2013"- eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: 4,948 sq. ft. of floor area (0.95 FAR); a total height of 19'-8"; and minimum rear yard depth of 1'-10", as illustrated on the BSA-approved plans;

THAT no mechanical equipment will be located within 30'-0" of the rear lot line;

THAT there will be no entrance or exit at the rear of the building;

THAT construction shall proceed 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) only;

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

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

Adopted by the Board of Standards and Appeals, February 26, 2013.

234-12-BZ
CEQR #13-BSA-006X
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner; LA Fitness, lessee.
SUBJECT – Application July 20, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*LA Fitness*). 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 Street, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 19, 2012, acting on Department of Buildings Application No. 2201787, reads in pertinent part:

> Proposed PCE in a M1-1 zoning district in contrary to Section 42-10 ZR and requires a special permit from the BSA pursuant to 73-36 ZR; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-1 zoning district, the operation of a physical culture establishment (PCE) on the first and second floors of a proposed seven-story enlargement to an existing two-story building, contrary to ZR § 42-10; and

WHEREAS, the site is located within a larger zoning lot to be occupied by the Hutchinson Metro Center, a 42-acre campus with hotel and office space, and related uses located off the Hutchinson River Parkway in the Pelham Bay section of the Bronx; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, and then to decision on February 26, 2013; and

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

WHEREAS, Community Board 11, Bronx, recommends approval of this application; and

WHEREAS, the subject site is a through lot located east of Basset Avenue, west of Marconi Street, approximately 385 feet north of the intersection of Basset Avenue and Eastchester Road; and

WHEREAS, the site is occupied by an existing two-story building which is proposed to be enlarged to a seven-story commercial building; and

WHEREAS, the proposed PCE will occupy 44,273 sq. ft. of floor area, including 29,873 sq. ft. on the first floor for a front desk, retail sales area, circuit equipment, free weights, pool, locker rooms, and a children's area, and 14,400 sq. ft. on the second floor for a spinning area, aerobics studio, cardio equipment, and a personal training area; and

WHEREAS, the PCE will be operated as L.A. Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant requests the Board to permit the PCE to operate 24 hours a day, seven days a week; and

WHEREAS, in support of such hours, the applicant represents that the PCE is within a larger office complex located within a manufacturing district where residential uses are prohibited, and will cater primarily to business and institutions located within the development and in the surrounding area; and

WHEREAS, further, the applicant represents that many of the potential patrons work in facilities that have 24-hour operations including medical facilities and multiple hospitals located in the immediate area (including Bronx Psychiatric Center, Jacobi Medical Center, Einstein College of Medicine and Calvary Hospital; and

WHEREAS, the applicant provided a map showing the proximity of the surrounding institutions; and

WHEREAS, based on the above, the Board agrees that in this instance, a 24-hour operation for the proposed PCE is appropriate; 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA006X, dated July 19, 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 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 in an M1-1 zoning district, the operation of a physical culture establishment on the first and second floors of a proposed seven-story enlargement to an existing two-story building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 20, 2013" – Eight (8) sheets and *on further condition*:

THAT the term of this grant will expire on February 26, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, February 26, 2013.

35-11-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.
SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.
PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.
COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to April 23, 2013, at 1:30 P.M., for adjourned hearing.

63-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.
SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.
PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27th Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.
COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for continued hearing.

106-12-BZ
APPLICANT – Eric Palatnik, P.C., for Edgar Soto, owner; Autozone, Inc., lessee.
SUBJECT – Application April 17, 2012 – Special Permit (§73-50) to permit the development of a new one-story retail store (UG 6), contrary to rear yard regulations (§33-292). C8-3 zoning district.
PREMISES AFFECTED – 2102 Jerome Avenue between East Burnside Avenue and East 181st Street, Block 3179, Lot 20, Borough of Bronx.
COMMUNITY BOARD #5BX
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 12, 2013, at 1:30 P.M., for decision, hearing closed.

233-12-BZ
APPLICANT – Richard G. Leland, Esq./Fried Frank Harris Shriver & Jacob, for Porsche Realty, LLC, owner; Van Wagner Communications, lessee.
SUBJECT – Application July 19, 2012 – Variance (§72-21) to legalize an advertising sign in a residential district, contrary to use regulations (§22-00). R3X zoning district.
PREMISES AFFECTED – 246-12 South Conduit Avenue, bounded by 139th Avenue, 246th Street and South Conduit Avenue, Block 13622, Lot 7, 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 March 19, 2013, at 1:30 P.M., for decision, hearing closed.

242-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Toldos Yehuda*), contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.
PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, 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 April 9, 2013, at 1:30 P.M., for decision, hearing closed.

250-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Carla Zeitouny and Raymond Zeitouny, owners.
SUBJECT – Application August 13, 2012 – 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); less than the required rear yard (§23-47) and perimeter wall height (§23-631). R3-2 zoning district.
PREMISES AFFECTED – 2410 Avenue S, south side of Avenue S, between East 24th and Bedford Avenue, Block 7303, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

285-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Pigranel Management Corp., owner; Narita Bodywork, Inc., lessee.
SUBJECT – Application October 3, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Narita Bodyworks*) on the 4th floor of existing building. M1-6 zoning district.
PREMISES AFFECTED – 54 West 39th Street, south side of West 39th Street, between Fifth Avenue and Avenue of the Americas, Block 840, Lot 78, 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 March 12, 2013, at 1:30 P.M., for decision, hearing closed.

295-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Laura Danoff and Scott Danoff, owners.
SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district.
PREMISES AFFECTED – 49-33 Little Neck Parkway, Block 8263, Lot 110, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

298-12-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.
SUBJECT – Application October 17, 2012 – Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university use (*New York University*), contrary to use regulations. M1-5B zoning district.
PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4th Street, Block 545, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for deferred decision.

302-12-BZ
APPLICANT – Davidoff Hutcher & Citgron LLP, for YHD 18 LLC, owner; Lithe Method LLC, lessee.
SUBJECT – Application October 18, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Lithe Method*). C6-4A zoning district.
PREMISES AFFECTED – 32 West 18th Street, between

Fifth and Sixth Avenues, Block 819, Lot 1401, 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 March 19, 2013, at 1:30 P.M., for decision, hearing closed.

315-12-BZ

APPLICANT – Akerman Senterfitt, LLP, for Pali Realty LLC, owner.

SUBJECT – Application November 20, 2012 – Special Permit (§73-50) to allow for a community facility building, contrary to rear yard requirements (§33-29). C4-3 zoning district.

PREMISES AFFECTED – 23-25 31st Street, east side of 31st Street, between 23rd Avenue and 23rd Road, Block 835, Lot 27 & 31, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

318-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 45-47 Crosby Street Tenant Corp./CFA Management, owner; SoulCycle 45 Crosby Street, LLC, lessee.

SUBJECT – Application November 29, 2012 – Special permit (§73-36) to allow a physical culture establishment (*SoulCycle*) within a portion of an existing building. M1-5B zoning district.

PREMISES AFFECTED – 45 Crosby Street, east side of Crosby Street, 137.25' north of intersection with Broome Street, Block 482, 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 19, 2013, at 1:30 P.M., for decision, hearing closed.

320-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for West 116 Owners Realty LLC, owner; Blink 116th Street, Inc., lessee.

SUBJECT – Application December 6, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*). C4-5X zoning district.

PREMISES AFFECTED – 23 West 116th Street, north side of West 116th Street, 450' east of intersection of Lenox Avenue and W. 116th Street, Lot 1600, Lot 20, 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 March 19, 2013, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on January 8, 2013, under Calendar No. 200-12-BZ and printed in Volume 98, Bulletin Nos. 1-2, is hereby corrected to read as follows:

200-12-BZ
CEQR #12-BSA-148M
APPLICANT – Sheldon Lobel, P.C., for Oversea Chinese Mission, owner.
SUBJECT – Application June 26, 2012 – Variance (§72-21) to permit the enlargement of UG4 house of worship (*The Overseas Chinese Mission*), contrary floor area (§109-121), lot coverage (§109-122) and enlargement of non-complying building (§54-31). C6-2G zoning district.
PREMISES AFFECTED – 154 Hester Street, southwest corner of Hester Street and Elizabeth Street, Block 204, Lot 16, 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 5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 31, 2012, acting on Department of Buildings Application No. 121048801 reads, in pertinent part:

> ZR 109-121 – The existing floor area exceeds the 4.8 permitted by this section within Preservation Area A.
> ZR 109-122 – The proposed enlargement exceeds lot coverage permitted by this section.
> 1. ZR 54-31 – In a C6-2G Zoning District within Preservation Area A the existing bulk and lot coverage are non-complying, therefore the proposed enlargement increases the non-compliance and is not permitted; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in a C6-2G zoning district within the Special Little Italy District (LI) Area A the enlargement of an existing nine-story community facility building (Use Group 4), which does not comply with the underlying zoning district regulations for floor area and lot coverage and increases the degree of non-complying floor area and lot coverage conditions, contrary to ZR §§ 109-121, 109-122, and 54-31; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

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

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

WHEREAS, the applicant submitted approximately 70 letters in support of the application from community members and businesses in the area; and

WHEREAS, this application is being brought on behalf of Oversea Chinese Mission ("OCM"), a non-profit religious entity; and

WHEREAS, the subject site is located on the southwest corner of Hester Street and Elizabeth Street, within a C6-2G zoning district within the Special Little Italy District (LI) Area A; and

WHEREAS, the subject site has a width ranging from 54'-7" to 55'-1", a depth of 99'-10", and a lot area of 5,473 sq. ft.; and

WHEREAS, the subject site is currently occupied by a pre-existing non-complying nine-story building built in 1912, which was used as a school when OCM purchased it in 1966 and is now occupied by OCM for its house of worship and ancillary uses; and

WHEREAS, the cellar and first floor are built full to the lot lines and floors two through eight are built full with the exception of a light well located along the western lot line measuring approximately three feet by 40 feet for a total of approximately 320 sq. ft. per floor; the ninth floor is a partial floor along the north half of the building; and

WHEREAS, the applicant proposes to undertake a full renovation of the building to accommodate its growing needs and to enlarge the building by filling in the light well on floors two through eight; and

WHEREAS, the applicant states that the existing building has the following non-complying parameters: a total floor area of 43,650 sq. ft. (8.39 FAR) (which exceeds the maximum permitted 26,270 sq. ft. and 4.8 FAR for community facility use); a total lot coverage of 95 percent (which exceeds the maximum permitted 70 percent); and a height of 126'-6" (which exceeds the maximum permitted height of 75'-0"); and

WHEREAS, the applicant proposes to enlarge the building to the following parameters: a floor area of 45,959 sq. ft. (8.5 FAR); and a lot coverage of 100 percent; and

WHEREAS, the applicant notes that the enlargement increases the degree of non-compliance of the floor area and lot coverage, but does not affect any other bulk parameters; and

WHEREAS, the proposal provides for the following uses: (1) a multipurpose room/chapel at the first floor; (2) the main sanctuary on the second floor; (3) a multipurpose room/chapel and a nursery on the third floor; (4) a children's library and classrooms on the fourth floor; (5) classrooms, a computer lab, and a youth worship room on the fifth floor; (6) classrooms, offices, and a conference room on the sixth floor; (7) classrooms on the seventh floor; (8) classrooms and two accessory apartments on the eighth floor; and (9) classrooms and a rooftop terrace on the ninth floor; and

WHEREAS, the applicant states that due to the

building's non-complying bulk, without a variance, no enlargement of the building envelope would be allowed; and

WHEREAS, the applicant states that the following are the primary programmatic needs of OCM which necessitate the requested variances: (1) to increase the seating capacity of the sanctuary space; (2) to provide additional classroom space; (3) to provide improved and increased ADA-compliant facilities; (4) to provide additional office and support space; (5) to provide additional mechanical space without disrupting floor plans; and (6) to improve the efficiency of the building, its security, access, and circulation; and

WHEREAS, the applicant states that the congregation's size has grown consistently and continues to grow, but the building has never undergone any significant renovations and thus, some worship services overflow into different floors due to high attendance and members must participate remotely via audiovisual equipment; and

WHEREAS, the applicant states that the number of existing classrooms limits the number of fellowship activities that can be offered, particularly on Friday evenings and Sunday afternoons; and

WHEREAS, the applicant states that OCM has had to rent auditorium, gymnasium, and classroom space from a nearby public school to accommodate its programmatic needs; and

WHEREAS, the applicant states that the proposed floor area and lot coverage waivers will allow OCM to increase its floor area while allowing for more program space, improved interior layouts and circulation, and ADA-compliant restrooms and elevator; and

WHEREAS, the applicant represents that OCM also requires additional and improved space for its many community-based programs including language classes and activities for children; and

WHEREAS, the applicant provided a chart which analyzes the existing, as-of-right, and proposed conditions, which includes that (1) the existing sanctuary space accommodates 704 occupants, the as-of-right would accommodate 966, and the proposed will accommodate 1,018; and (2) the existing number of classrooms is 23, the as-of-right would accommodate 24, and the proposed reflects 28; and

WHEREAS, further, the chart reflects that the current building does not provide central HVAC or sprinklers, there are not any Code- or ADA-compliant restrooms, and that the existing stair tower is exposed to the elements; and

WHEREAS, the proposal reflects adding HVAC and sprinklers, providing complying restrooms, and enclosing the stair tower to enhance comfort and promote building-wide vertical circulation; and

WHEREAS, as to the existing conditions, the applicant notes that the building is nearly 100 years old and was formerly occupied by a school with many small offices and classrooms; and

WHEREAS, the applicant asserts that the pre-existing non-complying conditions of the 1912 building cannot accommodate modern use and the programmatic needs of OCM including large assembly areas, useful classroom configurations, required mechanicals, and circulation space; and

WHEREAS, the Board acknowledges that OCM, 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 OCM coupled with the constraints of the existing buildings 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 OCM 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 enlargement 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 that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant notes that OCM has occupied the building for more than 50 years and, thus, its use is established in the community and will not change; and

WHEREAS, the applicant states that the existing light well to be enclosed cannot be viewed from three sides of the building, including both street frontages; and

WHEREAS, the applicant states that no other changes are proposed to the envelope of the existing nine-story building and that the pre-existing non-complying height will not change; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram which reflects that the area is developed primarily with mixed-use commercial/residential buildings and multiple dwellings between five and seven stories; and

WHEREAS, the applicant asserts that the enlargement will not have a negative impact on the light and air accessed by the adjacent seven-story commercial building or eight-story apartment building; and

WHEREAS, the applicant performed a shadow study which reflects that the incremental increase in shadows associated with the enlargement is negligible; and

WHEREAS, with regard to noise, the applicant states that the new windows proposed for the enlargement will be inoperable on the first through third floors, which will be occupied by large assembly spaces, and will only be

operable on the fourth through eighth floors; additionally, the wall construction and new windows will have higher STC ratings than the existing wall and windows, and provide a greater level of noise attenuation; 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 OCM could occur in its existing building; and

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

WHEREAS, the applicant notes that the application reflects an increase in the total floor area of only approximately 2,300 sq. ft. (a five percent increase over the existing floor area) and an increase in lot coverage of approximately five percent; and

WHEREAS, the applicant notes that the building envelope will be unchanged except for the enclosure of the existing light well; otherwise, the renovation is within the envelope of the building; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford OCM 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.12BSA148M, dated June 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, 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 in a C6-2G zoning district within the Special Little Italy District (LI) Area A, the enlargement of an existing nine-story community facility building (Use Group 4), which does not comply with the underlying zoning district regulations for floor area and lot coverage and increases the degree of non-complying floor area and lot coverage conditions, contrary to ZR §§ 109-121, 109-122, 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 December 21, 2012" – Thirteen (13) sheets, and *on further condition*:

THAT the building parameters will include: a maximum floor area of 45,959 sq. ft. (8.5 FAR); and a maximum height of 126'-6", as illustrated 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 shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall 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 8, 2013.

***The resolution has been amended. Corrected in Bulletin Nos. 8-9, Vol. 98, dated February 26, 2013.**

BULLETIN

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Tuesday, March 5, 2013

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80-13-BZ
200 Park Avenue South, northwest corner of Park Avenue South and East 17th Street, Block 846, Lot(s) 33, Borough of **Manhattan, Community Board: 5**. Special Permit to allow a physical culture establishment in a C6-4A zoning district.

81-13-BZ
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82-13-BZ
1957 East 14th Street, east side of 14th Street between Avenue S and Avenue T., Block 7293, Lot(s) 64, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single family residence located in a residential (R5) zoning district. R5 district.

83-13-BZ
3089 Bedford Avenue, Bedford Avenue between Avenue I and Avenue J, Block 7589, Lot(s) 18, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single family residence located in a residential. R2 zoning district. R2 district.

84-13-BZ
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85-13-BZ
250 Utica Avenue, northeast corner of intersection of Utica Avenue and Lincoln Place, Block 1384, Lot(s) 51, Borough of **Brooklyn, Community Board: 8**. Special Permit (§73-36) to allow a physical culture establishment (Blink Fitness) within existing building. C4-3/R6 zoning district. C4-3(R6) district.

89-13-A
242 West 76th Street, south side of West 76th Street, 112' west of Broadway, between Broadway and West End Avenue., Block 1167, Lot(s) 55, Borough of **Manhattan, Community Board: 7**. This appeal is for an extension of time to obtain a Class B Certificate of Occupancy to legalize applicant's 120 hotel units, as provided for in recent legislation under Chapters 225 and 566 of the Laws of New York 2010, due to circumstances beyond the ap R8B district.

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

CALENDAR

MARCH 19, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 19, 2013, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

390-61-BZ
APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.
SUBJECT – Application January 5, 2013 – On February 22, 2011 an amendment was filed to permit the addition of an auto rental establishment on (UG8) in the cellar. The Application was approved on December 13, 2011. The Board specified that a new CO be obtained by December 13, 2012. The CO has not been issued and this application is filed for time to obtain the CO. R8B zoning district.
PREMISES AFFECTED – 148-150 East 33rd Street, southside of E. 33rd Street, 151.9' east of Lexington Avenue, Block 888, Lot 51, Borough of Manhattan.
COMMUNITY BOARD #6M

11-80-BZ
APPLICANT – Richard Bass, Herrick, Feinstein, LLP, for West 28th Street Owners LLC.
SUBJECT – Application January 10, 2013 – Amendment of previously granted variance (§72-21) which allowed conversion of the 3rd through the 7th floor of building from commercial to residential. Amendment would permit the conversion of the second floor from commercial to residential use. M1-6 zoning district.
PREMISES AFFECTED – 146 West 28th Street, south side of West 28th Street, between 6th and 7th Avenues, Block 803, Lot 65, Borough of Manhattan.
COMMUNITY BOARD #5M

543-91-BZ
APPLICANT – Eric Palatnik P.C., for George F. Salamy, owner.
SUBJECT – Application December 20, 2012 – Extension of Term of a previously approved Variance (§72-21) permitting a one-story television, radio, phonograph and household appliance store (*P.C. Richards*) which expired on July 28, 2012; Waiver of the Rules. C4-2A/R4-1 zoning district.
PREMISES AFFECTED – 576-80 86th Street, between Fort Hamilton Parkway, Brooklyn Queens Expressway, Block 6053, Lot 14, Borough of Brooklyn.
COMMUNITY BOARD #10BK

78-08-BZ
APPLICANT – Stephen Grasso, Partners for Architecture, for South Bronx Charter School for International Cultures & The Arts, owners.
SUBJECT – Application February 12, 1923 – Extension of Time to Complete Construction for a previously granted Variance (72-21) to construct a five-story charter elementary school (The South Bronx Charter School for International Cultures and the Arts) which expired on August 26, 2012; Waiver of the Rules. M1-2/R-6A, MX-1(Special Mixed Use) zoning district.
PREMISES AFFECTED – 611 East 133rd Street, bound by East 133rd Street and Cypress Place, Block 2546, Lot 27, Borough of Bronx.
COMMUNITY BOARD #1BX

APPEALS CALENDAR

251-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, for 330 Associates LLC c/o George A. Beck, owner; Radiant Outdoor, LLC, lessee.
SUBJECT – Application August 14, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign. C2-5 Zoning District.
PREMISES AFFECTED – 330 East 59th Street, west of southwest corner of 1st Avenue and East 59th Street, Block 1351, Lot 36, Borough of Manhattan.
COMMUNITY BOARD # 6M

292-12-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marie & Kenneth Fuchs, lessees.
SUBJECT – Application October 10, 2012 –Proposed reconstruction and enlargement of the existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. The proposed upgrade of the existing private disposal system in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. R4 zoning district.
PREMISES AFFECTED – 19 Marion Walk, east side of Marion Walk, 125' north of Breezy Point, Block 16350, Lot p/o400, Borough of Queens.
COMMUNITY BOARD #14Q

CALENDAR

297-12-A
APPLICANT – Law Office of Fredrick A. Becker, for 28-20Astoria Blvd LLC, owners.
SUBJECT – Application October 17, 2012 – An application filed seeking a determination that the owner of the premises has acquired a common law vested right to complete construction commenced under the prior R6 zoning district. R6-A (C1-1) ZD
PREMISES AFFECTED – 28-18/20 Astoria Boulevard, south side of Astoria Boulevard, approx. 53.87' west of 29th Street, Block 596, Lot 45, Borough of Queens.
COMMUNITY BOARD #1Q

307-12-A
APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Anne McCoale, lessee.
SUBJECT – Application November 8, 2012 – Reconstruction and enlargement of existing single family dwelling not fronting a mapped street is contrary to Article 3, section 36 of the General City law. The proposed upgrade of the existing non-conforming private disposal system located partially in the bed of the service road is contrary to building department policy.
PREMISES AFFECTED – 25 Olive Walk, Queens, east side of Olive Walk, 140' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

ZONING CALENDAR

321-12-BZ
APPLICANT – Dennis D. Dell'Angelo, for Jay Lessler, owner.
SUBJECT – Application December 6, 2012 – 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 ZR§ 23-141; perimeter wall height ZR §23-631 and less than the required rear yard ZR §23-47. R3-1 zoning district.
PREMISES AFFECTED – 22 Girard Street, west side of Girard Street, 149.63' south of Shore Boulevard, Block 8745, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #15BK

338-12-BZ
APPLICANT – Eric Palatnik, P.C., for 164-20 Northern Boulevard, LLC, owner; Northern Gym, Corp., lessee.
SUBJECT – Application December 13, 2012 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Metro Gym*) establishment located in an existing one-story and cellar 4,154 square feet commercial building. C2-2/R5B zoning district.
PREMISES AFFECTED – 164-20 Northern Boulevard, west side of the intersection of Northern Boulevard and Sanford Avenue, Block 5337, Lot 17, Borough of Queens.
COMMUNITY BOARD # 7Q

1-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Dryland Properties, LLC, owner; Reebok CrossFit 5th Avenue, L.P., lessee.
SUBJECT – Application January 7, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Reebok Crossfit*) at the cellar of an existing building. C5-3 zoning district.
PREMISES AFFECTED – 420 Fifth Avenue, aka 408 Fifth Avenue, between West 37th Street and West 38th Street, Block 839, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD # 5M

7-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Sharon Sofer and Daniel Sofer, owners.
SUBJECT – Application January 15, 2013 – Special Permit (§73-621) for the enlargement of a single family contrary to floor area, open space and lot coverage (ZR §23-141). R3-2 zoning district.
PREMISES AFFECTED – 1644 Madison Place, south side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot 58, Borough of Brooklyn.
COMMUNITY BOARD #18BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, MARCH 5, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

364-82-BZ
APPLICANT – Troutman Sanders LLP, for Little Neck Commons LLC, owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application December 13, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a physical culture establishment (*Bally's Total Fitness*) which expired on January 18, 2013. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 245-24 Horace Harding Expressway, Horace Harding Expressway, 140' west of Marathon Parkway, Block 8276, Lot 100, 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 9, 2013, at 10 A.M., for decision, hearing closed.

130-88-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application August 13, 2012 – Extension of Term of approved Special Permit (§73-211) for the continued operation of UG 16B gasoline service station (*Gulf*) which expired on January 24, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on October 12, 2003; Waiver of the Rules. C2-2/R4 zoning district.
PREMISES AFFECTED – 1007 Brooklyn Avenue, aka 3602 Snyder Avenue, southeast corner of the intersection formed by Snyder and Brooklyn Avenues, Block 4907, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #17BK
ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for continued hearing.

62-99-BZ
APPLICANT – Akerman Senterfitt LLP, for Starlex LP, owner; Bliss World LLC, lessee.
SUBJECT – Application June 19, 2012 – Extension of Term of a previously-approved Special Permit (§73-36) for the continued operation of a physical cultural establishment (*Bliss*) which expired on January 31, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on February 1, 2004; Waiver of Rules. C6-6 zoning district.
PREMISES AFFECTED – 541 Lexington Avenue, east side of Lexington Avenue, between E. 49th Street and E. 50th Streets, Block 1304, Lot 20, Borough of Manhattan.
COMMUNITY BOARD #6M
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

211-00-BZ
APPLICANT – Sheldon Lobel, P.C., for Hoffman & Hoffman, LLC, owner.
SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the legalization of residential units on the second through fourth floors of a mixed use (UG 17 & 2) four-story building, which expired on April 17, 2005; Amendment for minor modification to the approved plans; Waiver of the Rules. M1-2 zoning district.
PREMISES AFFECTED – 252 Norman Avenue, southeast corner of the intersection of Norman Avenue and Monitor Street, Block 2657, Lot 1, Borough Brooklyn.
COMMUNITY BOARD #1BK
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

292-12-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marie & Kenneth Fuchs, lessees.
SUBJECT – Application October 10, 2012 – Proposed reconstruction and enlargement of the existing single family dwelling located partially in the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law; proposed upgrade of the existing private disposal system in the bed of the mapped street, contrary to Article 3, Section 35 of the General City Law. R4 zoning district.
PREMISES AFFECTED – 19 Marion Walk, east side of Marion Walk, 125' north of Breezy Point, Block 16350, Lot p/o400, Borough of Queens.
COMMUNITY BOARD #14Q
ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for postponed hearing.

326-12-A thru 337-12-A
APPLICANT – Gibson Dunn, for Contest Promotions-NY LLC by Jessica Cohen
OWNER OF PREMISES: Lily Fong, Michael A. Maidman, Thomas Young, George Aryeh, Lily Fong,Vincent J. Ponte, Hung Ling Yung, David R. Acosta, James B. Luu, Fred G. Eng.
SUBJECT – Applications December 11, 2012 – Appeals challenging the Department of Buildings determination to revoke 12 permits previously issued permitting business accessory signs on the basis that they are appear to be advertising signs.
PREMISES AFFECTED –

52 Canal Street, Block 294, Lot 22, C6-2 zoning district, Manhattan
1560 2nd Avenue, Block 1543, Lot 49, C1-9 zoning district, Manhattan
2061 2nd Avenue, Block 1655, Lot 28, R8A zoning district, Manhattan
2240 1st Avenue, Block 1709, Lot 1, R7X zoning district, Manhattan
160 East 25th Street, Block 880, Lot 50, C2-8 zoning district, Manhattan
289 Hudson Street, Block 594, Lot 79, C6-2A zoning district, Manhattan
127 Ludlow Street, Block 410, Lot 17, C4-4A zoning district, Manhattan
1786 3rd Avenue, Block 1627, Lot 33, R8A zoning district, Manhattan
17 Avenue B, Block 385, Lot 1, R7A zoning district, Manhattan
173 Bowery, Block 424, Lot 12, C6-1 zoning district, Manhattan
240 Sullivan Street, Block 540, Lot 23, R7-2 zoning district, Manhattan
361 1st Avenue, Block 927, Lot 25, C1-6A zoning district, Manhattan

COMMUNITY BOARD #2/3/6/8/9/11M
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 23, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

161-12-BZ
CEQR # 12-BSA-140K
APPLICANT – Francis R. Angelino, Esq., for Soly D. Bawabeh, for Global Health Clubs, LLC, owner.
SUBJECT – Application May 31, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*) on the ground and second floor of an existing building. C8-2 zoning district.
PREMISES AFFECTED – 81 East 98th Street, corner of East 98th Street and Ralph Avenue, Block 3530, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #16BK
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 3, 2012, acting on Department of Buildings Application No. 301856631, reads in pertinent part:

> Proposed Physical Culture Establishment is not permitted in C8-2 zoning district. This use is contrary to Section 32-10 of the New York City Zoning Resolution and requires a special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C8-2 zoning district, the operation of a physical culture establishment (PCE) at the cellar, 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 5, 2013, after due notice by publication in *The City Record*, and then to decision on March 5, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 16, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the corner of East 98th Street and Ralph Avenue, in a C8-2 zoning district; and

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

WHEREAS, the proposed PCE will occupy a total of 10,010 sq. ft. of floor area with 2,089 sq. ft. on the first floor and 7,921 sq. ft. on the second floor and an additional 1,380 sq. ft. of space in the cellar; and

WHEREAS, the site has 192.95 feet of frontage on East 98th Street, 168.3 feet of frontage on Ralph Avenue, and a total lot area of 7,929 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 instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be Monday through Friday, from 5:00 a.m. to 11:00 p.m. and Saturday/Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant states that since the PCE will be located on the second floor of a free-standing commercial building, it will be completely isolated from any nearby residential uses which are quite distant from the subject building; 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 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 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.12BSA140K, dated May 18, 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 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 physical culture establishment at the cellar, 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 18, 2012" - Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on March 5, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, March 5, 2013.

241-12-BZ
CEQR # 13-BSA-013M

APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new mixed residential and retail building, contrary to use regulations (§42-10 and 42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No. 121183316, reads in pertinent part:

> Proposed UG 6 below the floor level of the second story is not permitted; contrary to ZR 42-14D(2)(b)
> Proposed UG 2 is not permitted; contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §72-21, to permit, in an M1-5B zoning district within the NoHo Historic District, the construction of a seven-story (including penthouse) mixed-use residential/commercial building with 11 dwelling units and retail use below the level of the second floor, contrary to ZR §§ 42-14 and 42-10; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in the *City Record*, with a continued hearing on December 11, 2012, and then to decision on March 5, 2013; 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, Manhattan, recommends approval of the application, with the following conditions: (1) commercial use not be permitted above the ground floor or in the proposed open courts or rear yard; (2) an eating and drinking establishment not be permitted; and (3) the proposed accessory garage not be permitted; and

WHEREAS, a representative of the NoHo-Bowery Stakeholders, Inc., provided testimony in support of the application; and

WHEREAS, the site is located on the northwest corner of the intersection of Bond Street and Lafayette Street, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the site has 60'-3½" of frontage along Bond Street, 100'-6¼" of frontage along Lafayette Street, and a total lot area of 6,471 sq. ft.; and

WHEREAS, on February 9, 2010, under BSA Cal. No. 195-07-BZ, the Board granted a variance to permit the construction of a seven-story 50-room hotel building with hotel and retail uses below the level of the second floor; and

WHEREAS, the applicant represents that the prior owner was unable to develop the hotel building, in part due to additional hardship costs that were not discovered at the time of the previous grant and which made the use of the site for a hotel building unviable; and

WHEREAS, the site is currently occupied by a two-story and mezzanine building, a one-story structure formerly used as an automotive service station, an open parking lot, and an advertising sign, all of which will be demolished or replaced; and

WHEREAS, the proposed seven-story (including penthouse) building will have a total floor area of 32,227 sq. ft. (4.98 FAR), with 29,459 sq. ft. (4.55 FAR) of residential floor area and 2,768 sq. ft. (0.43 FAR) of commercial floor area on the first floor, an additional 5,910 sq. ft. of floor space in the cellar, a wall height of 76'-0", and a total height of 84'-9"; and

WHEREAS, the proposal provides for the following uses: (1) retail space, an accessory fitness center, accessory residential storage, and mechanical use at the cellar level; (2) retail space, residential space, a residential lobby, an open court, and an accessory garage for one vehicle at the first floor; and (3) residential units at the second through seventh floors; and

WHEREAS, because general residential use is not permitted as-of-right in the subject M1-5B zoning district and retail use is not permitted below the level of the second floor, the subject use variance is requested; 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 combined effect of the site's adjacency to an existing 30-inch gas main, the Lexington Avenue subway line, and adjacent buildings; (2) the site's unusual depth to bedrock; and (3) the historic use of the site as an automotive service station, which has resulted in soil contamination; and

WHEREAS, the applicant submitted a letter from a geotechnical engineering consultant which states that a settlement analysis was performed based on a review of collected boring data and that the predicted settlements for the proposed building would be "unacceptable for the 30-inch gas main and subway structure located beneath Lafayette Street"; and

WHEREAS, the applicant states that based on the settlement analysis, the foundation for the proposed building has been designed for caisson support with piles drilled to bedrock, as driven piles are not permitted under applicable New York City Transit Authority ("NYCTA") regulations due to the adjacent subway line; and

WHEREAS, the applicant represents that collectively, the location of the 30-inch gas main and subway structure result in additional construction costs of $748,816, which includes special monitoring and inspection costs required under NYCTA regulations; and

WHEREAS, the applicant further represents that an additional $238,218 of construction costs is attributable to the cost of underpinning the adjacent buildings, which have unusual foundation conditions; and

WHEREAS, the applicant notes that in the variance approved under BSA Cal. No. 195-07-BZ, it proposed a hotel building with two cellar levels excavated to a depth of 20 feet (as opposed to the current proposal for a one-cellar building) in order to provide a sound subsurface base for a mat

foundation, due to the presence of uncontrolled fill and loose sand throughout much of the site and the efficiency gains associated with locating certain accessory hotel uses below grade; and

WHEREAS, the applicant represents that for the proposed mixed-use residential/commercial building there are few uses that can be located below grade, reducing the efficiencies gained from the additional excavation, and that employing a caisson support system allows the owner to avoid any of the extra bracing and shoring costs that would have been associated with deeper excavation; and

WHEREAS, at hearing the Board asked the applicant to compare the costs associated with building a foundation for the two-cellar alternative that was proposed for the hotel building with the currently proposed one-cellar building; and

WHEREAS, in response, the applicant submitted a cost schedule which shows that the two-cellar alternative would be approximately $364,181 more costly to construct; and

WHEREAS, the applicant notes that the project engineer also does not recommend the two-cellar alternative from a safety point of view because of the adjacency to the subway and gas line and the relative amount of settlement that it would produce; and

WHEREAS, the Board also requested that the applicant provide a comparison between the cost to build the proposed foundation with the cost of a "normal" foundation if the site was not encumbered with the aforementioned physical conditions; and

WHEREAS, in response, the applicant submitted a comparison prepared by its construction consultant which reflects that a standard foundation for a building of this type and size without the special conditions would be built on spread footings and the difference between the proposed foundation and the spread footing foundation is approximately $1,510,663; and

WHEREAS, as to the depth of the bedrock on the site, the applicant submitted another letter from the geotechnical consultant stating that the bedrock in the area surrounding the site is typically 50 to 60 feet below grade, while the boring logs show that the depth to bedrock for the subject site is between 80 and 90 feet below street grade, approximately 30 feet below the local bedrock elevation; and

WHEREAS, the applicant represents that the unusual depth of bedrock results in additional construction costs of $895,482; and

WHEREAS, as to the soil contamination, the applicant represents that remedial work will be required due to the industrial character of the historic uses on the lot, which included processes and businesses that used lead, mercury, and petroleum products; and

WHEREAS, the applicant states that three underground storage tanks associated with the former automotive service station located on the site were legally closed in 2006, and that the results of testing that was performed at that time confirmed the presence of elevated mercury and semi-volatile organic compound levels in the soil on the site; and

WHEREAS, the applicant submitted an environmental report and cost estimates documenting the expected testing and remediation of the soil, including the removal and disposal of one underground storage tank and the removal and disposal of soil (assuming it is substantially contaminated), and the potential inclusion of a vapor barrier and ventilation system, due to its historic use as an automotive service station; 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 that analyzed: (1) a lesser variance seven-story 50-room hotel as approved in the prior variance, but without a sub-cellar; and (2) the proposed residential building with ground floor retail use; and

WHEREAS, the Board notes that conforming hotel and office scenarios were previously analyzed under BSA Cal. No. 195-07-BZ and it was determined that they would not realize a reasonable return; and

WHEREAS, accordingly, the applicant concludes that the conforming and lesser variance scenarios would not result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed hotel building would realize a reasonable return and has submitted evidence in support of that assertion; 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 notes that the proposed 4.98 FAR complies with the maximum 5.0 FAR permitted for an as-of-right hotel building in the subject zoning district, and that no bulk waivers are requested; and

WHEREAS, the applicant represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, specifically, the applicant states that the immediate adjacent uses are largely comprised of ground floor and cellar retail uses with residential uses above; and

WHEREAS, in support of the above statements, the applicant submitted a 400-ft. radius diagram, showing the various uses in the immediate vicinity of the site; and

WHEREAS, as to the Community Board's requested conditions, the applicant is not proposing any commercial uses above the level of the second floor or in the open courts or rear yard, and has agreed that an eating and drinking establishment will not be permitted in the commercial space; and

WHEREAS, as to the Community Board's request that the curb cut and accessory parking garage be removed, the applicant seeks to maintain the proposed curb cut and accessory garage and notes that the proposed curb cut already exists as the current use of the site is as an open parking lot, and that four other curb cuts are being eliminated on the site; and

WHEREAS, the applicant notes that the proposed accessory garage is small and accommodates only one vehicle, and represents that the space would not be viable as additional retail space; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated February 12, 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 the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique subsurface soil conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs 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 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. 13BSA013M dated January 3, 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; 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 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 July 2012 Remedial Action Plan site-specific 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, DEP reviewed the results of noise monitoring and determined that a minimum of 31 dBA window-wall noise attenuation is required for both the windows and the walls of the proposed building and an alternate means of ventilation should be provided in order to achieve an interior noise level of 45 dBA; and

WHEREAS, DEP determined that, with these noise measures, the proposed project is not anticipated to result in significant noise 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 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 M1-5B zoning district within the NoHo Historic District, the construction of a seven-story (including penthouse) mixed-use residential/commercial building with 11 dwelling units and retail use below the level of the second floor, contrary to ZR §§ 42-14 and 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 December 21, 2012" – nineteen (19) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: seven stories; a maximum total floor area of 32,227 sq. ft. (4.98 FAR); a maximum residential floor area of 29,459 sq. ft. (4.55 FAR); a maximum commercial floor area of 2,768 sq. ft. (0.43 FAR); a wall height of 76'-0"; and a total height of 84'-9", as illustrated on the BSA-approved plans;

THAT no eating and drinking establishment (Use Group 6 or Use Group 12) will be permitted on the site;

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 the proposed building's windows and walls will have a noise attenuation rating of 31 dBA OITC and that an alternate means of ventilation will be provided throughout the building;

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

Adopted by the Board of Standards and Appeals, March 5, 2013.

257-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Birta Hanono and Elie Hanono, owners.

SUBJECT – Application August 29, 2012 – 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 yard (§23-461) and less than the required rear yard (§23-47). R4 (OP) zoning district.

PREMISES AFFECTED – 2359 East 5th Street, east side of East 5th Street between Avenue W and Angela Drive, Block 7181, Lot 44, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 1, 2012, acting on Department of Buildings Application No. 320500757, reads in pertinent part:

> Proposed enlargement of the existing one-family residence in an R4 zoning district:
>
> 1. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution.
> 2. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
> 3. Creates non-compliance with respect to the floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
> 4. Creates non-compliance with respect to the lot coverage and is contrary to Section 23-141 of the Zoning Resolution.
> 5. Creates non-compliance with respect to the open space and is contrary to Section 23-141 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§73-622 and 73-03, to permit, within an R4 zoning district within the Special Ocean Parkway District (OP), 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, rear yard, and side yard contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on January 15, 2013, after due notice by publication in *The City Record*, with a continued hearing on February 5, 2013, and then to decision on March 5, 2013; 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 east side of East 5th Street, between Avenue W and Angela Drive, within an R4 zoning district within the Special Ocean Parkway District (OP); and

WHEREAS, the subject site has a total lot area of 3,200 sq. ft., and is occupied by a single-family home with a floor area of 2,877 sq. ft. (0.90 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 2,877 sq. ft. (0.90 FAR) to 4,174 sq. ft. (1.30 FAR); the maximum permitted floor area is 2,400 sq. ft. (0.75 FAR); and

WHEREAS, the applicant proposes an open space of 1,667 sq. ft.; the minimum required open space is 1,760 sq. ft.; and

WHEREAS, the applicant proposes a lot coverage of 48 percent; the maximum permitted lot coverage is 45 percent; and

WHEREAS, the applicant proposes to maintain the pre-existing non-complying rear yard with a depth of 14'-10 ¼"; the minimum required rear yard depth is 30 feet; and

WHEREAS, the applicant proposes to maintain the pre-existing non-complying side yard with a width of 2'-4 ½" and to provide a second side yard with a width of 8'-7 ¾"; side yards with a minimum width of 5'-0" each are 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, 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 R4 zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, rear yard, and side yard contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 29, 2012"-(6) sheets and "December 20, 2012"-(5) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,174 sq. ft. (1.30 FAR), a minimum open space of 1,667 sq. ft., a maximum lot coverage of 48 percent, a rear yard with a minimum depth of 14'-10 ¼", and side yards with minimum widths of 2'-4 ½" and 8'-7 ¾", 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, March 5, 2013.

280-12-BZ
CEQR #13-BSA-035K
APPLICANT – Law Office of Fredrick A. Becker, for Sheila Weiss and Jacob Weiss, owners.
SUBJECT – Application September 21, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1249 East 28th Street, east side of 28th Street, Block 7646, Lot 26, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 21, 2012, acting on Department of Buildings Application No. 320519426, reads in pertinent part:

> Proposed plans are contrary to ZR 23-141(a) in that the proposed building exceeds the maximum permitted floor area ratio of .50.
> Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space ratio of 150.
> Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet.
> Proposed plans are contrary to ZR 23-461(a) in that the proposed side yard straight-line extension is less than the 5 foot minimum side yard permitted; 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 ratio, rear yard, and side yard contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on February 5, 2013, and then to decision on March 5, 2013; 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; and

WHEREAS, the subject site is located on the east side of East 28th Street, between Avenue M and Avenue L, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,900 sq. ft., and is occupied by a single-family home with a floor area of 2,348.66 sq. ft. (0.60 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 2,348.66 sq. ft. (0.60 FAR) to 3,919.48 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,950 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes an open space ratio of 53 percent; the minimum required open space ratio

is 150 percent; and

WHEREAS, the applicant proposes a rear yard with a depth of 20 feet; the minimum required rear yard depth is 30 feet; and

WHEREAS, the applicant proposes to maintain the pre-existing non-complying side yard with a width of 2'-10" and to provide a second side yard with a width of 8'-4"; side yards with a minimum width of 5'-0" each are 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, 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, open space ratio, rear yard, and side yard contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 21, 2013"-(6) sheets and "February 20, 2013"-(6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,919.48 sq. ft. (1.01 FAR), a minimum open space ratio of 53 percent, a rear yard with a minimum depth of 20 feet, and side yards with minimum widths of 2'-10" and 8'-4", as illustrated on the BSA-approved plans;

THAT the floor area in the attic will be limited to 339.7 sq. ft., 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, March 5, 2013.

296-12-BZ
CEQR #13-BSA-046X

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 2374 Concourse Associates LLC, owner; Blink 2374 Grand Concourse Inc., lessee.

SUBJECT – Application October 16, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within existing building. C4-4 zoning district.

PREMISES AFFECTED – 2374 Grand Concourse, northeast corner of intersection of Grand Concourse and East 184th Street, Block 3152, Lot 36, Borough of Bronx.

COMMUNITY BOARD #5BX

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 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 10, 2012, acting on Department of Buildings Application No. 220229429, reads in pertinent part:

> Proposed Physical Culture Establishment in a C4-4(C) district is contrary to 32-10 ZR and requires a special permit from the BSA pursuant to Section 73-36 ZR; 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 within the Special Grand Concourse Preservation District (C), the operation of a physical culture establishment (PCE) at the first through third floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 5, 2013, after due notice by publication in *The City Record*, and then to decision on March 5, 2013; and

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

WHEREAS, Community Board 5, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located at the northeast

corner of East 184th Street and the Grand Concourse, in a C4-4 zoning district within the Special Grand Concourse Preservation District (C); and

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

WHEREAS, the proposed PCE will occupy a total of 14,190 sq. ft. of floor area with 3,180 sq. ft. on the first floor, 9,860 sq. ft. on the second floor, and 1,150 sq. ft. on the third floor; and

WHEREAS, the site has 130.88 feet of frontage on the Grand Concourse, 78.39 feet of frontage on East 184th Street, and 140.1 feet of frontage on Ryer Avenue, and a total lot area of 10,032 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 instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed 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 applicant notes that the other uses in the building are all commercial; and

WHEREAS, the applicant states that although the site is located within the Special Grand Concourse Preservation District, pursuant to ZR § 122-80, the regulations of the special district do not apply to C4-4 districts within its boundaries; 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA046X, dated October 15, 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 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 C4-4 zoning district within the Special Grand Concourse Preservation District (C), the operation of a physical culture establishment at the first and first through third floors 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 February 20, 2013" - Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on March 5, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals,

March 5, 2013.

306-12-BZ
CEQR #13-BSA-052R
APPLICANT – Eric Palatnik, P.C., for Vincent Passarelli, owner; 2 Roars Restored Inc aka La Vida Massage, lessee.
SUBJECT – Application November 5, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*La Vida Massage*). M1-1 zoning district.
PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets Tyrellan Avenue and W Shore Expressway, Block 7511, Lot 1, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 4, 2012, acting on Department of Buildings Application No. 520111209, reads in pertinent part:

> Proposed change of use from existing office (use group 6 per CO# 500834500F) to . . . a Physical Culture Establishment (Massage La Vida N.Y.) requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-36 ; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-1 zoning district within the Special South Richmond Development District (SRD), the operation of a physical culture establishment (PCE) on a portion of the second floor of a two-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on February 12, 2013, after due notice by publication in *The City Record*, and then to decision on March 5, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

WHEREAS, the subject site is located on the south side of Veterans Road West between West Shore Parkway and Tyrellan Avenue, within an M1-1 zoning district within the Special South Richmond Development District (SRD); and

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

WHEREAS, the site has a total lot area of 335,780 sq. ft.; and

WHEREAS, on August 18, 2009, the Board approved a special permit for a PCE on another portion of the second floor of the building pursuant to BSA Cal. No. 288-08-BZ for a martial arts studio (Costanzo's Martial Arts) that continues to operate; and

WHEREAS, the proposed PCE will occupy a total of 2,699 sq. ft. of floor area on the second floor; and

WHEREAS, the proposed PCE will be operated as La Vida Massage; and

WHEREAS, the applicant represents that the services at the PCE include facilities for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be Monday through Saturday, from 9:00 a.m. to 9:00 p.m. and Sunday, from 9:00 a.m. to 7:00 p.m.; 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 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 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.13BSA052R, dated November 5, 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 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 an M1-1 zoning district within the Special South Richmond Development District (SRD), the operation of a physical culture establishment on a portion of the second floor 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 January 29, 2013" - Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on March 5, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, March 5, 2013.

56-12-BZ

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for continued hearing.

57-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mykola Volynsky, owner.

SUBJECT – Application March 13, 2012 – 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 (§23-461); less than the required rear yard (§23-37). R4 zoning district.

PREMISES AFFECTED – 2670 East 12th Street, between Shore Parkway and Gilmore Court, Block 7455, Lot 85, 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 9, 2013, at 10 A.M., for decision, hearing closed.

148-12-BZ

APPLICANT – Eric Palatnik, P.C., for Esther Kuessous, owner.

SUBJECT – Application May 8, 2012 – Special Permit (§73-621) for the enlargement of an existing single family semi-detached residence, contrary to floor area, lot coverage and open space (ZR23-141(b)). R4 zoning district.

PREMISES AFFECTED – 981 East 29th Street, between Avenue I and Avenue J, Block 7593, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

235-12-BZ
APPLICANT – Slater & Beckerman, LLP, for NBR LLC, owner.
SUBJECT – Application July 30, 2012 – Special Permit (§73-242) to allow a one-story building to be used as four eating and drinking establishments (Use Group 6), contrary to use regulations (§32-00). C3 zoning district.
PREMISES AFFECTED – 2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north. Block 8839, Lots 33, 38, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for deferred decision.

284-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Jack Cayre, owner.
SUBJECT – Application September 25, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) requirements. R2X (OP) zoning district.
PREMISES AFFECTED – 2047 East 3rd Street, eastern side of East 3rd Street, between Avenue S and Avenue T, Block 7106, Lot 122, Borough of Brooklyn.
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

294-12-BZ
APPLICANT – Eric Palatnik, P.C., for David Katzive, owner; Thomas Anthony, lessee.
SUBJECT – Application October 11, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Everyday Athlete*). C5-2A/DB special zoning district.
PREMISES AFFECTED – 130 Clinton Street, aka 124 Clinton Street, between Joralemon Street and Aitken Place, Block 264, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #2BK
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 9, 2013, at 10 A.M., for decision, hearing closed.

313-12-BZ
APPLICANT – Troutman Sanders LLP, for Flatbush Delaware Holding LLC, owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application November 20, 2012 – Special permit (§73-36) to allow the continued operation of the existing physical culture establishment (*Bally's Total Fitness*). C4-2/C4-4A zoning district.
PREMISES AFFECTED – 1009 Flatbush Avenue, block bounded by Flatbush Avenue, Albermarle Road, Bedford Avenue and Tilden Avenue, Block 5126, Lot 1, 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 16, 2013, at 10 A.M., for decision, hearing closed.

314-12-BZ
APPLICANT – Troutman Sanders LLP, for New York Communications Center Associates, L.P. c/o George Comfort & Sons Inc., owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application November 20, 2012 – Special permit (§73-36) to allow the continued operation of the existing physical culture establishment (*Bally's Total Fitness*). C6-4 (CL) zoning district.
PREMISES AFFECTED – 350 West 50th Street, block bounded by West 49th Street, Ninth Avenue, West 50th Street and Eighth Avenue, Block 1040, Lot p/1 Condo Lot 1003, 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 April 16, 2013, at 10 A.M., for decision, hearing closed.

325-12-BZ
APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Royal Charter Properties, Inc., for New York Presbyterian Hospital, owner.
SUBJECT – Application December 10, 2012 – Variance (§72-21) to permit a new Use Group 4 maternity hospital and ambulatory diagnostic or treatment health care facility (*New York Presbyterian Hospital*), contrary to modification of height and setback, lot coverage, rear yard, floor area and parking. R10/R9/R8 zoning districts.
PREMISES AFFECTED – 1273-1285 York Avenue, west side of York Avenue bounded by East 68th and 69th Streets, Block 1463, Lot 21, 31, 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 16,

2013, at 10 A.M., for decision, hearing closed.

341-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 403 Concord Avenue, Inc., owner.
SUBJECT – Application December 17, 2012 – Special Permit (§73-19) to permit a Use Group 3 school to occupy an existing building, contrary to use regulations (§42-00).
M1-2 zoning district.
PREMISES AFFECTED – 403 Concord Avenue, southwest corner of the intersection formed by Concord Avenue and East 144th Street, Block 2573, Lot 87, 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 16, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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87-13-A
174 Canal Street, Canal Street between Elizabeth and Mott Streets., Block 201, Lot(s) 13, Borough of **Manhattan, Community Board: 3**. Appeal of revocation of sign permit. C6-1G district.

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

CALENDAR

April 9, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 9, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

1073-62-BZ
APPLICANT – Peter Hirshman, for 305 East 40th Owner's Corporation, owner; Innovative Parking LLC, lessee.
SUBJECT – Application January 15, 2013 – Extension of Term of a previously approved variance pursuant MDL Section 60 (1d)), permitting no more than 108 unused and surplus tenant parking spaces for transient use within an accessory garage which expires on March 5, 2013, C1-9/R10 zoning district.
PREMISES AFFECTED – 305 East 40th Street, northeast corner of East 40 Street and Second Avenue, Block 1333, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #6M

1111-62-BZ
APPLICANT – Peter Hirshman, for 200 East Tenants Corporation, owner; MP 56 LLC, lessee.
SUBJECT – Application January 15, 2013 – Extension of Term permitting the use of unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which is set to expire on March 26, 2013. C6-6, C5-2 and C1-9 zoning district.
PREMISES AFFECTED – 201 East 56 Street, northeast corner of East 56 Street and Third Avenue, Block 1330, Lot 4, Borough of Manhattan.
COMMUNITY BOARD #6M

8-98-BZ
APPLICANT – Sheldon Lobel, P.C., for 106 Associates, LLC, owner.
SUBJECT – Application December 27, 2012 –Amendment of a previously granted Variance (§72-21), which permitted limited commercial uses in the cellar of a building located in a residential zoning district. The amendment seeks to permit additional Use Group 6 uses, excluding restaurant uses, expand the limited operation hours and remove the term restriction. R6 zoning district.
PREMISES AFFECTED – 106-108 West 13th Street, West 13th Street, 120' from the intersection formed by West 13th Street and 6th Avenue, Block 608, Lot 35, Borough of Manhattan.
COMMUNITY BOARD #2M

APPEALS CALENDAR

256-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, City Outdoor.
OWNER OF PREMISES: 195 Havemeyer Corporation.
SUBJECT – Application August 28, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as an advertising sign. C4-3 zoning district.
PREMISES AFFECTED – 195 Havemeyer Street, southeast corner of Havemeyer and South 4th Street, Block 2447, Lot 3, Borough of Brooklyn.
COMMUNITY BOARD #1BK

ZONING CALENDAR

138-12-BZ
APPLICANT – Harold Weinberg, for Israel Cohen, owner.
SUBJECT – Application April 27, 2012 – Special Permit (§73-622) for the legalization of an enlargement to a single family residence contrary to side yard requirement (23-461). R-5 zoning district.
PREMISES AFFECTED – 2051 East 19th Street, between Avenue U and Avenue T, Block 7324, Lot 64, Borough of Brooklyn.
COMMUNITY BOARD #15BK

139-12-BZ
APPLICANT – Gerald J. Caliendo, RA, AIA, PC, for Alvan Bisnoff/Georgetown Realty Corp., owner.
SUBJECT – Application April 30, 2012 – Special Permit (§73-53) to permit the enlargement of an existing non-conforming manufacturing building (warehouse (use group 16) and factory (use group 17)) contrary to §22-00. R5 zoning district.
PREMISES AFFECTED – 34-10 12th Street, southwest corner of 34th Avenue and 12th Street, Block 326, Lot 29, Borough of Queens.
COMMUNITY BOARD #1Q

293-12-BZ
APPLICANT – Eric Palatnik, P.C., for Mr. and Mrs. Angelo Colantuono, owners.
SUBJECT – Application October 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (§23-141(b)) and less than the required side yard (§23-461(a)). R3X zoning district.
PREMISES AFFECTED – 1245 83rd Street, north side of 83rd Street, between 12th Avenue and 13th Avenue, Block 6302, Lot 60, Borough of Brooklyn.
COMMUNITY BOARD #10BK

3-13-BZ
APPLICANT – Ellen Hay/Wachtel Masyr Missry LLP, for Greenridge 674 Inc., owner; Fitness International LLC DBA LA Fitness, lessees.
SUBJECT – Application January 11, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*LA Fitness*). C4-1 (SRD) zoning district.
PREMISES AFFECTED – 3231-3251 Richmond Avenue, aka 806 Arthur Kill Road, east side Richmond Avenue between Arthur Kill Road, Getz and Gurley Avenues, Block 5533, Lots 47, 58, 62, 123, Borough of Staten Island.
COMMUNITY BOARD #3SI

4-13-BZ
APPLICANT – Francis R. Angelino, Esq., for 1625 Flatbush, LLC, owner; Global Health Clubs, LLC, owner.
SUBJECT – Application January 11, 2013 – Special Permit (§73-36) to permit a physical culture establishment (*Retro Fitness*) on ground and cellar floors. C8-2 zoning district.
PREMISES AFFECTED – 1623 Flatbush Avenue, East 32nd Street and New York Avenue, Block 7578, Lot 49, Borough of Brooklyn.
COMMUNITY BOARD #17BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, MARCH 12, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

68-91-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application August 24, 2012 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on May 19, 2012; Amendment §11-412) to permit the legalization of certain minor interior partition changes and a request to permit automotive repair services on Sundays; Waiver of the Rules. R5D/C1-2 & 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: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
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, and an extension of time to obtain a certificate of occupancy for an automotive service station (UG 16B); and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with continued hearings on January 8, 2013 and February 12, 2013, and then to decision on March 12, 2013; 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, Queens, recommends approval of this application; and

WHEREAS, the site is on the northwest corner 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, for a term of ten years, which was renewed for another ten-year term that expired on May 19, 2012; and

WHEREAS, the applicant now seeks an additional extension of the term, an approval of certain changes to the site, and authorization to open on Sundays; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit amendments to the prior approval; and

WHEREAS, the applicant states that it has made certain minor changes to the site, including partition and layout changes to the interior of the accessory convenience store and relocation of the exterior door; and

WHEREAS, at hearing, the Board raised concerns about excessive signage at the site, which was not reflected on the previously-approved plans, and questioned whether the signage on the site was in compliance with C1 district regulations; and

WHEREAS, additionally, the Board directed the applicant to improve the appearance of the garbage enclosure; and

WHEREAS, the applicant submitted photographs reflecting that the signage that exceeded the C1 surface area regulations has been removed, and states that the site will comply with C1 district signage regulations; and

WHEREAS, the applicant also submitted photographs which reflect that the appearance of the garbage enclosure and the rear of the site have been improved; and

WHEREAS, the applicant also seeks to legalize the addition of Sunday hours of operation, from 8:00 a.m. to 4:00 p.m. prior to issuing its recommendation to approve the hours; and

WHEREAS, the applicant asserts that its facility services a religious community that does not drive on Saturday, but seek its services on Sundays; 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 this portion of the resolution shall read: "to extend the term for a period of ten years from May 19, 2012, to expire on May 19, 2022; *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 26, 2013'- (5) sheets; and *on further condition*:

THAT the term of this grant will expire on May 19, 2022;

THAT the signage on the site will comply with C1 district regulations;

THAT the hours of operation will be limited to Monday through Saturday, 7:00 a.m. to 7:00 p.m. and Sunday, 8:00 a.m. to 4:00 p.m.;

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

THAT a new certificate of occupancy will be obtained by March 12, 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 the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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 & 401393648)

Adopted by the Board of Standards and Appeals, March 12, 2013.

141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.

SUBJECT – Application August 7, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) permitting the construction of a three-story synagogue (*Congregation Tefiloh Ledovid*) which expired on June 19, 2011; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60th Street, corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

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 the construction of a synagogue; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in *The City Record*, with continued hearings on November 20, 2012, January 15, 2013 and February 12, 2013, and then to decision on March 12, 2013; 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, certain neighbors provided testimony in opposition to the proposal, citing concerns about the poor maintenance of the site, delay in construction, and damage to adjacent properties; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 19, 2007, when, under the subject calendar number, the Board granted a variance authorizing the proposed three-story Use Group 4 synagogue, which does not comply with floor area, FAR, lot coverage, front yards, side yards, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, and 24-31; and

WHEREAS, substantial construction was to be completed by June 19, 2011, in accordance with ZR § 72-23; and

WHEREAS, on October 3, 2008, the Board approved certain minor amendments to the plans, by letter; and

WHEREAS, the subject premises is located on the southwest corner of 21st Avenue and 60th Street, within an R5 zoning district within the Special Borough Park District; and

WHEREAS, during the hearing process, based on its own observations and the concerns raised by the neighbors, the Board directed the applicant to (1) remove debris from the site, (2) ensure the safety of the site including the sidewalk and fencing, and (3) resolve all outstanding DOB violations; and

WHEREAS, in response, the applicant (1) removed debris and other unsightly conditions at the site, (2) secured the site, and (3) provided a response regarding the violations, which reflects that there are four outstanding violations including two related to the plans, one related to monitoring adjacent buildings, and one related to inspections; and

WHEREAS, as to the violations, the applicant represents that two can only be resolved after the Board grants the requested extension and the other two are being resolved expeditiously; and

WHEREAS, due to the nature of the violations, the Board determined that the applicant must resolve all violations before resuming construction at the site; and

WHEREAS, as to the neighbors' concerns about property damage, the Board notes that any agreement between the parties related to damage is beyond the purview of the Board and is more appropriate for another forum; and

WHEREAS, however, the Board urges the applicant to communicate with the neighbors and adequately respond to their concerns; and

WHEREAS, the Board finds it appropriate for the applicant to provide a contact person to the neighbors so that they may reach them if issues arise; and

WHEREAS, the Board also urges the applicant to expeditiously resume and complete construction and to complete construction within the new four-year term; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant represents that the owner is now prepared to proceed with 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 June 19, 2007, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on March 12, 2017; *on condition*:

THAT construction will be completed by March 12, 2017;

THAT the property owner provides a contact number and contact person to the neighbors;

THAT all DOB violations must be resolved prior to the reissuance of the permit and resumption of construction;

THAT the site be maintained free of debris;

THAT the security of the site be maintained;

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. 302159571)

Adopted by the Board of Standards and Appeals, March 12, 2013.

982-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192nd Street, Block 5513, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for adjourned hearing.

18-02-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 8610 Flatlands Realty, LLC, owner.

SUBJECT – Application August 17, 2012 – Extension of Term (§11-411) of an approved variance for the continued operation of an automotive laundry (UG 16B) which expired on August 13, 2012. C2-3/R5D zoning district.

PREMISES AFFECTED – 8610 Flatlands Avenue, southwest corner of intersection of Flatlands Avenue and 87th Street, Block 8023, Lot 39, 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 April 16, 2013, at 10 A.M., for decision, hearing closed.

189-03-BZ

APPLICANT – Eric Palatnik, P.C., for 830 East 233rd Street Corp., owner.

SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expires on October 21, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.

PREMISES AFFECTED – 836 East 233rd Street, southeast corner of East 233rd Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for deferred decision.

APPEALS CALENDAR

310-12-A

APPLICANT – Mitchell A. Korbey, Esq./Herrick, Feinstein, for 141 East 88th Street LLC, owners.

SUBJECT – Application December 12, 2012 – Appeal to the Multiple Dwelling Law section 310(2)(a) to permit the reclassification of a partially occupied residential building, a rehabilitation and a rooftop addition. C1-8X zoning district.

PREMISES AFFECTED – 141 East 88th Street, south-east corner of East 88th Street and Lexington Avenue, Block 1517, Lot 20, 50, 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 16, 2013, at 10 A.M., for decision, hearing closed.

15-13-A thru 49-13-A
APPLICANT – Eric Palatnik, P.C., for Block 7094 Associates, LLC, owners.
SUBJECT – Application January 25, 2013 – Proposed construction of thirty-five (35) one and two-family dwellings that do not front on a legally mapped street, contrary to General City Law Section 36. R3-1(SRD) zoning district.
PREMISES AFFECTED –

16, 20, 24, 28, 32, 36, 40, 44, 48, 52, 56, 60, 64, 68, 78, 84, 90, 96, 102, 108, 75, 79, 85, 89, 93, 99, 105, 109, 115, 119 Berkshire Lane. Block 7094, Lot 70, 69, 68, 67, 66, 65, 62, 61, 60, 59, 54, 53, 52, 51, 43, 44, 45, 46, 47, 48, 41, 40, 39, 38, 37, 36, 35, 34, 33, 32.

19, 23, 27, 31, 35, Wiltshire Lane. Block 7094, Lot 57, 56, 55, 50, 49. Borough of Staten Island.

COMMUNITY BOARD #3SI
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 9, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

1-12-BZ
CEQR #12-BSA-057M
APPLICANT – Law Office of Fredrick A. Becker, for Harran Holding Corp., owner; Moksha Yoga NYC LLC, lessee.
SUBJECT – Application January 3, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Moksha Yoga*) on the second floor of a six-story commercial building. C4-5 zoning district.
PREMISES AFFECTED – 434 6th Avenue, southeast corner of 6th Avenue and West 10th Street, Block 573, Lot 6, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 9, 2011, acting on Department of Buildings Application No. 121181130, reads in pertinent part:

> The proposed "Physical Culture or Health Establishment" (PCE) on the second floor of the subject building, is contrary to ZR 32-31, is contrary to ZR 32-31 and requires a BSA special permit pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-5 (Special Limited Commercial District (LC)) zoning district and the Greenwich Village Historic District, the operation of a physical culture establishment (PCE) on the second floor of a six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on February 12, 2013, and then to decision on March 12, 2013; 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, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Avenue of the Americas and West 10th Street, within a C4-5 (LC) zoning district and the Greenwich Village Historic District; and

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

WHEREAS, the site has 65.12 feet of frontage on

Avenue of the Americas, 78.08 feet of frontage on West 10th Street, and a total lot area of 5,102 sq. ft.; and

WHEREAS, the PCE occupies 4,725 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE is operated as Moksha Yoga; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the PCE are: Monday through Friday, from 7:00 a.m. to 10:00 p.m. and Saturday and Sunday, from 10:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant submitted a Certificate of No Effect (CNE No. 12- 2522) from the Landmarks Preservation Commission (LPC) dated July 13, 2011, approving the interior alterations in the subject PCE space; and

WHEREAS, the applicant submitted a Certificate of No Effect (CNE No. 12-7056) from LPC dated November 30, 2011, approving the exterior alterations in the subject building; 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 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 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 PCE has been in operation since approximately January 15, 2012, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant will be reduced for the period of time between January 15, 2012 and the date of this grant; 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, CEQR No.12BSA057M, dated December 16, 2011; 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 located within a C4-5 (LC) zoning district and the Greenwich Village Historic District, the operation of a physical culture establishment on the second floor of a 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 March 6, 2013" - Two (2) sheets and *on further condition*:

THAT the term of this grant will expire on January 15, 2022;

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 all massages must be performed by New York State licensed massage therapists;

THAT the hours of operation will be limited to Monday through Friday, from 7:00 a.m. to 10:00 p.m. and Saturday and Sunday, from 10:00 a.m. to 8:00 p.m.;

THAT all modifications to the interior and the exterior will be in accordance with the Landmarks Preservation Commission's Certificates of No Effect;

THAT any modifications will be subject to Landmarks Preservation Commission approval;

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

Adopted by the Board of Standards and Appeals, March 12, 2013.

55-12-BZ

APPLICANT – Eric Palatnik, P.C., for Kollel L'Horoah, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based, non-profit school (*Kollel L'Horoah*), contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot 19, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 29, 2012, acting on Department of Buildings Application No. 310126155 reads in pertinent part:

> Proposed Use Group 3 use is not permitted as of right within manufacturing zoning districts, and is contrary to ZR Section 42-00 and therefore requires a special permit from the NYC BSA pursuant to ZR Section 73-19; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within an M1-2 zoning district, the legalization of a six-story yeshiva (Use Group 3), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on November 15, 2012, after due notice by publication in the *City Record*, with continued hearings on January 8, 2013 and February 12, 2013, and then to decision on March 12, 2013; 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, Brooklyn, recommends approval of this application; and

WHEREAS, the application is brought on behalf of the Central United Talmudical Association (the "Yeshiva"); and

WHEREAS, the site is located on the west side of Wythe Avenue, between Penn Street and Rutledge Street, within an M1-2 zoning district; and

WHEREAS, the site has 200 feet of frontage on Wythe Avenue, 125 feet of frontage on Penn Street, 125 feet of frontage on Rutledge Street, and a lot area of 25,000 sq. ft.; and

WHEREAS, the subject building is six stories with a floor area of approximately 119,997.4 sq. ft. (4.80 FAR), and was formerly occupied by a factory; and

WHEREAS, the applicant represents that the Yeshiva meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M1 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 states that the school serves an estimated 1,920 students from pre-nursery through ninth grade; and

WHEREAS, the Yeshiva's program includes 86 classrooms, 142 teachers, and 26 support staff positions; and

WHEREAS, the applicant states that the Yeshiva's program requires a minimum lot area of 20,000-25,000 sq. ft. and a building with a floor area of approximately 120,000 sq. ft. with an additional 20,000 sq. ft. of space in the cellar; and

WHEREAS, accordingly, the applicant searched for two years in South Williamsburg in R6 or equivalent zoning districts, which would allow for an FAR of 4.80 and accommodate the programmatic needs; and

WHEREAS, the applicant represents that it specifically evaluated the feasibility of 11 sites that were either vacant or under-developed within the catchment area of the school, and which could potentially be redeveloped for a school that could accommodate the projected enrollment; and

WHEREAS, the applicant submitted a chart identifying the sites (on Bedford Avenue, Flushing Avenue, Myrtle Avenue, Park Avenue, Willoughby Avenue, and Skillman Street) and summarizing the insufficiencies; and

WHEREAS, the applicant states that, of the 11 sites it evaluated, only two had lot area greater than 20,000 sq. ft. (one was a vacant lot which has since been developed by HPD and one is a banquet hall parking lot not available for sale); six of the smaller sites are in the process or have recently been developed for residential use; and the remaining three are used as parking and a gas station and are not available for sale; and

WHEREAS, the applicant submitted a letter from a real estate broker stating that the Yeshiva sought an existing building for immediate occupancy, but also considered vacant lots, which were not available due to an active residential market that resulted in residential development on the vacant lots; and

WHEREAS, further, the applicant submitted communication between its representation, City Councilperson Letitia James, and the Department of Education (DOE), seeking space to lease in DOE buildings;

the applicant represents that no available DOE space was identified; and

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

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

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

WHEREAS, the applicant submitted a radius diagram which reflects that directly across Wythe Avenue there is an R6 zoning district and directly across Rutledge Street there is an R7-1 zoning district, and therefore the site is within 400 feet of at least two zoning districts 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 adequate separation from noise, traffic and other adverse effects of the surrounding M1-2 zoning district will be provided through the building's 12-inch thick exterior masonry with four-inch wood stud interior walls and double-paned glass windows; and

WHEREAS, the noise analysis submitted by the applicant indicates that the existing windows comply with the required noise attenuation and no additional mitigation measures are recommended; and

WHEREAS, the Board finds that the exterior wall and window construction of the building and the adjacency of residential zoning districts with residential uses directly across Wythe Avenue and Rutledge Street will adequately separate the Yeshiva 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 states that approximately 1,800 students arrive by bus, and that the school operates approximately 15 buses; and

WHEREAS, the applicant further states that the buses arrive between 7:40 a.m. and 10:00 a.m., and that their arrival is spread out so that the buses arrive at the school in a staggered manner with a maximum of six buses parked in front of the school at one time; and

WHEREAS, the applicant further states that there are two teachers/monitors on each bus with young children and constant radio contact between the bus and a monitor at the school who is solely responsible for buses and stands in front of the school; there are also two monitors on the street in front of the school at the time of arrival and departure; and

WHEREAS, the applicant states that the students are also dismissed in a staggered manner from 2:30 p.m. for the youngest to 6:00 p.m. for the oldest; and

WHEREAS, the Yeshiva confirms that its 15 buses make a total of 35 runs each day at designated times; and

WHEREAS, the applicant states that when buses are not in use, they are parked nearby at 671 Myrtle Avenue and 41 South 11th Street, off street; and

WHEREAS, the applicant states that the street system has significant capacity to enable the buses to access the school without disruption; and

WHEREAS, the Department of Transportation submitted a letter stating that it does not object to the proposed legalization of the school from a traffic safety perspective; and

WHEREAS, the Board finds that the above-mentioned measures maintain safe conditions for children going to and from the 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 notes that the Fire Department has inspected the site on numerous occasions and that its only violation is that the operating Interior Fire Alarm and full Sprinkler Systems require application and approval by DOB; 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 has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 12BSA088K, dated March 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, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2012 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 May 15, 2012 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, DEP reviewed the applicant's October 2012 noise analysis and concurs with the conclusions regarding the required sound attenuation levels and measures; and

WHEREAS, DEP determined that, with these noise measures, the proposed project is not anticipated to result in significant noise 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 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 legalization of a six-story yeshiva (Use Group 3), on a site within an M1-2 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 March 7, 2013" - Eleven (11) sheets; and *on further condition*:

THAT a certificate of occupancy will be obtained by March 12, 2015;

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 sound attenuation measures in the proposed building will be maintained 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 12, 2013.

82-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.

SUBJECT – Application April 5, 2012 – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2011 East 22nd Street, between Avenue S and Avenue T, Block 7301, Lot 55, 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 5

Negative.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 7, 2012, acting on Department of Buildings Application No. 320431387, 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 exceeds the maximum permitted.
4. Proposed plans are contrary to ZR 23-631 in that the proposed perimeter wall height exceeds the maximum permitted.
5. Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required.
6. 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 and 73-03, to permit, within an R3-2 zoning 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, perimeter wall height, rear yard, and side yard contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in *The City Record*, with continued hearings on October 23, 2012, November 20, 2013, January 8, 2013, and February 12, 2013, and then to decision on March 12, 2013; 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; and

WHEREAS, an adjacent neighbor provided testimony in opposition to the application; and

WHEREAS, the subject site is located on the east side of East 22nd Street, between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,000 sq. ft., and is occupied by a semi-detached single-family home with a floor area of 1,584.24 sq. ft. (0.79 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 1,584.24 sq. ft. (0.79 FAR) to 2,125.32 sq. ft. (1.07 FAR); the maximum permitted floor area is 1,200 sq. ft. (0.60 FAR); and

WHEREAS, the applicant proposes an open space ratio of 53 percent; the minimum required open space ratio is 65 percent; and

WHEREAS, the applicant proposes a lot coverage of 47 percent; a maximum lot coverage of 35 percent is permitted; and

WHEREAS, the applicant proposes to maintain the existing non-complying perimeter wall height of 21'-7 9/16"; the maximum permitted perimeter wall height is 21'-0"; and

WHEREAS, the applicant proposes a rear yard with a depth of 20 feet; the minimum required rear yard depth is 30 feet; and

WHEREAS, the applicant proposes to maintain the pre-existing non-complying side yard with a width of 6'-9 ½"; a side yard with a minimum width of 8'-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 Board notes that the applicant initially proposed an FAR of 1.13, which it directed the applicant to reduce to be more compatible with the neighborhood context; and

WHEREAS, in response, the applicant reduced the amount of floor area and the FAR to the current proposal of 1.07; 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 noncomplying perimeter wall facing the street; and

WHEREAS, the applicant represents that the proposed perimeter wall height is equal to the pre-existing perimeter wall height and lower than the perimeter wall of the adjacent semi-detached home to the north; and

WHEREAS, the applicant submitted a survey to establish the perimeter wall heights, which reflects that the building and the adjacent semi-detached home, constructed as one building have a consistent perimeter wall height; and

WHEREAS, as to the FAR, at the Board's request, the applicant provided an analysis indicating that several homes in the surrounding area have higher FAR's than what is permitted; specifically, six homes range from 1.01 to 1.2 FAR, and thus 1.07 is compatible with the surrounding character; and

WHEREAS, further, the Board notes that the enlargement is completely at the rear of the home and that the front profile mirrors the adjacent semi-detached home; and

WHEREAS, at the Board's direction, the applicant revised the massing at the rear of the home to be more compatible with the adjacent home; 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 R3-2 zoning district, the proposed enlargement of a semi-detached single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, perimeter wall height, rear yard, and side yard contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; *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 31, 2013"-(6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,125.32 sq. ft. (1.07

FAR), a minimum open space ratio of 53 percent, a maximum lot coverage of 47 percent; a maximum perimeter wall height of 21'-7 9/16"; a rear yard with a minimum depth of 20 feet; and a side yard with a minimum width of 6'-9 ½", 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, March 12, 2013.

106-12-BZ

APPLICANT – Eric Palatnik, P.C., for Edgar Soto, owner; Autozone, Inc., lessee.

SUBJECT – Application April 17, 2012 – Special Permit (§73-50) to permit the development of a new one-story retail store (UG 6), contrary to rear yard regulations (§33-292). C8-3 zoning district.

PREMISES AFFECTED – 2102 Jerome Avenue between East Burnside Avenue and East 181st Street, Block 3179, Lot 20, Borough of Bronx.

COMMUNITY BOARD #5BX

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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Superintendent, dated March 20, 2012, acting on Department of Buildings Application No. 220174004, reads in pertinent part:

> Rear yard in conjunction with one story new building is contrary to ZR 33-292 and therefore must be referred to the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-50 and 73-03, to permit, on a site in a C8-3 zoning district abutting an R8 zoning district, the construction of a one-story commercial building which encroaches on a required 30-foot open area, contrary to ZR § 33-292; and

WHEREAS a public hearing was held on this application on November 27, 2012 after due notice by publication in *The City Record*, with continued hearings on January 29, 2013 and February 26, 2013, and then to decision on March 12, 2013; 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, Bronx, recommends approval of this application; and

WHEREAS, the site is an interior lot located on the east side of Jerome Avenue with 150 feet of frontage on Jerome Avenue and a depth of 100 feet, and a total lot area of 15,000 sq. ft.; and

WHEREAS, the subject site is vacant and currently used for off-street parking; and

WHEREAS, the subject site is located within a C8-3 zoning district that abuts an R8 zoning district to its rear; and

WHEREAS, pursuant to ZR § 33-292, an open area at curb level with a minimum depth of 30 feet is required on a zoning lot within a C8 district with a rear lot line that abuts the rear lot line of a zoning lot in a residential district; and

WHEREAS, the applicant proposes to construct a new one-story, 7,622 sq. ft. commercial building which will contain automobile parts and accessories (Autozone) that sets back 9'-3" from the rear lot line for a width of 63'-3", and a 17 space open parking lot; and

WHEREAS, the first floor encroaches within 20'-9" of the required 30 foot open area up to a height of 18'-8" to the roof and 24'-10" to the parapet wall, contrary to ZR § 33-292; and

WHEREAS, under ZR § 73-50, the Board may grant a waiver of the open area requirements set forth in ZR § 33-29 in appropriate cases; and

WHEREAS, the uses adjacent to the property's rear lot line are an outdoor basketball court and a six-story apartment building; and

WHEREAS, the proposed commercial building will be adjacent to the open basketball court, while the proposed 17 space parking lot will be adjacent to the six-story residential building; and

WHEREAS, the applicant submitted a letter from the NYC Department of Parks and Recreation stating that the adjacent basketball court will remain as dedicated parkland for the foreseeable future; and

WHEREAS, the original proposal was for a building that encroached within the full depth of the open area to a height of 32'-8"; and

WHEREAS, the Board raised concerns regarding the proposed 32'-8" total height of the rear portion of the building and questioned whether the height of the parapet wall could be reduced; and

WHEREAS, in response, the applicant reduced the height of the parapet wall, thereby reducing the total height of the building to 24'-10"; and

WHEREAS, the applicant represents that the proposed height of 24'-10" is within what is typically seen for a one-

story rear yard encroachment, which allows a building height of 23'-0" and a 3'-6" to 4'-0" parapet wall for a total height of up to 27'-0"; and

WHEREAS, the Board raised concerns regarding the location of the building on the zoning lot in regards to the amount of open space at the rear property line; and

WHEREAS, in response, the applicant shifted the building closer to the front lot line thereby providing a 9'-3" open area at the rear lot line; and

WHEREAS, the Board raised concerns regarding lack of any landscaping on the site; and

WHEREAS, in response, the applicant provided revised plans showing ground cover and trees along the perimeter of the site; and

WHEREAS, the Board finds that the proposed development is appropriate because: (1) the building provides a 9'-3" open area at the rear lot line; (2) the height is limited to 24'-10" including the parapet wall; (3) the portion of the building that encroaches into the open area is adjacent primarily to the park and does not face the residential buildings to the rear; and (4) the use is fully enclosed and the site is buffered by landscaping; and

WHEREAS, therefore, the Board finds that the waiver to the required open area will not have an adverse affect on the surrounding area; and

WHEREAS, therefore the Board has determined that the application meets the requirements of ZR §73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of ZR §73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§73-50 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II 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 §§ 73-50 and 73-03, to permit, on a lot within a C8-3 zoning district abutting an R8 zoning district, the construction of a one-story commercial building which encroaches on a required 30-foot open area required by ZR § 33-292, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received March 6, 2013" – seven (7) sheets; and *on further condition*;

THAT the height of the building within the required open area will be limited to a height of 18'-8" to the roof and 24'-10" to the parapet wall;

THAT the building will encroach 20'-9" within the 30 foot open area and the remaining 9'-3" will be landscaped;

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

THAT all landscaping will be maintained and replaced if necessary;

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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 12, 2013.

149-12-BZ

APPLICANT – Alexander Levkovich, for Arkadiv Khavkovich, owner.

SUBJECT – Application May 9, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141(b)) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 154 Girard Street, between Hampton Avenue and Oriental Boulevard, Block 8749, Lot 265, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 8, 2012, acting on Department of Buildings Application No. 320443748, reads in pertinent part:

1. Objection #3 ZR 23-141b – Proposed lot coverage is contrary to Max LC of 35 for this zoning distr.
2. Objection #4 ZR 23-46 – Proposed rear yard is contrary to min 30 ft required.
3. Objection #4 ZR 23-141b – Proposed FAR is contrary to max of .5 for this zoning district; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, 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"), rear yard, and lot coverage contrary to ZR §§ 23-141 and 23-46; and

WHEREAS, a public hearing was held on this application on February 12, 2013, after due notice by publication in *The City Record*, and then to decision on

March 12, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

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

WHEREAS, the subject site has a total lot area of 3,120 sq. ft., and is occupied by a single-family home with a floor area of 1,311 sq. ft. (0.42 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 1,311 sq. ft. (0.42 FAR) to 2,319 sq. ft. (1.74 FAR); the maximum permitted floor area is 1,560 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes a lot coverage of 44 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant proposes a rear yard with a depth of 28'-2"; the minimum required rear yard depth is 30 feet; 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, 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 R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, rear yard, and lot coverage contrary to ZR §§ 23-141 and 23-46; *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 14, 2012"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,319 sq. ft. (0.74 FAR), a maximum lot coverage of 44 percent, and a rear yard with a minimum depth of 28'-2", 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, March 12, 2013.

285-12-BZ
CEQR #13-BSA-040M

APPLICANT – Sheldon Lobel, P.C., for Pigranel Management Corp., owner; Narita Bodywork, Inc., lessee.

SUBJECT – Application October 3, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Narita Bodyworks*) on the 4th floor of existing building. M1-6 zoning district.

PREMISES AFFECTED – 54 West 39th Street, south side of West 39th Street, between Fifth Avenue and Avenue of the Americas, Block 840, Lot 78, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 5, 2012, acting on Department of Buildings Application No. 121142655, reads in pertinent part:

> Physical Culture Establishment is not permitted as of right in zoning M1-6 district and is contrary to ZR 42-10. Approval from BSA 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 located within an M1-6 zoning district, the operation of a physical culture

establishment (PCE) on the fourth floor in a sixteen-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, and then to decision on March 5, 2013; 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 disapproval of this application; and

WHEREAS, the subject site is located on the south of West 39th Street between Fifth Avenue and Avenue of the Americas, within an M1-6 zoning district; and

WHEREAS, the site has 35feet of frontage on West 39th Street, a maximum lot depth of 98.75 feet, and a total lot area of 3,456 sq. ft.; and

WHEREAS, the site is occupied by a 16-story commercial building; and

WHEREAS, the proposed PCE will occupy 3,080 sq. ft. of floor area on the fourth floor and will provide various therapeutic and relaxation services such as massages, facials, waxing, and body treatments; it will include eight massage therapy treatment rooms, four rooms for skin care treatments, a reception area, laundry room, and showers within certain treatment rooms; and

WHEREAS, the PCE will be operated as Narita Bodywork; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be: 24 hours a day, 7 days a week; and

WHEREAS, in response to concerns raised by the Community Board regarding the proposed 24-hour operation, the applicant asserts that the Board has granted several PCE special permits in the surrounding manufacturing area with 24-hour operation; and

WHEREAS, further, the applicant notes that the surrounding area is a high-density commercial district bordering the Special Midtown District and is characterized predominantly by commercial uses, and that the subject building only contains commercial uses; and

WHEREAS, the applicant also represents that the proposed operation is intended to open 10:00 am to 2:00 am daily, however they would prefer the flexibility to increase the hours, should there be demand for 24-hour service; and

WHEREAS, the applicant states and the Board agrees that if the applicant elects to extend the PCE's hours to a 24-hours/day, it will not adversely affect the surrounding uses; 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA040M, dated October 1, 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 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 M1-6 zoning district, the operation of a physical culture establishment on the fourth floor in a sixteen-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 5, 2013" - Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on February 26, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, March 12, 2013.

16-12-BZ

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 – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

195-12-BZ

APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for continued hearing.

238-12-BZ

APPLICANT – Harold Weinberg, for Stuart Ditchek, owner.

SUBJECT – Application August 1, 2012 – Special Permit (§73-622) for the enlargement of single family home contrary floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1713 East 23rd Street, between Quentin Road and Avenue R, Block 6806, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

312-12-BZ

APPLICANT – Jay A. Segal, Esq./Greenberg Traurig LLP, for 33 Beekman Owner LLC c/o Naftali Group, owners; Pace University, lessee.

SUBJECT – Application November 19, 2012 – Variance (§72-21) to facilitate the construction of a new 34-story, 760-bed dormitory (*Pace University*), contrary to maximum permitted floor area. C6-4 district/Special Lower Manhattan District.

PREMISES AFFECTED – 29-37 Beekman Street aka 165-169 William Street, northeast corner of block bound by Beekman, William, Nassau and Ann Streets, Block 92, Lot 1,3,37,38, 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 April 9, 2013, at 10 A.M., for decision, hearing closed.

316-12-BZ

APPLICANT – Eric Palatnik, P.C. for Prince Plaza LLC, owner; L'Essence de Vie LLC d/b/a Orient Retreat, lessee.

SUBJECT – Application November 21, 2012 – Special Permit (§73-36) to allow a proposed physical culture establishment (*Orient Retreat*). C4-2 zoning district.

PREMISES AFFECTED – 37-20 Prince Street, west side of Prince Street between 37th Avenue and 39th Avenue, Block 4972, Lot 43, 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 April 16, 2013, at 10 A.M., for decision, hearing closed.

323-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 25 Broadway Office Properties, LLC, owner; 25 Broadway Fitness Group LLC, lessees.
SUBJECT – Application December 7, 2012 – Special Permit (§73-36) to allow a proposed physical culture establishment (*Planet Fitness*). C5-5LM zoning district.
PREMISES AFFECTED – 25 Broadway, southwest corner of the intersection formed by Broadway and Morris Street, Block 13, Lot 27, 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 April 23, 2013, at 10 A.M., for decision, hearing closed.

324-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Taxiarnis Davanelos, Georgia Davanelos, Andy Mastoros, owners.
SUBJECT – Application December 7, 2012 – Special permit (§73-622) for the enlargement of an existing single family home, contrary to floor area regulations (23-141(b)). R3-1 zoning district.
PREMISES AFFECTED – 45 76th Street, north side of 76th Street between Narrows Avenue and Colonial Road, Block 5937, Lot 69, Borough of Brooklyn.
COMMUNITY BOARD #10BK
ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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DOCKETS

New Case Filed Up to March 19, 2013

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90-13-BZ
165-05 Cryders Lane, Northeast corner of the intersection of Cryders Lane and 166th Street, Block 4611, Lot(s) 1, Borough of **Queens, Community Board: 07**. Variance (§72-21) to permit the construction of a single-family dwelling contrary to open area requirements. R1-2 zoning district. R1-2 district.

91-13-BZ
115 East 57th Street, north side, between Park and Lexington Avenues., Block 1312, Lot(s) , Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment to be located on the 7th, 8th and 9th floor of a 57 story mixed use building. C5-3,C5-2.5(MiD) zoning district. C5-3,C5-2.5(MiD 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 16, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 16, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

326-02-BZ
APPLICANT – Sheldon Lobel, P.C., for 2230 Church Avenue Realty, LLC, owner; 2228 Church Avenue Fitness Group, LLC, lessee.
SUBJECT – Application November 27, 2012 – Extension of term of a previously approved Special Permit (73-36) for the continued operation of physical culture establishment, (Planet Fitness) which expires on November 5, 2013; Amendment to allow the extension of the use to a portion of the building's first floor and the change in ownership. C4-4A zoning district.
PREMISES AFFECTED – 2228-2238 Church Avenue, south side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot 36, Borough of Brooklyn.
COMMUNITY BOARD #14BK

341-02-BZ
APPLICANT – Sheldon Lobel, P.C., for 231 East 58th Street Associates LLC, owners.
SUBJECT – Application January 25, 2013 – Extension of Term of a previously granted Variance §72-21 for the continued UG6 retail use on the first floor of a five-story building which expired on April 8, 2013. R-8B zoning district.
PREMISES AFFECTED – 231 East 58th Street, northwest corner of the intersection of Second Avenue and East 58th Street, Block 1332, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #6M

55-06-BZ
APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.
SUBJECT – Application March 7, 2013 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a three-story with cellar, 15,995 sq. ft. (UG 6B) office building which expired on January 23, 2011; Waiver of the Rules. C1-1(NA-1) zoning district.
PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot 92, 93, 94, Borough of Staten Island.
COMMUNITY BOARD # 2SI

APPEALS CALENDAR

493-73-A
APPLICANT – Sheldon Lobel, P.C., for 83rd Street Associates LLC, owner.
SUBJECT – Application October 4, 2012 – Application seeking to extend the term of the variance granted pursuant to MDL Section 310 to permit a superintendent's apartment in the cellar, which expired on March 20, 2004, an amendment to eliminate the term of the variance going forward, an extension of time to obtain a Certificate of Occupancy, and a waiver of the BSA's Rules of Practice and Procedure. R10A /R8B Zoning District.
PREMISES AFFECTED – 328 West 83rd Street, West 83rd Street, approx. 81'-6" east of Riverside Drive, Block 1245, Lot 40, Borough of Manhattan.
COMMUNITY BOARD #7M

267-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, for Robert McGivney, owner.
SUBJECT – Application September 5, 2012 – Appeal from Department of Buildings' determination that the sign is not entitled to continued non-conforming use status as advertising sign. M1-2 & R6A zoning district.
PREMISES AFFECTED – 691 East 133rd Street, northeast corner of Cypress Avenue and East 133rd Street, Block 2562, Lot 94, Borough of Bronx.
COMMUNITY BOARD #1BX

79-13-A
APPLICANT – Law Offices of Howard B. Hornstein, for 813 Park Avenue holdings, LLC, owner.
SUBJECT – Application February 27, 2013 – Appeal of final determination of the status of a lot of record as a zoning lot based on a note on a certificate of occupancy but not upon the Zoning Resolution's definition of "zoning lot". R10(Pl) zoning district.
PREMISES AFFECTED – 807 Park Avenue, East side of Park Avenue, 77.17' south of intersection with East 75th Street, Block 1409, Lot 72, Borough of Manhattan.
COMMUNITY BOARD # 8M

CALENDAR

ZONING CALENDAR

Jeff Mulligan, Executive Director

135-11-BZ/136-11-A
APPLICANT – Eric Palatnik, P.C., for Block 3162 Land LLC, owner.
SUBJECT – Application September 7, 2011 – Variance (§72-21) to allow for the construction of a commercial use UG6, contrary to use regulations, ZR 22-00. Also, is located within the mapped but not built portion of a mapped street (Clove Road and Sheridan Avenue) which is contrary to General City Law Section 35. R3-2 zoning district.
PREMISES AFFECTED – 2080 Clove Road, southwest corner of Clove Road and Giles Place, Block 3162, Lot 22, Borough of Staten Island.
COMMUNITY BOARD #2 SI

59-12-BZ/60-12-A
APPLICANT – Mitchell S. Ross, Esq., for Ian Schindler, owner.
SUBJECT – Application March 15, 2012 – Variance (§72-21) proposed reconstruction of an existing landmarked building with non-complying front yard (ZR 23-45) in the bed of a mapped street.
PREMISES AFFECTED – 240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue, Block 8103, Lot 25, Borough of Queens.
COMMUNITY BOARD #11Q

12-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Rosette Zeitoune and David Zeitoune, owners.
SUBJECT – Application January 22, 2013 – Special Permit (§73-622) for the enlargement of a single family home contrary to side yards (ZR §23-461) and less than the required rear yard (ZR§ 23-47). R5 (OP) Ocean parkway Special zoning district.
PREMISES AFFECTED – 2057 Ocean Parkway, east side of Ocean Parkway between Avenue T and Avenue U, Block 7109, Lot 66, Borough of Brooklyn.
COMMUNITY BOARD # 15BK

52-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for LF Greenwich LLC c/o Centaur Properties LLC., owner; SoulCycle 609 Greenwich Street, LLC, lessee.
SUBJECT – Application January 31, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*) within a portion of an existing building in an M1-5 zoning district.
PREMISES AFFECTED – 126 Leroy Street, southeast corner of intersection of Leroy Street and Greenwich Street, Block 601, Lot 47, Borough of Manhattan.
COMMUNITY BOARD #2M

MINUTES

REGULAR MEETING
TUESDAY MORNING, MARCH 19, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

374-04-BZ
APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., owner.
SUBJECT – Application December 5, 2012 – Extension of Time to complete construction of a previously-granted Variance (§72-21) for the development of a seven-story residential building with ground floor commercial space, which expired on October 18, 2009; Amendment to approved plans; and waiver of the Rules. C6-2A zoning district/SLMD.
PREMISES AFFECTED – 246 Front Street, fronting on Front and Water Streets, 126' north of intersection of Peck Slip and Front Street, Block 107, Lot 34, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of time to complete construction and obtain a certificate of occupancy in accordance with a variance, which expired on October 18, 2009, and an amendment to the prior approval; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in *The City Record*, and then to decision on March 19, 2013; 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, the site is located on in the midblock of the block bounded by Front Street, Peck Slip, Water Street and Dover Street in a C6-2A zoning district within the South Street Seaport Historic District and Extension and the South Street Seaport Subdistrict of the Special Lower Manhattan District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 18, 2005 when, under the subject calendar number, the Board granted a variance for the development of a mixed-use building with residential use and ground floor retail, rising to seven stories on Front Street and five stories on Water Street, which does not comply with certain bulk regulations set forth at ZR §§ 23-32, 23-145, 23-533, 23-692, 23-711 and 28-32, to expire on October 18, 2009; and

WHEREAS, under the original grant, the applicant represented that the proposed mixed building would contain 11,158 sq. ft. of total floor area (total FAR of 5.25), 9,571 sq. ft. of which would be residential floor area (FAR of 4.54), and 1,587 sq. ft. of which would be commercial floor area (FAR of .71); and

WHEREAS, the amended plans for the mixed building indicate that it will contain 10,782 sq. ft. of total floor area (total FAR of 4.99), 9,734 sq. ft. of which will be residential floor area (FAR of 4.28) and 1,048 sq. ft. of which will be commercial floor area (FAR of .71); and

WHEREAS, the applicant seeks to extend the time to complete construction and obtain a certificate of occupancy in accordance with the variance for an additional four years; and

WHEREAS, the applicant also requests an amendment to permit: elimination of the excavated cellar on the Front Street side of the building; reconfiguration of what will now be a ground floor residential lobby with accessory storage on the Water Street side of the building; reconfiguration of the building entrance lobby and the elevator vestibule on all floors on the Front Street side; redesign of the apartments on the Water Street side as a single family dwelling; addition of an internal convenience stair between the sixth and seventh floors on the Front Street side of the building to create a duplex; and a reconfiguration of the rooftop bulkheads for stairs, elevator and mechanicals; a three-inch increase of the height of the setback above the sixth story; a change in the number of dwelling units from nine to six; and removal of recreation space from the rooftop of the Front Street building segment; and

WHEREAS, the Department of Buildings has reviewed the amended plans and clarified that such plans do not comply with: ZR §§ 23-32, 23-532, 23-47, 23-692, 23-711 and 23-145; and

WHEREAS, the Board has determined that the amended plans result in the same, or a lesser degree of non-compliance with the Zoning Resolution than was previously proposed and approved; and

WHEREAS, the applicant has submitted a Status Update Letter from the Landmarks Preservation Commission ("LPC"), which indicates that on October 16, 2012, LPC voted to approve the amended plans on condition that the applicant work with LPC staff to improve the detailing and articulation of the Water Street façade and obtain a Certificate of Appropriateness for such design; and

WHEREAS, based upon its review of the record, the Board finds the requested waiver, extension of time, 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, as adopted on October 18, 2009, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for a period of four years from March 19, 2013, to expire on March 19, 2017, and to permit the noted modifications to the site; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received March 14, 2013'- (14) sheets; and *on further condition*:

THAT construction will be completed by March 19, 2017;

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

THAT the number of dwelling units, floor area and FAR for the proposed mixed building will be in accordance with the terms of this grant;

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."

(DOB Application No. 121324487)

Adopted by the Board of Standards and Appeals, March 19, 2013.

551-37-BZ

APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.

SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of approved variance for the continued operation of an automobile repair shop (*Red's Auto Repair*) which expired on July 15, 2012; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, between 234th and 233rd Street, Block 8166, Lot 20, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for continued hearing.

135-46-BZ

APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.

SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment (§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.

PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8555, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for adjourned hearing.

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application January 5, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously approved variance permitting UG8 parking garage and an auto rental establishment (UG8) in the cellar level, which expired on December 13, 2012. R8B zoning district.

PREMISES AFFECTED – 148-150 East 33rd Street, southside of E. 33rd Street, 151.9' east of Lexington Avenue, Block 888, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #6M

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 16, 2013, at 10 A.M., for decision, hearing closed.

410-68-BZ

APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of approved variance which permitted the operation of (UG16B) automotive service station (*Citgo*) with accessory uses, which expired on November 26, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.

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

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

11-80-BZ

APPLICANT – Richard Bass, Herrick, Feinstein, LLP, for West 28th Street Owners LLC.

SUBJECT – Application January 10, 2013 – Amendment of previously approved variance (§72-21) which allowed conversion of the third through seventh floor from commercial to residential use. Amendment would permit the additional conversion of the second floor from commercial to residential use. M1-6 zoning district.

PREMISES AFFECTED – 146 West 28th Street, south side of West 28th Street, between 6th and 7th Avenues, Block 803, Lot 65, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for continued hearing.

543-91-BZ

APPLICANT – Eric Palatnik P.C., for George F. Salamy, owner.

SUBJECT – Application December 20, 2012 – Extension of Term of a previously approved variance (§72-21) permitting a one-story household appliance store (*P.C. Richards*) which expired on July 28, 2012; Waiver of the Rules. C4-2A/R4-1 zoning district.

PREMISES AFFECTED – 576-80 86th Street, between Fort Hamilton Parkway, Brooklyn Queens Expressway, Block 6053, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for continued hearing.

167-95-BZ

APPLICANT – Walter T. Gorman, P.E., for Springfield L. I. Cemetery Society, owners.

SUBJECT – Application September 21, 2012 – Extension of Term of a previously approved variance (§72-21) which permitted the maintenance and repairs of motor-operated cemetery equipment and accessory parking and storage of motor vehicles which expired on February 4, 2012; amendment to reduce the size of the area covered by the variance. R3A zoning district.

PREMISES AFFECTED – 121-20 Springfield Boulevard, west side of Springfield Boulevard, 166/15' south of 121st Avenue, Block 12695, Lot 1, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to March 19, 2013, at 10 A.M., for continued hearing.

78-08-BZ

APPLICANT – Stephen Grasso, Partners for Architecture, for South Bronx Charter School for International Cultures & The Arts, owners.

SUBJECT – Application February 12, 1923 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a five-story charter elementary school (*The South Bronx Charter School for International Cultures and the Arts*), which expired on August 26, 2012; Waiver of the Rules. M1-2/R-6A, MX-1(Special Mixed Use) zoning district.

PREMISES AFFECTED – 611 East 133rd Street, bound by East 133rd Street and Cypress Place, Block 2546, Lot 27, 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 9, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

110-10-BZY

APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities LLC c/o Blake Partners LLC, owner.

SUBJECT – Application November 19, 2012 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which expired on October 19, 2012. R5A zoning district.

PREMISES AFFECTED – 123 Beach 93rd Street, western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot 11, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in *The City Record*, and then to decision on March 19, 2013; and

WHEREAS, the site was inspected by Commissioner Hinkson; and

WHEREAS, the subject site is located on the west side of Beach 93rd Street, approximately 211 feet south of Holland Avenue in Rockaway Beach, in an R5A zoning district; and

WHEREAS, the site has 175 feet of frontage along Beach 93rd Street, 157.13 feet of frontage along Beach 94th Street, 107.01 feet of frontage along Shore Front Boulevard, and a total lot area of 18,488 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story residential building with 57 dwelling units and 36 accessory parking spaces (the "Building"); and

WHEREAS, the Building complies with the parameters of the former R6 zoning district; and

WHEREAS, on January 8, 2007, New Building Permit No. 402483013-01-NB (hereinafter, the "New Building Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, however, on August 14, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Rockaway Neighborhoods Rezoning, which rezoned the site

from R6 to R5A; and

WHEREAS, accordingly, the Building, being neither a one- or two-family detached residence, nor having a floor to area ratio of 1.10 or less, nor a maximum height of 35 feet or less, does not comply with the current zoning; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the two years subsequent to the Enactment Date, construction was not completed and a certificate of occupancy was not issued; and

WHEREAS, accordingly, an application was filed with the Board for an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, on October 19, 2010, the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy under the subject calendar number; and

WHEREAS, accordingly, the applicant had until October 19, 2012 to complete construction and obtain a certificate of occupancy; and

WHEREAS, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the Board notes that the subject site was initially vested by DOB in 2008, granted an extension of time to complete construction and obtain a certificate of occupancy by the Board in 2010, and now seeks an additional extension under ZR § 11-332; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated August 17, 2010, 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 has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant, and directed the applicant to exclude pre-permit expenditures; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of October 19, 2012 has been considered; and

WHEREAS, the applicant states that work on the Building subsequent to the issuance of the permits includes: 100 percent of the excavation; 100 percent of the foundation (including the installation of over 300 driven piles); and the installation of a complex drainage system; and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; a foundation survey; copies of cancelled checks; invoices; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is $3,011,614 (including $1,474,974 in hard costs), or 17 percent, out of the $17,610,614 cost to complete; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permit, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 402483013-01-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 the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 19, 2015.

Adopted by the Board of Standards and Appeals, March 19, 2013.

201-10-BZY

APPLICANT – Kramer Levin Naftalis & Frankel, for 180 Orchard LLC., owner.

SUBJECT – Application January 18, 2013 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which will expire on March 15, 2013. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, Orchard Street to Ludlow Street, Block 412, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in *The City Record*, and then to decision on March 19, 2013; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, the subject site is an L-shaped through lot with frontage on Orchard Street and Ludlow Street, between Houston Street and Stanton Street, within a C4-4A zoning district; and

WHEREAS, the subject site has 128'-3" of frontage along Orchard Street, 50'-1" of frontage along Ludlow Street, a depth ranging from 87'-10" to 175'-8", and a total lot area of 41,501 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 24-story building containing approximately 246 hotel rooms, community facility uses, retail stores on the lower levels and an accessory underground parking garage (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of 154,519.6 sq. ft.; and

WHEREAS, the applicant states that the owner will be filing an application with the City Planning Commission ("CPC") requesting a special permit pursuant to ZR § 13-561 to expand the size of the underground accessory parking garage at the site; and

WHEREAS, the applicant represents that the proposed CPC special permit for the garage has no effect on the subject proposal and that the plans for the garage, as approved by the Department of Buildings ("DOB"), have not changed; and

WHEREAS, the development complies with the former C6-1 zoning district parameters; and

WHEREAS, on November 23, 2005, New Building Permit No. 104297850-01-NB (hereinafter, the "Permit") was issued by the DOB permitting construction of the Building; and

WHEREAS, however, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site from C6-1 to C4-4A; and

WHEREAS, accordingly, the Building does not comply with the current zoning with respect to floor area ratio, building height and street wall location; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue

under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the two years subsequent to the Enactment Date, construction was not completed and a certificate of occupancy was not issued; and

WHEREAS, accordingly, an application was filed with the Board for an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 15, 2011, the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy under the subject calendar number; and

WHEREAS, accordingly, the applicant had until March 15, 2013 to complete construction and obtain a certificate of occupancy; and

WHEREAS, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the Board notes that the subject site was initially vested by DOB in 2008, granted an extension of time to complete construction and obtain a certificate of occupancy by the Board in 2011, and now seeks an additional extension under ZR § 11-332; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated February 1, 2011, 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 has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant, and directed the applicant to exclude pre-permit expenditures; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the original permit includes: 100 percent of the excavation, footings and foundation; 100 percent of the underground parking garage and cellar levels; and 100 percent of the first and second floor retail space; and

WHEREAS, the applicant states that work on the proposed development subsequent to the Board's March 15, 2011 extension of time to complete construction under the permit includes: installation of sprinklers in the sub-cellar, ground and second floors; installation of concrete and masonry block in the sub-cellar, cellar and ground floors, construction of columns throughout the cellar and sub-cellar; construction of additional support for columns below grade; installation of a new glass storefront; reconfiguration of

elevator and stair cores; and installation of roof protection on the adjacent properties; and

WHEREAS, additionally, the applicant has substantially revised the plans to comply with changes in applicable codes since 2005, including: the 2010 ADA Code; the life safety provisions of the 2008 NYC Construction Codes; and the NYC Energy Conservation Code; and

WHEREAS, in support of these statements, the applicant has submitted the following: a breakdown of the construction costs by line item; plans showing recent foundation, sub-cellar, cellar, ground, mezzanine and second-story work; copies of cancelled checks; invoices; photographs of the site; and court actions taken in furtherance of continuing construction; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is $25,205,136, or 36.5 percent, out of the $69,014,234 cost to complete; and

WHEREAS, further as to costs, the applicant represents of the $25,205,136 expended to date, $6,612,054 has been expended since the Board's March 15, 2011 extension of time to complete construction; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permit, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104297850-01-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 the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 19, 2015.

Adopted by the Board of Standards and Appeals, March 19, 2013.

292-12-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marie & Kenneth Fuchs, lessees.

SUBJECT – Application October 10, 2012 – Proposed reconstruction and enlargement of existing single-family dwelling located partially in the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law; proposed upgrade of the existing private disposal system in the bed of the mapped street, contrary to Article 3, Section 35 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 19 Marion Walk, east side of Marion Walk, 125' north of Breezy Point, Block 16350, Lot p/o400, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated September 21, 2012 acting on Department of Buildings Application No. 420592102, reads in pertinent part:

A1- The existing building to be altered lies within the bed of a mapped street, contrary to General City Law Article 3, Section 35; and

A2- The proposed upgrade of the existing private disposal system in the bed of a mapped street is contrary to General City Law Article 3, Section 35; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated October 18, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections to the proposal; and

WHEREAS, by letter dated October 24, 2012, the Department of Environmental Protection states that it has no objections to the proposal; and

WHEREAS, by letter dated January 28, 2013, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency'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 September 21, 2012 acting on Department of Buildings Application No. 420592102, 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

shall substantially conform to the drawing filed with the application marked "Received October 10, 2012"-one (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) only;

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;

THAT the home shall be sprinklered in accordance with the BSA-approved plans; and

THAT the Department of Buildings must ensure compliance 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 19, 2013.

307-12-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Anne McCoale, lessee.

SUBJECT – Application November 8, 2012 – Reconstruction and enlargement of existing single-family dwelling not fronting a mapped street, contrary to Article 3, section 36 of the General City law. The proposed upgrade of the existing non-conforming private disposal system located partially in the bed of the service road, contrary to building department policy. R4 zoning district.

PREMISES AFFECTED – 25 Olive Walk, Queens, east side of Olive Walk, 140' north of Breezy Point Boulevard, Block 16350, Lot 400, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated November 1, 2012 acting on Department of Buildings Application No. 420629537, reads in pertinent part:

(A1) The street giving access to the existing building to be altered is not duly placed on the official map of the city of New York, therefore:

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law

b) The existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 501.3.1 of the administrative code.

(A2) The proposed upgrade of the existing private disposal system in the bed of a the service lane is contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated February 22, 2013 the Fire Department states that it has reviewed the subject proposal and has no objections to the proposal; 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 November 1, 2012 acting on Department of Buildings Application No. 420629537, 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 November 8, 2012 "-one (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) only;

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;

THAT the home shall be sprinklered in accordance with the BSA-approved plans; and

THAT the Department of Buildings must ensure compliance 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 19, 2013.

89-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.
COMMUNITY BOARD #3SI
ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

92-07-A thru 94-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.
COMMUNITY BOARD #3SI
ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

95-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.
COMMUNITY BOARD #3SI
ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

190-12-A, 191-12-A & 192-12-A
APPLICANT – Davidoff Hutcher & Citron, LLP, for Fuel Outdoor LLC.
OWNER OF PREMISES – JRR Realty Co., Inc.
SUBJECT – Application June 13, 2012 – Appeals from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 zoning district.
PREMISES AFFECTED – 42-45 12th Street, north of Northeast corner of 12th Street and 43rd Street, Block 458, Lot 83, Borough of Queens.
COMMUNITY BOARD #2Q
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for deferred decision.

197-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, for Interstate Outdoor Advertising.
OWNER OF PREMISES – Hamilton Plaza Associates.
SUBJECT – Application June 21, 2012 – Appeal from Department of Buildings' determination that a sign is not entitled to continued legal status as advertising sign. M1-2/M2-1 zoning district.
PREMISES AFFECTED – 1-37 12th Street, east of Gowanus Canal between 11th Street and 12th Street, Block 10007, Lot 172, Borough of Brooklyn.
COMMUNITY BOARD #7BK
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for deferred decision.

203-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, for CBS Outdoor, Inc.
OWNER OF PREMISES – Gemini 442 36th Street H LLC.
SUBJECT – Application June 28, 2013 – Appeal from Department of Buildings' determination that a sign is not entitled to continued legal status as advertising sign. C2-5 /HY zoning district.
PREMISES AFFECTED – 442 West 36th Street, east of southeast corner of 10th Avenue and 36th Street, Block 733, Lot 60, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for deferred decision.

251-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, for 330 Associates LLC c/o George A. Beck, owner; Radiant Outdoor, LLC, lessee.
SUBJECT – Application August 14, 2012 – Appeal from Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. C2-5 Zoning District.
PREMISES AFFECTED – 330 East 59th Street, west of southwest corner of 1st Avenue and East 59th Street, Block 1351, Lot 36, Borough of Manhattan.
COMMUNITY BOARD # 6M
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for continued hearing.

297-12-A
APPLICANT – Law Office of Fredrick A. Becker, for 28-20Astoria Blvd LLC, owners.
SUBJECT – Application October 17, 2012 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to complete construction commenced under the prior R6 zoning district. R6-A/C1-1 zoning district.
PREMISES AFFECTED – 28-18/20 Astoria Boulevard, south side of Astoria Boulevard, approx. 53.87' west of 29th Street, Block 596, Lot 45, 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 April 23, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

67-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 1442 First Avenue, LLC, owner.
SUBJECT – Application March 21, 2012 – Variance (§72-21) to allow for the extension of an eating and drinking establishment to the second floor, contrary to use regulations (§32-421). C1-9 zoning district.
PREMISES AFFECTED – 1442 First Avenue, southeast corner of the intersection formed by 1st Avenue and East 75th Street, Block 1469, Lot 46, Borough of Manhattan.
COMMUNITY BOARD #8M
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
Adopted by the Board of Standards and Appeals, March 19, 2013.

233-12-BZ
CEQR #13-BSA- 005Q
APPLICANT – Richard G. Leland, Esq./Fried Frank Harris Shriver & Jacob, for Porsche Realty, LLC, owner; Van Wagner Communications, lessee.
SUBJECT – Application July 19, 2012 – Variance (§72-21) to legalize an advertising sign in a residential district, contrary to use regulations (§22-00). R3X zoning district.
PREMISES AFFECTED – 246-12 South Conduit Avenue, bounded by 139th Avenue, 246th Street and South Conduit Avenue, Block 13622, Lot 7, Borough of Queens.
COMMUNITY BOARD #13Q
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: Vice Chair Collins.....1
THE RESOLUTION –
WHEREAS, the decision of the Queens Borough Commissioner, dated July 5, 2012, acting on Department of Buildings Application No. 420581481, reads in pertinent part:

1. The existing/proposed illuminated advertising sign is not a permitted use in an R3X district, contrary to ZR 22-30 and 52-731.
2. The existing/proposed sign structure is not a permitted obstruction in the required yards in an R3X district, contrary to ZR 23-44, 23-45 and 23-46.
3. The area of the existing/proposed sign exceeds the maximum area of signs for non-residential buildings or other structures in an R3X district, contrary to ZR 22-321(b).
4. The existing/proposed sign structure 39'-1" in

height exceeds the maximum height of signs in an R3X district, contrary to ZR 22-342; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3X zoning district, the legalization of an existing indirectly illuminated outdoor advertising sign, which does not conform to district use and bulk regulations, contrary to ZR §§ 22-30, 22-321, 22-342, 23-44, 23-45, 23-46, and 52-731; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, continued hearings on January 29, 2013 and February 26, 2013, and then to decision on March 19, 2013; 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 13, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of South Conduit Avenue, between 247th Street and the intersection of 246th Street and 139th Avenue, within an R3X zoning district; and

WHEREAS, the site has approximately 76 feet of frontage on South Conduit Avenue, with side lot lines extending at 35- and 55-degree angles off of South Conduit Avenue, for a distance of 62.56 feet and 43.13 feet, respectively; the site has a total lot area of 1,350 sq. ft.; and

WHEREAS, the site is occupied by a 14'-0" by 48'-0" indirectly illuminated advertising sign on a structure with a height of 39'-1", facing northwest toward South Conduit Avenue at an angle of approximately 55 degrees off of the front lot line and sidewalk, running nearly parallel to the eastern side lot line of the site; and

WHEREAS, the applicant submitted evidence to support its assertion that the sign and sign structure have existed at the site since 1936; and

WHEREAS, the applicant also filed an appeal of DOB's Notice of Sign Registration Rejection under BSA Cal. No. 14-12-A; the appeal is pending while the applicant pursues the subject variance application; and

WHEREAS, because the sign is not permitted in the subject zoning district, the applicant seeks a variance to legalize it; and

WHERAS, the applicant now seeks: a waiver of ZR § 22-30 (Sign Regulations) and ZR § 52-731 (Advertising signs) to allow the continued use of the sign in an R3X residential zoning district in which advertising signs are not permitted as-of-right; a waiver of ZR § 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents), ZR § 23-45 (Minimum Required Front Yards), and ZR § 23-46 (Minimum Required Side Yards) to allow the existing sign to remain within the required front and side yards; and a waiver of ZR § 22-321(b) (Nameplates or identification signs) and ZR § 22-342 (Height of signs) to allow the existing sign to rise to a height of 39'-1" with a surface area of 672 sq. ft.; 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 use: (1) the irregular shape and small shallow lot configuration that limits the size and layout of any permitted residential development; (2) the location on a heavily-trafficked road with many commercial uses; (3) the history of use of the site for non-residential use; and (4) its reliance in good faith on DOB's permit issuance; and

WHEREAS, the applicant asserts that the shape, small size, and orientation of the lot limit the potential use of the site and thus trigger the yard non-compliance; and

WHEREAS, as to the lot's shape and size, the applicant states that it has an unusually small lot area of 1,350 sq. ft. in a sharply angled triangular shape, with an extremely shallow depth of 28 feet; and

WHEREAS, the applicant submitted evidence to establish that the lot has been in its current configuration since prior to December 15, 1961 and that it is what remains of a much larger lot that was taken over to allow for the widening of South Conduit Avenue several decades before December 15, 1961; and

WHEREAS, as to uniqueness, the applicant states that the lot is the shallowest and has the least amount of lot area among all of the lots fronting on South Conduit Avenue between Brookeville Park and the boundary of the City of New York with Nassau County; and

WHEREAS, additionally, the applicant states that the site is the only triangular lot fronting on South Conduit Avenue in the vicinity; and

WHEREAS, the applicant notes that there is one other lot along the stretch of South Conduit Avenue that is nearly triangular in shape, however it is more than 70 percent larger than the site, with a lot area of approximately 2,300 sq. ft.; and

WHEREAS, the applicant states that there are no lots with residences fronting on South Conduit Avenue along an approximately one-half mile stretch of South Conduit Avenue; and

WHEREAS, the applicant states that the 1,350 sq. ft. lot area is well below the 3,325 sq. ft. minimum lot area required for residences in R3X districts, and is even significantly below the absolute minimum lot area – 1,700 sq. ft. – for non-contextual R3 districts; and

WHEREAS, the applicant asserts that residential development would only be permitted on the site pursuant to the special provision in ZR § 23-33 for development on existing small lots owned separately and individually from all other adjoining tracts of land on the date of establishment of the R3X district; and

WHEREAS, the applicant asserts that the unique site conditions constrain development that complies and conforms with zoning; and

WHEREAS, the applicant asserts that the residential building permitted at the site would consist of an extremely small, irregularly-shaped triangular building with narrow interior angles; and

WHEREAS, the applicant notes that the R3X zoning district regulations impose substantial yard and open space requirements; the amount of open space and lot coverage for residential uses on the site is governed by the yard requirements: the front yard must be at least 10 feet deep, but at least as deep as adjacent front yards, up to 20 feet deep (ZR § 23-45); also, there must be two side yards totaling at least 10 feet in width, with each side yard at least two feet wide, and at least eight feet of space between residential buildings (ZR § 23-461); and that the rear yard must be at least 10 feet deep (ZR § 23-52); and

WHEREAS, the applicant notes that for community facility buildings, front yards must be at least 15 feet in depth (ZR § 24-34), there must be two side yards, each at least eight feet in depth (ZR § 24-35), and there must be a rear yard at least 30 feet in depth (ZR § 24-36); and

WHEREAS, specifically, the applicant states that a complying residential building would consist of a small, irregularly-shaped triangular two-story residence with interior angles of 90, 55, and 35 degrees; the residence would have a maximum floor area of 673 sq. ft., with 400 sq. ft. on the first floor and 273 sq. ft. on the second floor; the longest dimension of the residence would be 40 feet along South Conduit Avenue, set back 10 feet from the street to accommodate a required front yard and the other sides of the residence would be approximately 23 feet and 33 feet; and

WHEREAS, further, the applicant states that a community facility building would be infeasible on the site, as the yard requirements would result in a small triangular building with a footprint of no more than approximately 48 square feet; and

WHEREAS, as to the location, the applicant states that South Conduit Avenue (also known as New York State Route 27, Sunrise Highway, and POW/MIA Memorial Highway) is an approximately 135-ft. wide seven-lane highway running east-west, where it abuts the site, and directly north of the highway are several Long Island Railroad ("LIRR") tracks connecting to the Rosedale LIRR station, which is approximately 1,000 feet from the site, near the intersection of South Conduit Avenue and Francis Lewis Boulevard; and

WHEREAS, the applicant asserts that the site's location on such a heavily-trafficked thoroughfare further diminishes its marketability for residential use; and

WHEREAS, as to the history of use, the applicant asserts that an advertising sign has been continuously maintained on the site since at least January 1936, as supported by affidavits and letters from 1939 and 1942 referencing advertising sign leases on the site, as well as advertising contracts from 1976 and 1977; and

WHEREAS, the applicant asserts that at the time the sign was installed, under the then-applicable 1916 Zoning Resolution, the site was mapped in a business district that permitted advertising signs, but was rezoned in 1961 to an R3-2 residence district; and

WHEREAS, the applicant notes that according to ZR § 52-731, "[i]n all Residence Districts, a non-conforming advertising sign may be continued for ten years after December 15, 1961, or such later date that such sign becomes non-conforming, providing that after the expiration of that period such non-conforming advertising sign shall terminate;" and

WHEREAS, however, the applicant notes that notwithstanding this provision of the Zoning Resolution, after the 1961 zoning change, DOB issued permits for the sign at least twice – in 1969 (Permit #1373/69) and in 1981 (Permit #1662/81); and

WHEREAS, the applicant asserts that the 1981 permit specifically notes that it is within a residential zoning district and the sign has existed to the present time in reliance on the 1981 permit; and

WHEREAS, accordingly, the applicant asserts that it relied in good faith on DOB's permit issuance in 1981 and made investments based on that permit, which was later deemed invalid; and

WHEREAS, the Board is not persuaded by the applicant's assertions that it relied in good faith on DOB's 1981 reissuance of the permit as the language of ZR § 52-731 is clear that there was a ten-year amortization period and the sign use should have ceased on December 15, 1971; and

WHEREAS, thus, the Board rejects that applicant's claim that its reliance constitutes a unique condition that creates practical difficulty or unnecessary hardship; and

WHEREAS, however, based upon the above, the Board finds that the triangular shape and small size of the site and its location on South Conduit Avenue together are unique conditions which creates unnecessary hardship and practical difficulty in developing the site in conformance and compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a conforming scenario of a fully compliant single-family home; (2) a non-conforming commercial scenario; (3) a lesser variance residential scenario with yard waivers; and (4) the proposed legalization of the sign; and

WHEREAS, the study concluded that neither the conforming nor lesser variance scenarios would result in a reasonable return, but that the proposed legalization would realize a reasonable return; and

WHEREAS, specifically, the applicant asserts that the as of right single-family home and the lesser variance single-family home alternative would be too constrained to offset the development costs associated with the project; and

WHEREAS, further, as to the lesser variance residential scenario, while a larger footprint for a home could be accommodated without the required yards, the open areas and yards as a result would be small and irregularly-shaped which diminishes the value of the site for a single-family use, and, coupled with the location on heavily-trafficked South Conduit Avenue, makes it infeasible; and

WHEREAS, similarly, the commercial use would not be viable without on site parking, which cannot be accommodated on the small site; 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 legalization of the 76-year-old sign 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 asserts that the Rosedale neighborhood is characterized by open and enclosed commercial uses, including a concentration of automotive-related uses, facing on South Conduit Avenue, with detached, single-family homes only in areas to the north and south of South Conduit Avenue; and

WHEREAS, the applicant asserts that the area to the north of South Conduit Avenue is zoned R3-2, which permits multi-family apartment houses; the area to the south of South Conduit Avenue (where the site is located) is zoned R3X, with C1-3 overlays mapped on the blocks to the east and west of the site, each within approximately 250 feet of the site and also fronting onto South Conduit Avenue; and

WHEREAS, as noted, the applicant states that there are not any residences fronting on South Conduit Avenue along the more than half-mile stretch of South Conduit Avenue where the site is located between Brookeville Park and the boundary of the City of New York with Nassau County; and

WHEREAS, the applicant states that the adjacent sites to the east and west along South Conduit Avenue are occupied by commercial uses, and are between the seven-lane thoroughfare and the residential uses located further into the blocks south of South Conduit Avenue; and

WHEREAS, the applicant states that the site directly to the west of the site on South Conduit Avenue is a gasoline service station with a convenience store and a sign approximately 20 feet in height and 15 sq. ft. in area displaying the name of the station and the price of gasoline (a pre-existing non-conforming use that has also been the subject of a Board variance); the applicant notes that on the back wall of the station's lot near the sign are banners advertising products sold at the service station; and

WHEREAS, the applicant states that continuing west, beyond a paved traffic island, is another gas station, also with a convenience store and a sign with a height of approximately 20 feet, a sign displaying the station's name and further there are a couple vacant lots and commercial buildings, and another gas station located across Francis Lewis Boulevard, near the Rosedale LIRR Station; and

WHEREAS, the applicant notes that to the east of the site on South Conduit Avenue, is a fence company and a two-story commercial building occupied by a fence distribution center with an open lot with stacks of fences, and an approximately 20-car open parking lot; and

WHEREAS, the applicant states that on the next block to the east, approximately 300 feet from the site, are additional commercial uses; and

WHEREAS, the applicant states that in the area, residences are generally set back from the thoroughfare by at least approximately 30 feet; additionally, the applicant notes that no residential uses face the sign or have view of the sign copy; and

WHEREAS, the applicant asserts that the sign is consistent with the commercial character of South Conduit Avenue and the site is maintained in better condition than a majority of the uses fronting on South Conduit Avenue; it is secured behind two fences and includes a number of plantings that shield it from pedestrians and cars traveling along South Conduit Avenue and shield the sign from view from most of the residences located to the south of the site; and

WHEREAS, the applicant notes that the side lot lines of the site abut the rear lot lines of the adjacent residential uses and, thus, because of the sign's orientation across South Conduit and away from the rear of the site, its copy is not visible from any residential uses; and

WHEREAS, at hearing the Board inquired about screening and the sign's potential impact on the neighborhood character and on light and air to adjacent residential uses and whether there were any measures to provide additional buffer to the residential uses; and

WHEREAS, the applicant notes that the residential uses sharing the rear and side lot lines with the subject property are set back significantly from the lot lines and are separated from the sign by approximately 40'-0" to 42'-3" to the south and more than 55'-0" to the west; and

WHEREAS, the applicant also added that, initially, there were more trees within the site but that the Community Board did not like the appearance of the trees and they were trimmed; and

WHEREAS, the Board directed the applicant to provide evergreen landscaping in the form of coniferous trees that have year-round foliage and to install a new fence to make the site more compatible to the adjacent uses; and

WHEREAS, further, the Board asked the applicant to consider reducing the height of the sign to 35 feet to be within the height limit of the zoning district; and

WHEREAS, the applicant agreed to provide a new fence and evergreens, however notes that reducing the height of the sign would cause the sign to be obstructed by other signs and street furniture, and therefore would diminish the sign's effectiveness and marketability; and

WHEREAS, in support, the applicant provided a visual analysis of the sign's height and the effect of a reduction of height to 35 feet, which reflects that due to several visual obstructions along South Conduit Avenue, the utility of the sign would be diminished if it were reduced from a height of 39'-1" to 35 feet; and

WHEREAS, the Board notes that, based on the visual analysis of a 35-ft. sign, the 4'-0" difference in height is not discernible from the proposed sign, and the landscaping and opaque fence will aid in further screening the rear of the sign from adjacent residential uses; and

WHEREAS, the Board inquired about the status of the fence samples from a nearby fence company located along the front of the site; and

WHEREAS, in response, the applicant stated that the fences are located beyond the property line on City property and that the owner of the site does not have any relationship with the fence company; and

WHEREAS, accordingly, the fence samples are not reflected on the site plan and are not incorporated into the subject variance application; 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 applicant notes that the unique size and shape of the lot are due to the historic widening of South Conduit Avenue, which significantly reduced the size of the pre-existing lot to incorporate it into the new seven-lane thoroughfare; and

WHEREAS, accordingly, 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 unique physical conditions; and

WHEREAS, the applicant considered lesser variance alternatives including a square-shaped residential building with yard waivers, a 0.6 FAR, and a total of 810 sq. ft. of floor area; and

WHEREAS, the applicant states that in such a scenario, the longest dimension of the residence would be approximately 20 feet along South Conduit Avenue, set back four feet from the street to accommodate a minimal front yard space and the other sides of the residence would be between approximately 16 and 20 feet long which leads to difficulty entering and exiting the parking space along the fast-moving traffic along South Conduit Avenue; and

WHEREAS, at the Board's direction, the applicant also analyzed lesser variance alternatives of (1) a commercial use and (2) a sign with a height of 35 feet, which respects the zoning district's height limit; and

WHEREAS, the applicant concluded that (1) a commercial use with vehicular traffic could not be accommodated at the site and (2) a sign with a height of 35 feet would be obstructed at various angles and not be sufficiently marketable; and

WHEREAS, accordingly, 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 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. 13BSA005Q dated July 12, 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 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, the legalization of an existing indirectly illuminated outdoor advertising sign, which does not conform to district use and bulk regulations, contrary to ZR §§ 22-30, 22-321, 22-342, 23-44, 23-45, 23-46, and 52-731; *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 March 4, 2013" – five (5) sheets; and *on further condition*:

THAT the following are the parameters of the sign: dimensions of 14'-0" by 48'-0", and a total height of the sign and sign structure of 39'-1", as indicated on the Board-approved plans;

THAT the above condition and the Board's approval be reflected on the permit;

THAT fencing and landscaping be installed by September 19, 2013, six months from the date of this grant, and maintained as indicated on the Board-approved plans;

THAT by September 19, 2013 the applicant will obtain all required approvals and permits from DOB;

THAT all lighting be directed away from adjacent residential uses;

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, March 19, 2013.

302-12-BZ
APPLICANT – Davidoff Hutcher & Citgron LLP, for YHD 18 LLC, owner; Lithe Method LLC, lessee.
SUBJECT – Application October 18, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Lithe Method*). C6-4A zoning district.
PREMISES AFFECTED – 32 West 18th Street, between Fifth and Sixth Avenues, Block 819, Lot 1401, Borough of Manhattan.
COMMUNITY BOARD #5M
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
Adopted by the Board of Standards and Appeals, March 19, 2013.

318-12-BZ
CEQR #13-BSA-059M
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 45-47 Crosby Street Tenant Corp./CFA Management, owner; SoulCycle 45 Crosby Street, LLC, lessee.
SUBJECT – Application November 29, 2012 – Special permit (§73-36) to allow a physical culture establishment (*SoulCycle*) within a portion of an existing building. M1-5B zoning district.
PREMISES AFFECTED – 45 Crosby Street, east side of Crosby Street, 137.25' north of intersection with Broome Street, Block 482, Lot 3, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 28, 2012, acting on Department of Buildings Application No. 121415165, reads in pertinent part:

Proposed Physical Culture Establishment requires a special permit from the BSA per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-5B zoning district within the SoHo Cast Iron Historic District Extension, the operation of a physical culture establishment (PCE) in the cellar and first story of a seven-story building occupied by dwellings for Artists in Residence on the second through seventh stories, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in The City Record, and then to decision on March 19, 2013; and

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

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

WHEREAS, the subject site is located on the east side of Crosby Street between Broome Street and Spring Street, in an M1-5B zoning district within the SoHo Cast Iron Historic District Extension); and

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

WHEREAS, the proposed PCE will occupy a total of 2,135 sq. ft. of floor area with 2,135 sq. ft. of floor area on the first floor, and 1,122 sq. ft. of floor space in the cellar; and

WHEREAS, the site has 50.08 feet of frontage on Crosby Street, and a total lot area of 5,008 sq. ft.; and

WHEREAS, the PCE will be operated as Soul Cycle; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed 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 applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission (LPC), dated December 11, 2012, approving the proposed exterior alterations at the ground floor storefront and related signage under its jurisdiction; 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA059M, dated November 28, 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 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 located in an M1-5B zoning district within the SoHo Cast Iron Historic District Extension, the operation of a physical culture establishment at the cellar and first stories of a seven-story building, contrary to ZR § 42-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received March 6, 2013" – Four (4) sheets and on further condition:

THAT the term of this grant will expire on March 19, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, March 19, 2013.

320-12-BZ
CEQR # 13-BSA-060M
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for West 116 Owners Realty LLC, owner; Blink 116th Street, Inc., lessee.
SUBJECT – Application December 6, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*). C4-5X zoning district.
PREMISES AFFECTED – 23 West 116th Street, north side of West 116th Street, 450' east of intersection of Lenox Avenue and W. 116th Street, Lot 1600, Lot 20, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 20, 2012, acting on Department of Buildings Application No. 121181746, reads in pertinent part:

> Proposed physical culture establishment is not permitted as of right in a C4-5X district as per ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-5X zoning district the operation of a physical culture establishment (PCE) on the second floor of a six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in *The City Record*, and then to decision on March 19, 2013; 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 north side of West 116th Street, 450 feet east of the intersection of Lenox Avenue and West 116th Street, within a C4-5X zoning district; and

WHEREAS, the site is vacant but foundation work has commenced on a new mixed building that will measure nine stories in height on West 117th Street and twelve stories in height on West 116th Street; and

WHEREAS, the site has 150 feet of frontage on West 116th Street, 219.65 feet of frontage on West 117th Street, and a total lot area of 37,303 sq. ft.; and

WHEREAS, the PCE occupies 16,000 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE is operated as Blink Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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, 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA060M, dated December 4, 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 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 C4-5X zoning district the operation of a physical culture establishment on the first story of a twelve-story mixed building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 5, 2013" - Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on March 19, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, March 19, 2013.

56-12-BZ

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for adjourned hearing.

153-12-BZ

APPLICANT – Harold Weinberg, for Ralph Bajone, owner.
SUBJECT – Application May 10, 2012 – Special Permit (§73-36) to legalize a physical culture establishment (*Fight Factory Gym*). M1-1/OP zoning district.
PREMISES AFFECTED – 23/34 Cobek Court, south side, 182.0' west of Shell Road, between Shell Road and West 3rd Street, Block 7212, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #13BK

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 23, 2013, at 10 A.M., for decision, hearing closed.

199-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.
SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.
PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

250-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Carla Zeitouny and Raymond Zeitouny, owners.
SUBJECT – Application August 13, 2012 – 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); less than the required rear yard (§23-47) and perimeter wall height (§23-631). R3-2 zoning district.
PREMISES AFFECTED – 2410 Avenue S, south side of Avenue S, between East 24th and Bedford Avenue, Block 7303, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for continued hearing.

295-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Laura Danoff and Scott Danoff, owners.
SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district.
PREMISES AFFECTED – 49-33 Little Neck Parkway, Block 8263, Lot 110, 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 23, 2013, at 10 A.M., for decision, hearing closed.

315-12-BZ

APPLICANT – Akerman Senterfitt, LLP, for Pali Realty LLC, owner.
SUBJECT – Application November 20, 2012 – Special Permit (§73-50) to allow for a community facility building, contrary to rear yard requirements (§33-29). C4-3 zoning district.
PREMISES AFFECTED – 23-25 31st Street, east side of 31st Street, between 23rd Avenue and 23rd Road, Block 835, Lot 27 & 31, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for continued hearing.

321-12-BZ

APPLICANT – Dennis D. Dell'Angelo, for Jay Lessler, owner.
SUBJECT – Application December 6, 2012 – 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 (§23-141); perimeter wall height (§23-631) and less than the required rear yard ZR §23-47. R3-1 zoning district.
PREMISES AFFECTED – 22 Girard Street, west side of Girard Street, 149.63' south of Shore Boulevard, Block 8745, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for postponed hearing.

338-12-BZ

APPLICANT – Eric Palatnik, P.C., for 164-20 Northern Boulevard, LLC, owner; Northern Gym, Corp., lessee.
SUBJECT – Application December 13, 2012 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Metro Gym*) located in an existing

one-story and cellar commercial building. C2-2/R5B zoning district.
PREMISES AFFECTED – 164-20 Northern Boulevard, west side of the intersection of Northern Boulevard and Sanford Avenue, Block 5337, Lot 17, Borough of Queens.
COMMUNITY BOARD # 7Q

ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for continued hearing.

1-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Dryland Properties, LLC, owner; Reebok CrossFit 5th Avenue, L.P., lessee.
SUBJECT – Application January 7, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Reebok Crossfit*) at the cellar of an existing building. C5-3 zoning district.
PREMISES AFFECTED – 420 Fifth Avenue, aka 408 Fifth Avenue, between West 37th Street and West 38th Street, Block 839, Lot 7501, 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 April 23, 2013, at 10 A.M., for decision, hearing closed.

7-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Sharon Sofer and Daniel Sofer, owners.
SUBJECT – Application January 15, 2013 – Special Permit (§73-621) for the enlargement of a single-family home, contrary to floor area, open space and lot coverage (§23-141). R3-2 zoning district.
PREMISES AFFECTED – 1644 Madison Place, south side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot 58, 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 April 23, 2013, at 10 A.M., for decision, hearing closed.

9-13-BZ
APPLICANT – Slater & Beckerman PC, for Alamo Drafthouse Cinemas, owners.
SUBJECT – Application January 18, 2013 – Special Permit (§73-201) to allow a Use Group 8 motion picture theater (*Alamo Drafthouse Cinema*), contrary to use regulations (§32-17). R9A/C1-5 zoning district.
PREMISES AFFECTED – 2626-2628 Broadway, east side of Broadway between West 99th Street and West 100th Streets, Block 1871, Lot 22 and 44, Borough of Manhattan.
COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to April 16, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on February 26, 2013, under Calendar No. 75-12-BZ and printed in Volume 98, Bulletin Nos. 8-9, is hereby corrected to read as follows:

75-12-BZ
CEQR #12-BSA-106M
APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc., owner.
SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of retail use (UG 6) on the first floor and expand the use into the cellar and sub-cellar, contrary to use regulations (§42-14 (D)(2)(b)). M1-5B zoning district.
PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 29, 2012, acting on Department of Buildings Application No. 120991150, reads in pertinent part:

> Proposed works to create a new use – UG#6 below the floor level of second floor level in Zoning M1-5B is not permitted as per ZR 42-12/2b. Provide approval from BSA as per ZR 42-31; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing six-story building to a commercial retail use (UG 6) with expansion into the cellar and accessory retail use in the subcellar, contrary to ZR § 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in the *City Record*, with a continued hearing on January 15, 2013, and then to decision on February 26, 2013; 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 approval of this application, with the condition that an eating and drinking establishment not be permitted; and

WHEREAS, the subject site is a through lot with frontage on Broadway and Mercer Street, between Prince Street and Spring Street, in an M1-5B zoning district within the SoHo-Cast Iron Historic District; and

WHEREAS, the site has 25 feet of frontage on Broadway and Mercer Street, a depth of 200.25 feet, and a lot area of 5,006.25 sq. ft.; and

WHEREAS, the site is currently occupied by a 26,057 sq. ft. (5.2 FAR) building with a five-story portion on Mercer Street and a six-story portion on Broadway, with ground floor retail use, commercial use on the second floor, and Joint Live Work Quarters for Artists ("JLWQA") units on the third through sixth floors; and

WHEREAS, on April 12, 1988, under BSA Cal. No. 1081-85-ALC, the Board granted an authorization pursuant to ZR § 72-30 to exclude floor area from the relocation incentive contribution relating to the building's change of use from commercial/manufacturing to JLWQA use on the third through sixth floors; and

WHEREAS, the applicant now seeks to legalize the 4,832 sq. ft. of retail floor area on the first floor, and to expand the retail use to 10,266 sq. ft. of floor space at the cellar and sub-cellar; and

WHEREAS, because Use Group 6 retail is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that 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 narrowness of the lot; and (2) the obsolescence of the existing building for manufacturing use; and

WHEREAS, as to the narrow width, the applicant states that the building has a width of 25'-0", which results in narrow floor plates that are ill-suited for manufacturing use or other conforming uses; and

WHEREAS, further, the applicant represents that the building has a light well which is along one lot line and measures 5'-10" by 29'-10", reducing the effective interior width of the building to 15'-5" at its narrowest point, which exacerbates the hardship by further limiting the floor plates for a conforming use; and

WHEREAS, the applicant represents that the configuration on the subject site is unique in the surrounding area; and

WHEREAS, the applicant provided a study which indicated that out of 500 lots on blocks zoned M1-5B or M1-5A within 1,000 feet of the site, there are only 182 lots that are 25'-0" or less in width; of these 182 lots, 75 lots have an effective width of less than 25'-0", and only five of these lots have conforming uses on the ground floor; and

WHEREAS, further, of these 75 lots, only six contain buildings with light wells other than the subject site; and only one building containing a light well is occupied by a conforming use (JLWQA) on the ground floor; and

WHEREAS, the applicant concludes that the lack of conforming uses occupying buildings with narrow widths reinforces the fact that such narrow widths are unable to

reasonably accommodate conforming uses; and WHEREAS, as to the obsolescence of the building, the applicant identifies the following conditions: (a) the absence of a loading dock and the inability to install a loading dock, (b) limited street access at the site, (c) severely limited space to install any equipment to accommodate light manufacturing uses and (d) the lack of a working freight elevator; and

WHEREAS, the applicant states that other narrow properties within 400 feet of the site may have similar characteristics, however, none are occupied by a conforming use; and

WHEREAS, the applicant states that, further, the ground floor tenant is severely limited in its access to the building since the upper floor JLWQA tenants have street access through both Broadway and Mercer Street; and

WHEREAS, based on the above arguments and analyses, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) conforming use at the first floor and cellar; and (2) the proposed ground floor and cellar retail use; and

WHEREAS, the study concluded that the conforming scenario would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, the applicant represents that the first floor and the cellar were listed with a real estate broker for a period of 120 days, however the broker was unable to secure a tenant to occupy the space for light manufacturing use; 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 compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity contain ground floor retail uses with residential space above, particularly along both Broadway, a major retail street, and along Mercer Street between Prince and Spring Streets; and

WHEREAS, further, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, approving the proposal on February 13, 2013; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant has agreed to not allow any eating or drinking establishments to occupy the ground floor space; 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

WHEREAS, the applicant notes that there is no proposed increase in the bulk of the building; and

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

WHEREAS, the project is classified as a Type I 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. 12BSA106M, dated October 3, 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, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing building to a commercial retail use (UG 6) with expansion into the cellar and accessory retail use in the sub-cellar, contrary to ZR § 42-14(d)(2)(b); *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 7, 2013"– seven (7) sheets; and *on further condition*:

THAT no eating and drinking establishment will be

permitted on the site;

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 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, February 26, 2013.

***The resolution has been amended. Corrected in Bulletin No. 12, Vol. 98, dated March 27, 2013.**

BULLETIN

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99-13-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

April 23, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 23, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

853-53-BZ
APPLICANT – Carl A. Sulfaro, Esq., for Knapp, LLC, owner; Bolla Management Corp., owners.
SUBJECT – Application January 18, 2013 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store and enlarge the building of a previously granted Automotive Service Station (Mobil) (UG 16B), with accessory uses. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 2402/16 Knapp Street, southwest corner of Avenue X, Block 7429, Lot 10, Borough of Brooklyn.
COMMUNITY BOARD #15BK

718-68-BZ
APPLICANT – Sheldon Lobel, P.C., for Zinc Realty LLC, owner.
SUBJECT – Application May 31, 2011 – Amendment to the Special Permit (§73-211) which permitted the operation of an automotive service station. The application seeks to permit additional fuel dispensing islands and conversion from existing service bays to accessory convenience store. C2-2/R5 zoning district.
PREMISES AFFECTED – 71-08 Northern boulevard, South side of Northern Boulevard between 71st and 72nd Street, Block 1244, Lot 1, Borough of Queens.
COMMUNITY BOARD #3Q

292-01-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Villa Mosconi Restaurant, owner.
SUBJECT – Application January 17, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 eating and drinking establishment (*Villa Mosconi*) which permitted the legalization of a new dining room and additional accessory cellar level storage which expired on January 7, 2013. R7-2 zoning district.
PREMISES AFFECTED – 69/71 MacDougal Street, west side of MacDougal Street between Bleecker Street and West Houston Street, Block 526, Lot 33, 34, Borough of Manhattan.
COMMUNITY BOARD #2M

150-04-BZ
APPLICANT – Sheldon Lobel, P.C., for Shun K. and Oi-yee Fung, owners.
SUBJECT – Application January 25, 2013 – Extension of Time to Complete Construction of a previously granted Variance to build a new four-story residential building with a retail store and one-car garage on the ground floor which expired on March 29, 2009; Waiver of the Rules. C6-2G LI (Special Little Italy) zoning district.
PREMISES AFFECTED – 129 Elizabeth Street, west side of Elizabeth Street between Broome and Grand Street, Block 470, Lot 17, Borough of Manhattan.
COMMUNITY BOARD #2M

58-10-BZ
APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner; Eckford II Realty Corp., lessee.
SUBJECT – Application March 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Physical Culture Establishment (*Quick Fitness*) which expired on February 14, 2013. M1-2/R6A zoning district.
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COMMUNITY BOARD #1BK

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245-12-A & 246-12-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. Also, seeking a determination that the owner of the property has acquired a common law vested right to complete construction under the prior R7-2 zoning. 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

CALENDAR

ZONING CALENDAR

Jeff Mulligan, Executive Director

8-13-BZ
APPLICANT – Lewis E. Garfinkel, for Jerry Rozenberg, owner.
SUBJECT – Application January 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space ZR 23-141(a); less than the minimum side yards ZR 23-461. R2 zoning district.
PREMISES AFFECTED – 2523 Avenue N, corner formed by the intersection of the north side of Avenue N and west of East 28th Street, Block 7661, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #14BK

10-13-BZ & 11-13-BZ
APPLICANT – Friedman & Gotbaum LLP, by Shelly Friedman, Esq., for Stephen Gaynor School and Cocodrilo Development Corporation, owners.
SUBJECT – Application January 18, 2013 – Variance (§72-21) The proposed action will facilitate (1) the construction of an addition to the South Building that will include an infill at the existing fifth floor and the construction of a 6th floor activity space (Addition); and (2) the construction of a connecting bridge (Bridge) at the fourth story level to connect the South and North Buildings to serve the School's educational mission and provide for more efficient operations. The proposed project will result in development of an additional 4,221 zsf of community facility floor area on the Site. C1-9 & R7-2 zoning districts.
PREMISES AFFECTED – 175 West 89th Street (South Building) and 148 West 90th Street (North Building), between West 89th Street and West 90th Street, 80ft easterly from the corner formed by the intersection of the northerly side of West 89th Street and the easterly side of Amsterdam Avenue, Block 1220, Lots 5 and 7506, Borough of Manhattan.
COMMUNITY BOARD #7M

53-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Walker Memorial Baptist Church, Inc., owner; Grand Concourse Academy Charter School, lessee.
SUBJECT – Application January 31, 2013 – Variance (§72-21) to permit the enlargement of the existing UG 3 school, located within an R8 zoning district, which exceeds the 23' one-story maximum permitted obstruction in the required rear yard and is therefore contrary to ZR §§24-36 and 24-33(b). R8 zoning district.
PREMISES AFFECTED – 116-118 East 169th Street, corner of Walton Avenue and East 169th Street with approx. 198.7' of frontage along East 169th Street and 145.7' along Walton Avenue, Block 2466, Lots 11, 16, & 17, Borough of Bronx.
COMMUNITY BOARD #4BX

MINUTES

REGULAR MEETING
TUESDAY MORNING, APRIL 9, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

364-82-BZ
APPLICANT – Troutman Sanders LLP, for Little Neck Commons LLC, owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application December 13, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a physical culture establishment (*Bally's Total Fitness*) which expired on January 18, 2013. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 245-24 Horace Harding Expressway, Horace Harding Expressway, 140' west of Marathon Parkway, Block 8276, Lot 100, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term for a physical culture establishment ("PCE"); and

WHEREAS, a public hearing was held on this application on March 5, 2013 after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board No. 11, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of the Horace Harding Expressway, approximately 140 feet west of Marathon Parkway in a (C1-2) R3-2 zoning district; and

WHEREAS, the subject site is occupied by a one-story building; and

WHEREAS, the PCE at the building occupies a total of 26,989 sq. ft. of floor space in the ground (13,955 sq. ft.) and cellar (13,034 sq. ft.) levels, and is operated as Bally's; and

WHEREAS, on June 3, 1969, pursuant to BSA Cal. No.214-69-BZ, the Board granted a variance to allow a PCE in an existing shopping center within a C-12 zoning district for a term of ten years; and

WHEREAS, on January 18, 1983, the Board re-established a variance, under the subject calendar number, to permit, in a C1-2 zoning district, the enlargement and maintenance of an extension to an existing PCE, for a term of ten years; and

WHEREAS, the variance was extended and amended at various times; and

WHEREAS, on September 27, 2005, the variance was extended until January 18, 2013 with certain conditions, including signs shall be posted stating that all users of the PCE are entitled to two hours of free parking and cautioning the PCE members not to park illegally; and

WHEREAS, on May 31, 2006, the applicant received an amendment to the variance allowing certain alterations to the approved signage on the building façade; and

WHEREAS, the applicant proposes no change to the existing hours of operation or the area of the building currently occupied by the PCE; and

WHEREAS, accordingly, the Board finds that the requested extension of term is appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution adopted on January 18, 1983, amended through May 31, 2006, so that as amended this portion of the resolution shall read "to extend the term for ten years from January 18, 2013; *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 13, 2012'- (2) sheets and 'March 7, 2013'-(1) sheet ; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on January 18, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

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

THAT 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."

Adopted by the Board of Standards and Appeals, April 9, 2013.

189-03-BZ
APPLICANT – Eric Palatnik, P.C., for 830 East 233rd Street Corp., owner.
SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expires on October 21, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.
PREMISES AFFECTED – 836 East 233rd Street, southeast corner of East 233rd Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.
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 Montanez 5
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 automotive service station, which will expire on October 21, 2013, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on August 21, 2012, after due notice by publication in *The City Record*, with continued hearings on October 16, 2012, November 20, 2012, January 8, 2013, February 12, 2013 and March 12, 2013, and then to decision on April 9, 2013; 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 12, Bronx, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of East 233rd Street and Bussing Avenue, within a C2-2 (R5) zoning district; and

WHEREAS, the site is currently occupied by an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 6, 1958 when, under BSA Cal. No. 292-58-BZ, the Board granted a variance to permit the extension of an existing gasoline service station on Lot 44; and

WHEREAS, on October 21, 2003, under BSA Cal. No. 189-03-BZ, the Board granted an application for a special permit under ZR § 73-211 to legalize the enlargement of the zoning lot to include Lot 41 for a term of ten years to expire on October 12, 2013; and

WHEREAS, the use of Lot 41 is limited to parking of vehicles awaiting storage; and

WHEREAS, on June 14, 2005, the Board granted an application to permit the enlargement and conversion of the existing service bays to an accessory convenience store; and

WHEREAS, most recently, on August 15, 2006, under the subject calendar number, the Board granted an application to extend the time to complete construction and obtain a certificate of occupancy which expired on October 21, 2008; and

WHEREAS, the applicant states that it does not plan to construct the accessory convenience store; and

WHEREAS, the applicant now seeks to extend the term; and

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

WHEREAS, at hearing, the Board directed the applicant to (1) verify that all signage complies with the prior approval and to remove any excessive signage and (2) install planters along the perimeter of Lot 41 adjacent to the site and at the Bussing Avenue frontage, as reflected on the approved plans; and

WHEREAS, in response, the applicant submitted a revised signage analysis and photographs reflecting that the planters have been installed; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated October 21, 2003, so that as amended this portion of the resolution shall read: "to extend the term for a period of 10 years from the date of this grant; *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 8, 2013'- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 9, 2023;

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

THAT a certificate of occupancy be obtained by October 9, 2013;

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. 200869916)

Adopted by the Board of Standards and Appeals, April 9, 2013.

78-08-BZ
APPLICANT – Stephen Grasso, Partners for Architecture, for South Bronx Charter School for International Cultures & The Arts, owners.
SUBJECT – Application February 12, 2013 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a five-story charter elementary school (*The South Bronx Charter School for International Cultures and the Arts*), which expired on August 26, 2012; Waiver of the Rules. M1-2/R-6A, MX-1(Special Mixed Use) zoning district.
PREMISES AFFECTED – 611 East 133rd Street, bound by East 133rd Street and Cypress Place, Block 2546, Lot 27, Borough of Bronx.
COMMUNITY BOARD #1BX
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to complete construction in accordance with the conditions of a variance; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, the site is located at the intersection of Bruckner Boulevard/Cypress Place and East 133rd Street within an MX-1 (M1-2/R6A) Special Mixed Use zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 26, 2008 when, under the subject calendar number, the Board granted a variance for construction of a five-story charter elementary school on a site within an MX-1 (M1-2/R6A) Special Mixed Use zoning district which does not comply with regulations for floor area, FAR, and setbacks, contrary to ZR §§ 24-11, 123-62 and 123-662; and

WHEREAS, a condition of the grant was that the construction be completed pursuant to ZR § 72-23, which requires substantial completion within four years, by August 26, 2012; and

WHEREAS, the applicant states that construction has been delayed due to financing constraints, but that it will resume in Spring 2013 with a scheduled completion date of August 2014; and

WHEREAS, the applicant now seeks to extend the time to complete construction in accordance with the variance for an additional four years; and

WHEREAS, based upon its review of the record, the Board finds the requested waiver 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, as adopted on August 26, 2008, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for a period of four years from April 9, 2013, to expire on April 9, 2017; *on condition* that all work will substantially conform to the approved plans; and *on further condition*:

THAT substantial construction be completed by April 9, 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) 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."
(DOB Application No. 210040784)

Adopted by the Board of Standards and Appeals, April 9, 2013.

1073-62-BZ
APPLICANT – Peter Hirshman, for 305 East 40th Owner's Corporation, owner; Innovative Parking LLC, lessee.
SUBJECT – Application January 15, 2013 – Extension of Term of a previously approved variance (MDL Section 60 (1d)), permitting 108 tenant parking spaces for transient use within an accessory garage, which expires on March 5, 2013, C1-9/R10 zoning district.
PREMISES AFFECTED – 305 East 40th Street, northeast corner of East 40 Street and Second Avenue, Block 1333, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #6M
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 7, 2013, at 10 A.M., for decision, hearing closed.

1111-62-BZ
APPLICANT – Peter Hirshman, for 200 East Tenants Corporation, owner; MP 56 LLC, lessee.
SUBJECT – Application January 15, 2013 – Extension of Term of a previously approved variance (MDL Section 60 (3)) permitting the use of tenant parking spaces for transient

use within an accessory garage, which expires on March 26, 2013. C6-6, C5-2 and C1-9 zoning district.
PREMISES AFFECTED – 201 East 56 Street, northeast corner of East 56 Street and Third Avenue, Block 1330, Lot 4, Borough of Manhattan.
COMMUNITY BOARD #6M
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 7, 2013, at 10 A.M., for decision, hearing closed.

982-83-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.
SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.
PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192nd Street, Block 5513, Lot 27, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

103-91-BZ
APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.
SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.
PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.
COMMUNITY BOARD #13Q
ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

8-98-BZ
APPLICANT – Sheldon Lobel, P.C., for 106 Associates, LLC, owner.
SUBJECT – Application December 27, 2012 – Amendment of a previously approved variance (§72-21) which permitted limited commercial uses in the cellar of a building located in a residential zoning district. The amendment seeks to permit additional UG 6 uses, excluding restaurant use, expand the limited operation hours, and remove the term restriction. R6 zoning district.
PREMISES AFFECTED – 106-108 West 13th Street, West 13th Street, 120' from the intersection formed by West 13th Street and 6th Avenue, Block 608, Lot 35, 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 May 7, 2013, at 10 A.M., for decision, hearing closed.

62-99-BZ
APPLICANT – Akerman Senterfitt LLP, for Starlex LP, owner; Bliss World LLC, lessee.
SUBJECT – Application June 19, 2012 – Extension of Term of a previously-approved Special Permit (§73-36) for the continued operation of a physical cultural establishment (*Bliss*) which expired on January 31, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on February 1, 2004; Waiver of Rules. C6-6 zoning district.
PREMISES AFFECTED – 541 Lexington Avenue, east side of Lexington Avenue, between E. 49th Street and E. 50th Streets, Block 1304, Lot 20, Borough of Manhattan.
COMMUNITY BOARD #6M
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 23, 2013, at 10 A.M., for decision, hearing closed.

211-00-BZ
APPLICANT – Sheldon Lobel, P.C., for Hoffman & Hoffman, LLC, owner.
SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the legalization of residential units on the second through fourth floors of a mixed use (UG 17 & 2) four-story building, which expired on April 17, 2005; Amendment for minor modification to the approved plans; Waiver of the Rules. M1-2 zoning district.
PREMISES AFFECTED – 252 Norman Avenue, southeast corner of the intersection of Norman Avenue and Monitor Street, Block 2657, Lot 1, Borough 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 April 23,

2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

190-12-A, 191-12-A & 192-12-A
APPLICANT – Davidoff Hutcher & Citron, LLP, for Fuel Outdoor LLC.
OWNER OF PREMISES – JRR Realty Co., Inc.
SUBJECT – Application June 13, 2012 – Appeals from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 zoning district.
PREMISES AFFECTED – 42-45 12th Street, north of Northeast corner of 12th Street and 43rd Street, Block 458, Lot 83, Borough of Queens.
COMMUNITY BOARD #2Q
ACTION OF THE BOARD – Appeals Denied.
THE VOTE TO GRANT –
Affirmative:.....0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to three Notice of Sign Registration Rejection letters from the Queens Borough Commissioner of the Department of Buildings ("DOB"), dated May 14, 2012, denying registration for the signs at the subject premises (the "Final Determinations"), which read, 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. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. 1998 Permit states not within 200 feet of arterial which is inaccurate. Even if signs were beyond 200 feet from arterial, surface area is excessive. 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 February 5, 2012, after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, the subject premises ("the Premises") is located on the east side of 12th Street between 43rd Avenue and Queens Plaza South, and 343 feet from the Ed Koch Queensborough Bridge, in an M1-4 district; and

WHEREAS, the Premises is occupied with a six-story warehouse building; affixed to three walls of the building are illuminated advertising signs; and

WHEREAS, this appeal is brought on behalf of the lessee of the sign structures (the "Appellant"); and

WHEREAS, the Appellant states that the north wall sign measures 30 ft. by 90 ft. and has a surface area of 2,700 sq. ft., the east wall sign measures 30 ft. by 58 ft., 6 in. and has a surface area of 1,755 sq. ft., and the west wall sign measures 30 ft. by 74 ft. and has a surface area of 2,250 sq. ft. (collectively, "the Signs"); and

WHEREAS, on February 18, 1998, DOB issued Permit No. 400809434-01-SG for the installation of a sign at the north wall with a surface area of 2,700 sq. ft., and Permit No. 400809425-01-SG for the installation of a sign at the east wall with a surface area of 1,800 sq. ft.; on June 30, 1998, DOB issued Permit No. 400851690-01-SG for the installation of a sign at the west wall with a surface area of 2,250 sq. ft. (collectively, the three 1998 sign permits shall be hereafter referred to as "the Permits"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration of the Signs based on DOB's determination that the Appellant failed to provide evidence of the lawful establishment of the Signs in 1998; 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

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 1, 2009, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted an inventory of outdoor signs under its control and Sign Registration Applications for the Signs and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) copies of the original Permits; and (3) four photographs; and

WHEREAS, on September 29, 2011, DOB issued Notices of Sign Registration Deficiency, stating, in pertinent part, that "[DOB is] unable to accept the sign for registration (due to) Failure to provide proof of legal establishment"; and

WHEREAS, by letter dated March 6, 2012, the Appellant submitted a response to DOB indicating that the Permits legally established the Signs; and

WHEREAS, accordingly, on May 14, 2012, DOB issued three Final Determinations, which indicated that the Signs were rejected for registration; 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. . .

* * *

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 § 42-58

Signs Erected Prior to December 13, 2000
M1 M2 M3
In all districts, as indicated, a #sign# shall have #non-conforming use# status pursuant to Sections 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of #non-conformity# of such #sign# as of such date with the provisions of Section 42-52, 42-53 and 42-54, where such #sign# shall have been issued a permit by the Department of Buildings on or before such date.

* * *

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 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 because: (1) the Signs were established pursuant to Permits and may be maintained as legal non-conforming uses; and (2) equitable estoppel prevents DOB from taking enforcement action against the Signs; and

The 1998 Permits

WHEREAS, the Appellant assert that the Signs were established in 1998 pursuant to the Permits as advertising signs in an M1-4 zoning district beyond 200 feet from an arterial highway according to Appendix H of the Zoning Resolution; and

WHEREAS, the Appellant asserts that the Permits "have remained in full force and effect since their issuance"; and

WHEREAS, the Appellant asserts that the Premises "has been used for the display of advertising signage without any discontinuance for a period of two or more years after December 2000"; and

WHEREAS, the Appellant asserts that, as such, the Signs are entitled to non-conforming use protection and DOB improperly rejected the registration of the Signs in its Final Determinations; and

Estoppel Against the City

WHEREAS, the Appellant asserts that under established principles of equity, DOB should be estopped from ordering the removal of the Signs; and

WHEREAS, the Appellant asserts that it has relied on the Permits for several years and made substantial investments relative to the continued operation of the Signs; and

WHEREAS, the Appellant contends that although as a general rule estoppel or laches cannot be used against a municipality enforcing its zoning law, New York courts have ruled that these doctrines are not foreclosed entirely and may be invoked as a rare exception; and

WHEREAS, the Appellant states that two New York State court decisions – Town of Hempstead v. DeMasco, 2007 WL 4471362 (Sup. Ct. 2007), aff'd, 62 A.D.3d 692 (2d Dept. 2009) and Inner Force Econ. Dev. Corp. v. Dep't of Educ. Of the City of New York, 36 Misc.3d 758, 559 (Sup. Ct. 2012) – to support its conclusion that the City should be estopped; and

WHEREAS, the Appellant notes that in DeMasco, the Town sought to enforce its zoning ordinance against a metal salvage business which had existed for many years prior to a zoning change, and the Appellate Division affirmed that the Town was equitably estopped in part because it continued business with the junkyard and "gave an imprimatur to the businesses' continued operation"; and

WHEREAS, the Appellant asserts that this appeal is similar to DeMasco, in that DOB "did not prohibit the [Appellant] from continuing to maintain its advertising signage during the period following the issuance of the Permit[s]" and that "by not enforcing against the signage [DOB] implicitly permitted its continued use"; and

WHEREAS, the Appellant notes that Inner Force involved an action against the New York City Department of Education in which a plaintiff filed its Notice of Claim with the Comptroller's Office instead of the Office of the Corporation Counsel, which should have received the claim instead, and the Comptroller's Office acknowledged the receipt of the Notice, informed the plaintiff that it was conducting an investigation and ultimately denied the claim based in part on the improper notice; and

WHEREAS, the Appellant notes that the Inner Force court found estoppel applicable to the conduct of the Comptroller's Office because the Comptroller's response to the plaintiff's erroneous notice wrongfully or negligently induced reliance by the plaintiff to its detriment to believe that its notice of claim was proper and that the proper party had been served; and

WHEREAS, the Appellant contends that this appeal is similar because "DOB clearly understood or should have understood that by not pursuing enforcement action against the maintenance of valuable advertising signage there was every reason for the [Appellant] to continue its operation"; and

WHEREAS, accordingly, the Appellant argues that DOB should be estopped from taking any enforcement action against the Signs and DOB's Final Determinations with respect to the Signs should be reversed; and

DOB'S POSITION

WHEREAS, DOB contends that: (1) the Permits for the Signs were issued contrary to ZR § 42-53 and cannot be relied upon to establish non-conforming uses pursuant to ZR § 42-58; and (2) the Signs were not entitled to non-conforming use protection under ZR § 42-55; and

WHEREAS, DOB contends that the Permits for the Signs were issued in error, in that the Permits failed to comply with ZR § 42-53—the pre-cursor to the current ZR § 42-55—which limits advertising signs in manufacturing districts beyond 200 feet from an arterial highway to a surface area equal to their distance from such highway; and

WHEREAS, DOB asserts that the Signs are 343 feet from an arterial highway (Ed Koch Queensborough Bridge) and within view of such highway; and

WHEREAS, DOB contends that, pursuant to the 1998 version of ZR § 42-53, advertising signs at the Premises were limited to 343 feet or less in surface area; and

WHEREAS, DOB asserts that the Permits—which purport to authorize the erection of signs measuring 2,700, 1,800, and 2,250 sq. ft. in surface area—were issued contrary to the Zoning Resolution and cannot be relied upon as establishing the Signs; and

WHEREAS, DOB notes that insofar as the Appellant relies on ZR § 42-58 as protecting the Signs, such reliance is misplaced, because ZR § 42-58 only applies where permits have been lawfully issued; and

WHEREAS, DOB notes that the Appellant has failed to submit credible evidence that any of the Signs is protected by ZR § 42-55(c)(1) by virtue of being in existence prior to June 1, 1968 or protected by ZR § 42-55(c)(2) by virtue of being in existence between June 1, 1968 and November 1, 1979 and being a certain size; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determinations denying registration of the Signs; and

CONCLUSION

WHEREAS, the Board finds that (1) DOB properly denied the Sign registrations because the Appellant has not demonstrated that the Signs were lawfully established; and (2) DOB is not equitably estopped from correcting its erroneous issuance of the Permits; and

WHEREAS, the Board agrees with DOB that the Permits were issued in 1998 in violation of ZR § 42-53 in that the Permits authorized the construction of three wall signs measuring 2,700, 1,800, and 2,250 sq. ft. in surface area, respectively, at the Premises in excess of 343 feet of surface area and at a distance of 343 feet from and within view of the Ed Koch Queensborough Bridge, an arterial highway pursuant to Appendix H of the Zoning Resolution; and

WHEREAS, because the Permits failed to comply with ZR § 42-53, the Board concludes that the Permits were invalidly issued; and

WHEREAS, the Board finds that the Signs are not protected by ZR § 42-58, because that provision only protects signs erected pursuant to lawfully-issued permits; and

WHEREAS, thus, the Board finds that the Appellant cannot rely on the invalid Permits to establish the Signs as non-conforming; and

WHEREAS, the Board agrees with DOB that the Appellant has failed to demonstrate that any of the Signs existed prior to June 1, 1968 such that any of the Signs would be protected by ZR § 42-55(c)(1); and

WHEREAS, the Board agrees with DOB that the Appellant has failed to demonstrate that any of the Signs existed within the date and size limitations set forth in ZR § 42-55(c)(2) such that any of the Signs would be protected by that provision; and

WHERAS, the Board notes that even if the Permits had been validly issued in 1998 and the Signs had become non-conforming, the Appellant has failed to demonstrate with sufficient evidence that the Signs were not thereafter discontinued pursuant to ZR § 52-61; and

WHEREAS, the Board does not find the Appellant's arguments regarding equitable estoppel persuasive; and

WHEREAS, the Board distinguishes the Appellant's case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision that deprived the claimant of a right he might otherwise have had, if the City had not accepted his claim without notifying him of its defective notice; and

WHEREAS, the Board notes that the Court of Appeals has squarely held that DOB cannot be estopped from enforcing the Zoning Resolution where a permit was invalid when issued pursuant to Matter of Parkview Associates v. City of New York, 71 N.Y.2d 74 (1988); and

WHEREAS, the Board also notes that the Appellant has enjoyed approximately 15 years' worth of revenue from advertising signs that are five to eight times larger in surface area than what has ever been permitted by the Zoning Resolution at the Premises; and

WHEREAS, therefore, the Board finds that DOB's enforcement against the Signs is warranted, and as such, DOB properly rejected the Appellant's registration of the Signs.

Therefore it is Resolved that this appeal, challenging Final Determinations issued on May, 14, 2012, is denied.

Adopted by the Board of Standards and Appeals, April 9, 2013.

197-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for Interstate Outdoor Advertising.

OWNER OF PREMISES – Hamilton Plaza Associates.

SUBJECT – Application June 21, 2012 – Appeal from Department of Buildings' determination that a sign is not entitled to continued legal status as advertising sign. M1-2/M2-1 zoning district.

PREMISES AFFECTED – 1-37 12th Street, east of Gowanus Canal between 11th Street and 12th Street, Block 10007, Lot 172, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Appeals Denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Brooklyn Borough Commissioner of the Department of Buildings ("DOB"), dated May 25, 2012, 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 support of the legal establishment of this sign. Unfortunately, we find this documentation inadequate to support the registration for advertising use. We note that the permit provided is for an accessory sign, and 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 February 5, 2013, after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the subject premises ("the Premises") is located on the north side of 12th Street between Hamilton Place and the Gowanus Canal, in an M1-2 zoning district; and

WHEREAS, the Premises is occupied by a five-story commercial building and, on the roof of the building, a south-facing advertising sign ("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 a rectangular advertising sign measuring 24 feet in height by 75 feet in length for a surface area of 1,800 sq. ft. and located within 900 feet of the Gowanus Expressway; and

WHEREAS, on August 29, 1968, DOB issued a permit in connection with application BN 4655/68 for the construction of a "steel structure on roof as per plan filed herewith (Business Sign)" (the "Permit"); and

WHEREAS, DOB states that the Sign is located 550 feet from the Gowanus Expressway; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration 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

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 1, 2009, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching one undated photograph and a copy of the Permit as evidence of establishment of the Sign; and

WHEREAS, on September 29, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that "[DOB is] unable to accept the sign for registration (due to) "Failure to provide proof of legal establishment – 1972 BN 4655 for accessory sign"; and

WHEREAS, by letter dated February 29, 2012, the Appellant submitted a response to DOB, asserting that the Permit established the use in 1968 and that the applicable date for lawful establishment under the Zoning Resolution was actually October 31, 1979; and

WHEREAS, DOB determined that theFebruary 29, 2012 arguments lacked merit, and issued the Final Determination on May 25, 2012; 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. . .

* * *

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 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 because: (1) the Sign was established as an advertising sign prior to June 1, 1968 and may therefore be maintained as a legal non-conforming advertising sign; (2) the Sign has not been discontinued; and (3) equitable estoppel prevents DOB from taking enforcement action against the Sign; and

Lawful Establishment

WHEREAS, the Appellant contends that that the Sign was established prior to June 1, 1968 because the text of the Permit contains references to DOB applications from 1966; and

WHEREAS, the Appellant contends that such references are sufficient proof that the Sign existed as an advertising sign rather than a business sign prior to June 1, 1968; and

Continuous Use

WHEREAS, the Appellant asserts that the Sign has not been discontinued for a period of two or more years since establishment as a non-conforming use on June 1, 1968; and

WHEREAS, the Appellant contends that it has submitted sufficient evidence proving the requisite continuity in the form of DOB Buildings Information System printouts showing "numerous BN and electric sign applications" from 1965-1984 and one undated photograph; and

Estoppel Against the City

WHEREAS, the Appellant asserts that it has relied on the Permit for several years and made substantial investments relative to the continued operation of the Sign; and

WHEREAS, the Appellant asserts that under established principles of equity, DOB should be estopped from ordering the removal of the Sign; and

WHEREAS, the Appellant asserts that although as a general rule estoppel or laches cannot be used against a municipality enforcing its zoning law, New York courts have ruled that these doctrines are not foreclosed entirely and may be invoked as a rare exception; and

WHEREAS, the Appellant states that two New York State court decisions – Town of Hempstead v. DeMasco, 2007 WL 4471362 (Sup. Ct. 2007), aff'd, 62 A.D.3d 692 (2d Dept. 2009) and Inner Force Econ. Dev. Corp. v. Dep't of Educ. Of the City of New York, 36 Misc.3d 758, 559 (Sup. Ct. 2012) – to support its conclusion that the City should be estopped; and

WHEREAS, the Appellant notes that in DeMasco, the Town sought to enforce its zoning ordinance against a metal salvage business which had existed for many years prior to a zoning change, and the Appellate Division affirmed that the Town was equitably estopped in part because it continued business with the junkyard and "gave an imprimatur to the businesses' continued operation"; and

WHEREAS, the Appellant argues that this appeal is similar to DeMasco, in that DOB "did not prohibit the [Appellant] from continuing to maintain its advertising signage during the period following the issuance of the Permit[s]" and that "by not enforcing against the signage [DOB] implicitly permitted its continued use"; and

WHEREAS, the Appellant notes that Inner Force involved an action against the New York City Department of Education in which a plaintiff filed its Notice of Claim with the Comptroller's Office instead of the Office of the Corporation Counsel, which should have received the claim instead, and the Comptroller's Office acknowledged the receipt of the Notice, informed the plaintiff that it was conducting an investigation and ultimately denied the claim based in part on the improper notice; and

WHEREAS, the Appellant notes that the Inner Force court found estoppel applicable to the conduct of the Comptroller's Office because the Comptroller's response to the plaintiff's erroneous notice wrongfully or negligently induced reliance by the plaintiff to its detriment to believe that its notice of claim was proper and that the proper party had been served; and

WHEREAS, the Appellant contends that this appeal is similar because "DOB clearly understood or should have understood that by not pursuing enforcement action against the maintenance of valuable advertising signage there was every reason for the [Appellant] to continue its operation"; and

WHEREAS, accordingly, the Appellant argues that DOB should be estopped from taking any enforcement action against the Sign and DOB's Final Determination with respect to the Sign should be reversed; and

DOB'S POSITION

WHEREAS, DOB asserts that the Appellant has not submitted sufficient evidence to demonstrate that an advertising sign was established at the Premises; and

WHEREAS, DOB states that in order to show proof of establishment of an advertising sign under the non-conforming use provisions of ZR § 42-55, an applicant only needs to demonstrate that the advertising sign was constructed prior to June 1, 1968 or November 1, 1979 (depending on the size of the sign); and

WHEREAS, DOB explains that the Department does not require proof of an advertising sign permit under this Zoning Resolution section because the section was promulgated on February 21, 1980 to legalize, as non-conforming, certain advertising signs that were previously prohibited; and

WHEREAS, DOB asserts that there is insufficient evidence of the establishment of an advertising sign at the Premises; and

WHEREAS, DOB contends that the only evidence the Appellant has produced to demonstrate establishment of an advertising sign at the Premises is the Permit, which by its terms indicates that it is for a "business sign"; and

WHEREAS, however, DOB states that the designation of "business sign" on the Permit indicates that the Permit was for an "accessory sign" and not for an "advertising sign"; and

WHEREAS, consequently, DOB asserts that the Permit cannot be relied upon as evidence of the establishment of anything other than an accessory sign; and

WHEREAS, DOB notes that the Appellant has also not produced any evidence that the 1968 accessory sign was converted to an advertising sign; and

WHEREAS, DOB notes that if an advertising sign was in fact constructed at the Premises between June 1, 1968 and November 1, 1979, the advertising sign could only obtain non-conforming status under ZR § 42-55(c)(2) if the advertising sign did not exceed 1,200 sq. ft. in surface area because the Premises is within 900 feet of an arterial highway; and

WHEREAS, DOB notes that the Sign measures 1,800 sq. ft. in surface area; and

WHEREAS, thus, DOB asserts that the Appellant has not demonstrated the lawful establishment of an advertising sign; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determination denying the registration of the Sign; and

CONCLUSION

WHEREAS, the Board finds that: (1) DOB properly denied the Sign registration because the Appellant has not met its burden of demonstrating that the Sign was established prior to June 1, 1968 or November 1, 1979 as an advertising sign; and (2) DOB is not equitably estopped from correcting its erroneous issuance of the Permit; and

WHEREAS, the Board finds that, in fact, there is no basis to conclude that an advertising sign was ever lawfully established at the Premises; and

WHEREAS, the Board agrees with DOB that the Permit is evidence of the establishment of an accessory sign rather than an advertising sign; and

WHEREAS, the Board notes that, historically, the Zoning Resolution defined a "business sign" as "an accessory sign which directs attention to a profession, business, commodity, service, or entertainment conducted, sold, or offered upon the same zoning lot"; and

WHEREAS, the Board finds that Permit authorized the construction of an accessory business sign rather than an

advertising sign because: (1) the "proposed work" noted on the Permit was the construction of a "business sign"; and (2) the two sketches included with the Permit contain a note stating that the sign is "For Business Conducted on the Premises"; and

WHEREAS, the Board finds that, contrary to the Appellant's assertions, the references to two 1966 alteration applications on the Permit are not relevant to the question of whether an advertising sign existed at the Premises prior to 1968; and

WHEREAS, thus, the Board finds that the Appellant's reliance on the Permit as evidence of the establishment of an advertising sign is misplaced; and

WHEREAS, the Board concludes that, since the Appellant has offered no other evidence regarding the establishment of an advertising sign pursuant to ZR § 42-55(c), an advertising sign has never been lawfully established at the Premises; and

WHEREAS, the Board does not find the Appellant's arguments regarding equitable estoppel persuasive; and

WHEREAS, the Board distinguishes the Appellant's case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision that deprived the claimant of a right he might otherwise have had, if the City had not accepted his claim without notifying him of its defective notice; and

WHEREAS, the Board finds the Appellant's assertions about reasonable reliance to be particularly dubious since it is unreasonable to rely on a "business sign" permit but maintain an "advertising sign"; and

WHEREAS, the Board notes that the Appellant, by its own admission, has enjoyed approximately 45 years' worth of revenue from an advertising sign that has never been permitted by the Zoning Resolution at the Premises; 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.

Therefore it is Resolved that this appeal, challenging a Final Determination issued on May, 25, 2012, is denied.

Adopted by the Board of Standards and Appeals, April 9, 2013.

203-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for CBS Outdoor, Inc.

OWNER OF PREMISES – Gemini 442 36th Street H LLC.

SUBJECT – Application June 28, 2013 – Appeal from Department of Buildings' determination that a sign is not entitled to continued legal status as advertising sign. C2-5 /HY zoning district.

PREMISES AFFECTED – 442 West 36th Street, east of southeast corner of 10th Avenue and 36th Street, Block 733, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Appeals Denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

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 May 30, 2012, denying registration for the 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. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on February 5, 2013, after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, the subject premises ("the Premises") is located on the south side of West 36th Street between Tenth Avenue and an exit roadway for the Lincoln Tunnel, in an R8A (C2-5) zoning district within the Special Hudson Yards District; and

WHEREAS, the site is occupied by a 14-story hotel building and, on the east wall of the building, an advertising sign ("the Sign"); and

WHEREAS, on May 8, 2001, DOB issued Permit No. 102955287-01-SG which authorized the installation of "a non-illuminated advertising wall flex 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 a rectangular advertising sign with a surface area of 2,100 sq. ft. and located within 900 feet of an arterial highway; and

WHEREAS, DOB states that the Sign is located 184.92 feet from the nearest boundary of an exit roadway for the Lincoln Tunnel and within view of such roadway; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration 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

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, that 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 1, 2009, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) DOB Buildings Information System printouts showing application data regarding the Permit; (3) copies of the original and subsequent issuance of the Permit; (4) an OASIS map of the Premises and surrounding area and (5) excerpts from a Sanborn map showing the Premises; and

WHEREAS, on February 22, 2010, the Appellant submitted an amended Sign Registration Application for the Sign; the amended application clarified the surface area of the Sign; and

WHEREAS, on September 27, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that "[DOB is] unable to accept the sign for registration (due to) 'Failure to provide proof of legal establishment – 2003 Permit # 102955287-01 and other permits, for non-arterial sign'"; and

WHEREAS, by letter dated February 28, 2012, the Appellant submitted a response to DOB indicating that it had no further documentation to submit regarding the Sign; and

WHEREAS, accordingly, on May 25, 2012, DOB issued a Final Determination that the Sign was rejected for registration; 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. . .
>
> * * *
>
> 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 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 § 52-83
Non-Conforming Advertising Signs
In all Manufacturing Districts, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Section…42-55, any non-conforming advertising sign except a flashing sign may be structurally altered, reconstructed, or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

(a) The creation of a new non-conformity or an increase in the degree of non-conformity of such sign;

(b) An increase in the surface area of the sign; or

(c) An increase in the degree of illumination of such sign; 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 because: (1) the Sign was established with a permit and became a non-conforming use when the Premises was rezoned; (2) the Sign has not been discontinued; and (3) equitable estoppel prevents DOB from taking enforcement action against the Sign; and

The 2001 Permit

WHEREAS, the Appellant asserts that it established the Sign when it obtained its Permit1 because, on the date of issuance, the Premises was located in an M1-5 zoning district and not within 200 feet of the nearest arterial highway (Lincoln Tunnel);

WHEREAS, although the Appellant does not dispute that the Sign is visible from an exit roadway of the Lincoln Tunnel, the Appellant maintains that because such roadway leads *from* the tunnel rather than *to* it, the roadway is not an "approach" as that term is defined in Rule 49 and referenced in Appendix H of the Zoning Resolution; and

WHEREAS, consequently, the Appellant contends that the Permit was properly issued and, as such, a sufficient basis for the lawful establishment of the Sign; and

WHEREAS, the Appellant contends that because the Sign was lawfully established, it became a non-conforming use when, on January 19, 2005, the zoning district for the Premises changed from M1-5 to (R8A) C2-5; and

Continuous Use

WHEREAS, as to the continuous use of the Sign, the Appellant relies on an October 26, 2000 lease agreement between the Appellant and the owner of the Premises providing for a ten-year term with two five-year renewal options; and

WHEREAS, the Appellant contends that the lease is sufficient evidence that the Sign has been in continuous use since its construction pursuant to the Permit; and

Estoppel Against the City

WHEREAS, the Appellant asserts that under established principles of equity, DOB should be estopped from ordering the removal of the Sign; and

WHEREAS, the Appellant asserts that it has relied on the Permit for years and made substantial investments relative to the continued operation of the Sign; and

WHEREAS, the Appellant contends that although as a general rule estoppel or laches cannot be used against a municipality enforcing its zoning law, New York courts have ruled that these doctrines are not foreclosed entirely and may be invoked as a rare exception; and

WHEREAS, the Appellant states that two New York State court decisions – Town of Hempstead v. DeMasco, 2007 WL 4471362 (Sup. Ct. 2007), aff'd, 62 A.D.3d 692 (2d Dept. 2009) and Inner Force Econ. Dev. Corp. v. Dep't of Educ. Of the City of New York, 36 Misc.3d 758, 559 (Sup. Ct. 2012) – to support its conclusion that the City should be estopped; and

WHEREAS, the Appellant notes that in DeMasco, the Town sought to enforce its zoning ordinance against a metal salvage business which had existed for many years prior to a zoning change, and the Appellate Division affirmed that the Town was equitably estopped in part because it continued business with the junkyard and "gave an imprimatur to the businesses' continued operation"; and

WHEREAS, the Appellant asserts that this appeal is similar to DeMasco, in that DOB "did not prohibit the [Appellant] from continuing to maintain its advertising signage during the period following the issuance of the Permit" and that "by not enforcing against the signage [DOB] implicitly permitted its continued use"; and

WHEREAS, the Appellant notes that Inner Force involved an action against the New York City Department of Education in which a plaintiff filed its Notice of Claim with the Comptroller's Office instead of the Office of the Corporation Counsel, which should have received the claim instead, and the Comptroller's Office acknowledged the receipt of the Notice, informed the plaintiff that it was conducting an investigation and ultimately denied the claim based in part on the improper notice; and

WHEREAS, the Appellant notes that the Inner Force court found estoppel applicable to the conduct of the Comptroller's Office because the Comptroller's response to the plaintiff's erroneous notice wrongfully or negligently induced reliance by the plaintiff to its detriment to believe that its notice of claim was proper and that the proper party had been served; and

WHEREAS, the Appellant contends that this appeal is similar because "DOB clearly understood or should have understood that by not pursuing enforcement action against the maintenance of valuable advertising signage there was every reason for the [Appellant] to continue its operation"; and

WHEREAS, accordingly, the Appellant asserts that DOB should be estopped from taking any enforcement action against the Sign and DOB's Final Determination with respect to the Sign should be reversed; and

DOB'S POSITION

WHEREAS, DOB asserts that: (1) the Sign was not lawfully established with the Permit because the Permit was issued in error; and (2) DOB cannot be equitably estopped from enforcing the Zoning Resolution where a permit was invalid when issued; and

The 2001 Permit

WHEREAS, DOB contends that the Permit for the Sign was issued in error on May 8, 2001, in that it failed to comply with ZR § 42-55(a), which prohibits advertising signs within 200 feet of an arterial highway and became effective on February 27, 2001; and

WHEREAS, DOB asserts that, according to a measurement made using Pictometry (computer software

1 The Appellant's written submissions indicate that the permit was first issued on January 16, 2003; however, according to DOB records, the permit was first issued on May 8, 2001.

that measures distances using geographic information systems), the Sign is 184.92 feet from the nearest boundary of an exit roadway from the Lincoln Tunnel and within view of such roadway; and

WHEREAS, DOB contends that roadways connecting the Lincoln Tunnel to and from the local street network are "approaches" according to Rule 49 and Appendix H of the Zoning Resolution; and

WHEREAS, DOB disagrees with the Appellant's distinction between, on the one hand, a roadway connecting the local street network *to* Lincoln Tunnel (which the Appellant considers an "approach" to an arterial highway, as that term is defined in Rule 49 and referenced in Appendix H of the Zoning Resolution), and, on the other hand, a roadway connecting the local street network *from* the Lincoln Tunnel (which the Appellant does not consider an "approach"); and

WHEREAS, DOB notes that in BSA Cal. No. 100-12-A, the Board agreed that an exit roadway from the Holland Tunnel constituted an "approach"; and

WHEREAS, accordingly, DOB contends that the Permit improperly authorized the construction of a Sign within 200 feet of an arterial highway contrary to ZR § 42-55(a); and

WHEREAS, DOB notes that even if the Board were to adopt the Appellant's position with respect to the term "approach," the Permit would still be contrary to ZR § 42-55(b), which provides in pertinent part that "beyond 200 feet from such arterial highway . . . the surface area of such sign may be increased one square foot for each linear foot such sign is located from the arterial highway," because the Permit purports to authorize the construction of a sign measuring 2,100 sq. ft. less than 2,100 linear feet from an arterial highway; and

WHEREAS, DOB asserts that because the Permit was issued contrary to the Zoning Resolution, it cannot be relied upon as establishing the Sign; and

Estoppel Against the City

WHEREAS, DOB states that it cannot be estopped from enforcing the Zoning Resolution where a permit was invalid when issued, citing Matter of Parkview Associates v. City of New York, 71 N.Y.2d 74 (1988); and

WHEREAS, DOB asserts that, consistent with Parkview Associates, to the extent that DOB erred in issuing the original Permit, it cannot be estopped from correcting that error now; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determination denying the registration of the Sign; and

CONCLUSION

WHEREAS, the Board finds that: (1) DOB properly denied the Sign registration because the Appellant has not demonstrated that the Sign was lawfully established; and (2) DOB is not equitably estopped from correcting its erroneous issuance of the Permit; and

WHEREAS, the Board agrees with DOB that the Permit was issued on May 8, 2001 in violation of ZR § 42-55(a), in that it authorized the construction of a sign at the Premises within 200 feet of a roadway that constitutes an approach to the Lincoln Tunnel, which is an arterial highway pursuant to Appendix H of the Zoning Resolution, and within view of such roadway; and

WHEREAS, the Board is guided by its analysis of the term "approach" in BSA Cal. No. 100-12-A; specifically, the Board finds the Appellant's position that the definition of an "approach" under Rule 49 was meant to excluded exit roadways because the definition does not state "to or from" a bridge or tunnel to be misguided, and agrees with DOB that the definition does not state which direction the traffic needs to flow from the "roadway" in order to be an approach; and

WHEREAS, the Board finds that the Rule 49 definition of "approach" is clear and that the exit roadway to the Lincoln Tunnel meets the relevant criteria of the definition, in that it is 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

WHEREAS, the Board notes that the Rule 49 definition of "approach" makes no distinction as to whether traffic is entering or exiting the tunnel via the roadway, and the Board does not find the Appellant's attempt to insert the direction of the traffic as an additional criteria in the definition to be compelling; and

WHEREAS, the Board concludes that the Premises and the Sign are within 200 feet of an arterial highway; and

WHEREAS, thus, the Board finds that the Permit was issued contrary to ZR § 42-55(a); and

WHEREAS, the Board agrees with DOB that the Permit was invalid when issued; and

WHEREAS, the Board notes even if the Board were to accept the Appellant's definition of "approach" (and therefore measure the distance to the nearest arterial highway approach connecting *to* the Lincoln Tunnel rather than *from* it), the Sign is within 900 feet of such approach; consequently, even under the Appellant's definition of approach, the Permit was issued contrary to ZR § 42-55(b)—which limits the surface area of an advertising sign in a manufacturing district beyond 200 feet of an arterial highway to its linear distance from such arterial highway—because the Permit purports to authorize a sign measuring 2,100 sq. ft. in surface area less than 2,100 linear feet from an arterial highway; and

WHERAS, the Board also notes that even if the Permit had been validly issued in 2001 and the Sign had become non-conforming, the Appellant has failed to demonstrate with sufficient evidence that the Sign was not thereafter discontinued pursuant to ZR § 52-61; and

WHEREAS, the Board does not find the Appellant's arguments regarding equitable estoppel persuasive; and

WHEREAS, the Board distinguishes the Appellant's case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision that deprived the claimant of a right he might otherwise have had, if the City

had not accepted his claim without notifying him of its defective notice; and

WHEREAS, the Board notes that the Court of Appeals has squarely held that DOB cannot be estopped from enforcing the Zoning Resolution where a permit was invalid when issued pursuant to Matter of Parkview Associates v. City of New York, 71 N.Y.2d 74 (1988); and

WHEREAS, the Board also notes that the Appellant, by its own admission, has enjoyed almost 12 years' worth of revenue from an advertising sign that has a surface area in excess of ten times what has ever been permitted by the Zoning Resolution at the Premises; 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.

Therefore it is Resolved that this appeal, challenging a Final Determination issued on May, 25, 2012, is denied.

Adopted by the Board of Standards and Appeals, April 9, 2013.

15-13-A thru 49-13-A

APPLICANT – Eric Palatnik, P.C., for Block 7094 Associates, LLC, owners.

SUBJECT – Application January 25, 2013 – Proposed construction of thirty-five (35) one and two-family dwellings that do not front on a legally mapped street, contrary to General City Law Section 36. R3-1(SRD) zoning district.

PREMISES AFFECTED –

16, 20, 24, 28, 32, 36, 40, 44, 48, 52, 56, 60, 64, 68, 78, 84, 90, 96, 102, 108, 75, 79, 85, 89, 93, 99, 105, 109, 115, 119 Berkshire Lane. Block 7094, Lot 70, 69, 68, 67, 66, 65, 62, 61, 60, 59, 54, 53, 52, 51, 43, 44, 45, 46, 47, 48, 41, 40, 39, 38, 37, 36, 35, 34, 33, 32.

19, 23, 27, 31, 35, Wiltshire Lane. Block 7094, Lot 57, 56, 55, 50, 49. 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated January 16, 2013, acting on Department of Buildings Application Nos. 520008759, 520008777, 520008795, 520008839, 520008820, 520008802, 520008811, 520008848, 520008857, 520008866, 520008900, 520008875, 520008884, 520008893, 520008991, 520009026, 520009035, 520009044, 520008928, 520009099, 520008982, 520008973, 520009124, 520009179, 520009188, 520009197, 520009204, 520009213, 520008964, 520008955, 520116785, 520009053, 520009062, 520009071, 520009080 read in pertinent part:

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

A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law.

B) Proposed construction does not have at least 8% of the total perimeter of Building 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 March 12, 2013 after due notice by publication in the *City Record*, and then to decision on April 9, 2013; and

WHEREAS, this application seeks a waiver to construct sixteen (16) one-family homes and nineteen (19) two-family homes at Veterans Road East and Berkshire Lane within an R3-1 zoning district within the Special South Richmond District (SSRD) not fronting upon a mapped street, contrary to General City Law Section 36; and

WHEREAS, there are an additional four homes proposed which do not seek General City Law Section 36 relief and are not the subject of this application; and

WHEREAS, as part of the initial filing, the applicant provided a letter from the Fire Department, dated March 24, 2012, which recommends approval subject to the following conditions: (1) that there be no parking anytime on the side of the street and at the corners indicated by the cross hatching on the approved plans; (2) that no parking signs will be installed throughout the development as shown on the approved plans and will conform with Fire Code Section 503.7; (3) private hydrants will be installed as indicated on the approved plan and a private hydrant is required to be within 250 feet of the main front entrance of the homes; (4) that the installation of new fire service mains will conform to the requirements of Fire Code Section 508.2.1 and private fire service mains and appurtenances will be installed in accordance with NFPA 24 and the requirements of the NYC Department of Environmental Protection; (5) once the installation of private fire service mains are complete, the requirements of Fire Code Section 508.4 which requires that a flow test be conducted to verify that the private fire hydrant system delivers the flow test will be conducted to verify that the private fire hydrant system delivers the minimum design capacity required by Fire Code Section 508.3; (6) that all required fire protection systems be installed, including the private hydrant system and associated piping be maintained in good working order; and (7) that the approval and the conditions are appurtenant to the property, binding the property owner and any and all successors in interest including any homeowner condominium association; and

WHEREAS, in response, the applicant submitted plans reflecting the conditions in accordance with the Fire Department's request; and

WHEREAS, by letter dated March 7, 2013 the Fire Department states it has no objections and no further requirements regarding the proposed application ; and

WHEREAS, at hearing, the Board inquired about the access to Veterans Road East; and

WHEREAS, in response, the applicant stated that Veterans Road East will extend to Wirt Avenue and be a New York State roadway, and that construction on Veterans Road East is subject to New York State Department of Transportation approval; and

WHEREAS, the Board also notes that the approvals from the Department of City Planning (for subdivision, arterial streets, and school seats, the Department of Environmental Protection, and DOB for a Builders Pavement Plan have been received as part of the subject filing; 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 January 16, 2013 acting on Department of Buildings Application Nos. 520008759, 520008777, 520008795, 520008839, 520008820, 520008802, 520008811, 520008848, 520008857, 520008866, 520008900, 520008875, 520008884, 520008893, 520008991, 520009026, 520009035, 520009044, 520008928, 520009099, 520008982, 520008973, 520009124, 520009179, 520009188, 520009197, 520009204, 520009213, 520008964, 520008955, 520116785, 520009053, 520009062, 520009071, 520009080 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 will substantially conform to the drawing filed with the application marked "Received February 21, 2013"- 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) only;

THAT the site and roadway will conform with the BSA-approved plans;

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

THAT the construction on Veterans Road East is subject to New York State Department of Transportation review and approval;

THAT any changes to the site plan, associated with the Department of City Planning approval process, are subject to review and approval from the Board; and

THAT the Department of Buildings must ensure compliance 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 9, 2013.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application September 5, 2012 – Reopening for a court remand to review the validity of the permit at issue in a prior vested rights application.

PREMISES AFFECTED – 1882 East 12th Street, west side of East 12th Street approx. 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

119-11-A

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Off Calendar.

103-12-A

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #2BK

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 7, 2013, at 10 A.M., for decision, hearing closed.

256-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, City Outdoor.
OWNER OF PREMISES: 195 Havemeyer Corporation.
SUBJECT – Application August 28, 2012 – Appeal challenging Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. C4-3 zoning district.
PREMISES AFFECTED – 195 Havemeyer Street, southeast corner of Havemeyer and South 4th Street, Block 2447, Lot 3, Borough of Brooklyn.
COMMUNITY BOARD #1BK
ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

265-12-A & 266-12-A
APPLICANT – Jesse Masyr, Watchel Masyr & Missry, LLP, for Related Retail Bruckner LLC.
OWNER OF PREMISES – Ciminello Property Associates.
SUBJECT – Application September 5, 2012 – Appeal challenging Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. M1-2 & R4/C2-1 zoning district.
PREMISES AFFECTED – 980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway, Block 5542, Lot 41, Borough of Bronx.
COMMUNITY BOARD #10BX
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 14, 2013, at 10 A.M., for decision, hearing closed.

288-12-A thru 290-12-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orin, Inc., owner.
SUBJECT – Application October 9, 2012 – Proposed construction of three two-family homes not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SRD) zoning district.
PREMISES AFFECTED – 319, 323, 327 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot 2, 3, 4, Borough of Staten Island.
COMMUNITY BOARD #3SI
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 7, 2013, at 10 A.M., for decision, hearing closed.

304-12-A
APPLICANT – Eric Palatnik, P.C., for Success Team Development, LLC, owner.
SUBJECT – Application October 26, 2012 – Proposed seven-story residential development located within mapped but inbuilt portion of Ash Avenue, contrary to General City Law Section 35. R6A zoning district.
PREMISES AFFECTED – 42-32 147th Street, west side, south of the intersection of Sanford Avenue and 147th Street, Block 5374, Lot 59, 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 May 7, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

57-12-BZ
CEQR #12-BSA-090K
APPLICANT – Eric Palatnik, P.C., for Mykola Volynsky, owner.
SUBJECT – Application March 13, 2012 – 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 (§23-461); less than the required rear yard (§23-37). R4 zoning district.
PREMISES AFFECTED – 2670 East 12th Street, between Shore Parkway and Gilmore Court, Block 7455, Lot 85, 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 5
Negative:.....0
THE RESOLUTION –
WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 8, 2012, acting on Department of Buildings Application No. 320443748, reads in pertinent part:

1. Proposed floor area ratio 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(a)
4. Proposed side yards (exist. non-compliance) contrary to ZR 23-461(a)
5. Proposed rear yard is contrary to ZR 23-47
   Minimum required: 30'
   Proposed: 20'; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, 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 ("FAR"), open space, lot coverage, side yards and rear yard contrary to ZR §§ 23-141, 23-46, and 23-47; and

WHEREAS, a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, with continued hearings on December 11, 2012, January 15, 2013, February 5, 2013 and March 5, 2013, and then to decision on April 9, 2013; and

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

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

WHEREAS, the subject site is located on the west side of East 12th Street, between Gilmore Court and Shore Parkway, within an R4 zoning district; and

WHEREAS, the subject site has a total lot area of 1,645 sq. ft., and is occupied by a single-family home with a floor area of 750.5 sq. ft. (0.45 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 750.5 sq. ft. (0.45 FAR) to 2,031 sq. ft. (1.23 FAR); the maximum permitted floor area is 1,485.5 sq. ft. (0.9 FAR); and

WHEREAS, the applicant proposes an open space ratio of 0.48; the minimum permitted open space ratio is 0.55; and

WHEREAS, the applicant proposes a lot coverage of 52 percent; the maximum permitted lot coverage is 45 percent; and

WHEREAS, the applicant proposes to enlarge the single existing side yard with a width of 5'-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 proposes a rear yard with a depth of 20 feet; the minimum required rear yard depth is 30 feet; 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, 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 R4 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, 23-46, 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 4, 2013"-(10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,031 sq. ft. (1.23 FAR), a maximum lot coverage of 52 percent, a minimum open space ratio of 0.47, one side yard measuring 5'-3", and a rear yard with a minimum depth of 20 feet, 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, April 9, 2013.

312-12-BZ
CEQR #13-BSA-054M
APPLICANT – Jay A. Segal, Esq./Greenberg Traurig LLP, for 33 Beekman Owner LLC c/o Naftali Group, owners; Pace University, lessee.
SUBJECT – Application November 19, 2012 – Variance (§72-21) to facilitate the construction of a new 34-story, 760-bed dormitory (*Pace University*), contrary to maximum permitted floor area. C6-4 district/Special Lower Manhattan District.
PREMISES AFFECTED – 29-37 Beekman Street aka 165-169 William Street, northeast corner of block bound by Beekman, William, Nassau and Ann Streets, Block 92, Lot 1,3,37,38, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 15, 2012, acting on Department of Buildings Application No. 104697507, reads in pertinent part:

Floor Area greater than allowed by Sec. 91-22;
and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C6-4 zoning district within the Special Lower Manhattan District, the construction of a 34-story dormitory building (Use Group 3) which does not comply with zoning requirements related to floor area, contrary to ZR § 91-22; and

WHEREAS, a public hearing was held on this application on March 12, 2013 after due notice by publication in the *City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, Community Board 1, Manhattan, recommends approval of the application on condition that the developer minimizes construction impacts on the surrounding community and that Pace offers community members programs and services; and

WHEREAS, a member of the community from several blocks away provided testimony in opposition to this application, citing concerns about the new building blocking views; and

WHEREAS, the application is brought on behalf of Pace University ("Pace"), a not for profit educational institution; and

WHEREAS, the zoning lot (Tax Lots 1, 3, 37, and 38) (the "Zoning Lot") is located on the southeast corner of William Street and Beekman Street, within a C6-4 zoning district within the Special Lower Manhattan District; and

WHEREAS, the Zoning Lot has approximately 120.4 feet of frontage on Beekman Street, 102 feet of frontage on William Street, and a total lot area of 13,436.9 sq. ft.; and

WHEREAS, the proposed building will be constructed on the portion of the Zoning Lot consisting of Lots 1, 37, and 38 (the "Development Site"), which has 120.4 feet of frontage on Beekman Street, 49.3 feet of frontage on William Street, and 9,866.5 sq. ft. of lot area; and

WHEREAS, Lot 3 is occupied by a ten-story building constructed in approximately 1908 (the "Lot 3 Building") with commercial use on the ground floor and residential use on the upper floors; and

WHEREAS, in 1989, the Board authorized the exclusion from payment of the conversion contribution then required under ZR § 15-50 in connection with the conversion of 17,892 sq. ft. of floor area in the Lot 3 Building (BSA Calendar No. 735-89-ALC); the Lot 3 Building is under separate ownership and control and no changes to it are proposed; and

WHEREAS, the applicant states that the Development Site and Lot 3 were merged into a single zoning lot pursuant to a Declaration of Zoning Lot Restrictions and Zoning Lot Development and Easement Agreement (the "ZLDA") that were executed by the prior owners of the parcels and recorded in 2007; and

WHEREAS, the applicant states that it has submitted draft materials to the Department of City Planning to amend a pending application (No. N090178 ZCM) seeking a certification from the Chair of the City Planning Commission for a proposed public plaza (the "Public Plaza") and floor area bonus pursuant to ZR §§ 73-78 and 91-24; and

WHEREAS, the applicant proposes to construct a 34-story dormitory building with 146,963 sq. ft. of floor area (10.94 FAR) and to maintain the existing Lot 3 Building with 31,977 sq. ft. of floor area (2.38 FAR) for a total of 178,963 sq. ft. of floor area (13.3 FAR) across the Zoning Lot; and

WHEREAS, the applicant proposes to increase the permitted base floor area of 134,369 sq. ft. (10.0 FAR) across the site by (1) installing a 3,012 sq. ft. Public Plaza on the northeast corner of the Development Site pursuant to City Planning Commission approval that will generate 18,072 sq. ft. (1.34 FAR) of bonus floor area; and (2) obtaining a variance for the additional required 26,522 sq. ft. (1.97 FAR); and

WHEREAS, the applicant asserts that a maximum of 12.0 FAR is contemplated for the site (10.0 FAR base and 2.0 FAR bonus for plaza or inclusionary housing), but that it cannot accommodate the maximum size plaza, so it can only generate 1.34 FAR in bonus floor area, rather than 2.0 FAR; and

WHEREAS, the applicant represents that the proposal will comply with all relevant zoning provisions except total floor area and FAR; and

WHEREAS, the applicant states that the proposed building provides the following uses: (1) accessory spaces for student recreational facilities and meeting rooms, administrative office space, lobby space, a gym, a kitchen, a laundry room, a storage room, and utility rooms on the cellar

level, first and second floors; (2) an approximately 400 sq. ft. retail space (which is required for the Public Plaza) on the first floor; and (3) 760 beds in 381 units on the 3rd through 34th floors and one staff apartment on the 3rd floor; and

WHEREAS, the site will also include an approximately 3,012 sq. ft. Public Plaza at the corner of Beekman and William Streets, subject to City Planning Commission review; and

WHEREAS, because the proposed building does not comply with the underlying zoning district regulations, the subject variance is requested; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the irregular shape of the Development Site; and (2) the easement benefitting the New York City Transit Authority (NYCTA) and the L-shaped turn of the subway directly beneath the Development Site; and

WHEREAS, the applicant also relies on Pace's primary programmatic needs of accommodating the increased number of out-of-state students and the high demand for dormitory beds in close proximity to Pace's facilities; and

WHEREAS, as to the irregular shape of the Development Site, which is roughly L-shaped and varies in depth (measured from Beekman Street) from 49.3 feet to 100.5 feet and in width from 66.5 feet to 120.4 feet; and

WHEREAS, as to the presence of the NYCTA transit easement, it precludes excavation and foundation work on a portion of the site, and therefore any substantial development, on approximately 22 percent of the buildable portion of the Development Site and the presence of the subway results in construction premiums related to foundation and excavation work of approximately 1.78 million dollars; and

WHEREAS, as to the uniqueness of this condition, the applicant states that there are no other development parcels in the C6-4 portion of the Special District or in other districts within a half- mile of the Development Site below which the subway turns as it does under the Development Site; and

WHEREAS, the applicant provided an area map, which reflects that within a half-mile of the site, the subway lines all run beneath the street beds except at the subject site where the 2/3 subway makes a turn at the corner of Beekman Street and William Street within the site, below grade; and

WHEREAS, the applicant asserts that the irregular shape of the Development Site and the presence of the transit easement result in an inefficient floor plate for the Proposed Building that reduces the number of beds that can be achieved; and

WHEREAS, the applicant states that these factors also limit the ability to maximize the area of the Public Plaza and, therefore, reduce the potential floor area bonus from 2.0 FAR to 1.34 FAR; and

WHEREAS, the applicant states that these conditions are illustrated by comparing the drawings and zoning calculations for the as-of-right scenario with the drawings and zoning calculations for the regularly-shaped scenario; and

WHEREAS, the applicant states that the building in the complying scenario would contain 120,464 sq. ft. of floor area and 624 beds on 28 floors, which amounts to approximately 193 sq. ft. of floor area per bed and that due to the shape of the Development Site, the maximum feasible area of the Public Plaza is 3,012 square feet, which generates a bonus of 18,072 square feet of floor area; and

WHEREAS, the applicant states that the regularly-shaped scenario assumes the same lot area for the Development Site (approximately 9,860 square feet) but with a rectangular shape: approximately 113.3 feet of frontage along Beekman Street and 87 feet of frontage along William Street and assumes the absence of the transit easement; and

WHEREAS, under the regularly-shaped scenario, the applicant states it would be possible to increase the area of the Public Plaza to 4,030 square feet, (with the inclusion of portion of the Lot 3's lot area) and generates 24,180 sq. ft. of bonus floor area (1.8 FAR), which is 6,168 sq. ft. more than under the complying alternative; such a scenario would also contain 126,572 sq. ft. of floor area and 755 beds on 34 floors, which amounts to approximately 168 sq. ft. per bed (a 15 percent increase in efficiency over the complying scenario; and

WHEREAS, the applicant states that in addition to reducing the efficiency of the building floor plates and limiting the size of the Public Plaza, the irregular shape of the Zoning Lot coupled with the presence of the transit easement also result in significant additional construction costs; and

WHEREAS, specifically, the applicant states that the estimated foundation and excavation costs would increase by $1,785,473, from $1,596,226 under the regularly-shaped scenario to $3,381,699 under the complying due primarily to the presence of the transit easement, an increase which includes the cost of additional piles and lagging necessitated by the presence of the subway, as well as special monitoring and inspection costs required under applicable NYCTA guidelines; and

WHEREAS, as to Pace's programmatic needs, it currently houses students in four buildings containing a total capacity of 1,900 beds and it has determined that it needs a minimum of 2,160 beds due to the increased number of applications from out-of-state students for Pace's general programs and, in particular, its Performing Arts Program; and

WHEREAS, the applicant submitted a letter from Pace, which describes that need and its exhaustive search for potential development sites in Lower Manhattan for a new dormitory to replace the leased 500-bed facility at 55 John Street; and

WHEREAS, the applicant also states that Pace has identified a number of factors including efficiency, student expectations, and industry standards, to help it establish standards regarding dormitory layouts, which it has applied to the design for the dormitory currently under construction at 180 Broadway as well as to the design for the proposed building; and

WHEREAS, the applicant states that Pace's goal is that the overwhelming majority of beds (83 percent) are within two-bed units and that in addition, each floor in the dormitory generally is permitted one one-bed unit (the majority of which

are reserved for resident advisors) and one three-bed unit and that each unit has a private bathroom with a shower, sink and toilet and is furnished with a single bed, desk/chair, and small bureau for each occupant as well as a small closet; and

WHEREAS, the applicant states that in order to accommodate these furnishings and provide a reasonable amount of circulation space, it has concluded that each unit contain approximately 100 net sq. ft. per bed; and

WHEREAS, the applicant asserts that the site's location within central proximity to the other Pace facilities made it an excellent choice to satisfy Pace's need for students to reside near the university's buildings; and

WHEREAS, the applicant states that due to the presence of the transit easement and the irregular shape of the Development Site, however, the maximum number of beds that could be provided in an as-of-right building on the Development Site, taking into account Pace's design standards, is 624, which is 136 few beds than is necessary to accommodate Pace's needs; and

WHEREAS, the applicant states that the variance allows for an additional 136 beds which otherwise could only be constructed if the Development Site were regularly shaped and not burdened by the transit easement; and

WHEREAS, the applicant represents that a complying building at the site would not provide an adequate amount of space for the current demand or for the anticipated growth; and

WHEREAS, based upon the above, the Board agrees that the cited unique conditions of the site and the programmatic needs are legitimate and have been documented with substantial evidence; and

WHEREAS, the Board acknowledges that Pace, 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 limitations of the existing site, when considered in conjunction with the programmatic needs of Pace, creates 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 Pace is a not-for-profit organization and the proposal is in furtherance of its not-for-profit mission; 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 notes that the use of the site as a dormitory is permitted as-of-right in the subject zoning district; and

WHEREAS, the applicant states that the neighborhood surrounding the Zoning Lot is predominantly characterized by institutional, commercial, parking, and some residential uses; and

WHEREAS, the applicant states that in addition to the residential and ground floor retail use in the Lot 3 Building, uses on the block include a four-story public parking garage, a ten-story garage, a number of commercial buildings, ranging from four to 22 stories in height, with ground-floor retail and offices above and one seven-story building with ground floor retail and residential use above; the block also includes a 22-story building occupied by Pace; and

WHEREAS, the applicant notes that other nearby buildings include the eight-story New York Downtown Hospital, the 76-story mixed-use Frank Gehry building, and eight Pace buildings including the main building at One Pace Plaza, a 16-story building at 41 Park Row, a 22-story building, located at 163 William Street, a performing arts center at 140 William Street, and a 12-story building located at 156 William Street; and

WHEREAS, as to dormitory use, students currently occupy a portion of One Pace Plaza, a 12-story (200-bed) building located at 106 Fulton Street, and a 500-bed leased facility at 55 John Street; construction of a new 600-bed dormitory at 180 Broadway is nearing completion; and

WHEREAS, at hearing, the Board directed the applicant to submit an expanded analysis of the surrounding streetscape; and

WHEREAS, in response, the applicant analyzed the buildings along Beekman Street and William Street within an 800-ft. radius of the site; the analysis reflects that to the south, along William Street, there is one building with a height of 341 feet and another with a height of 468 feet and to the east there is a series of buildings with height of 272 feet; and

WHEREAS, the applicant asserts that the proposed bulk is compatible within this portion of the Special Lower Manhattan District, which allows for a maximum permitted base FAR of 10.0 for C6-4 districts, 15.0 for C5-5 districts, and 6.5 for R8 districts; and

WHEREAS, further, the applicant states that pursuant to ZR § 91-24, the basic maximum permitted floor area may be increased by 6 sq. ft. for every square foot of public plaza provided to a maximum FAR of 12.0 in C6-4 districts and by 10 sq. ft. for every square foot of public plaza to a maximum FAR of 18.0 in C5-5 districts and a 12.0 FAR may also be achieved in the C6-4 district by providing inclusionary housing pursuant to ZR § 23-90; and

WHEREAS, additionally, the applicant states that other than FAR, all bulk conditions, including the height of the proposed building, comply with the underlying district regulations and will fit within the character of the surrounding neighborhood; 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 in conformance with zoning would meet the programmatic needs of Pace at the site; 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 meet the programmatic needs of Pace and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, in sum, 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 617.6(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. 13BSA054M, dated November 19, 2012; 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; 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 C6-4 zoning district within the Special Lower Manhattan District, the construction of a 34-story dormitory building (Use Group 3) which does not comply with zoning requirements related to floor area, contrary to ZR § 91-22, *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 4, 2013" – seventeen (17) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the site: a floor area of 146,986 sq. ft. (10.94 FAR) for the Pace building; a total floor area of 178,963 sq. ft. (13.3 FAR) across the site; and a total height of 339 feet; as reflected on the BSA-approved plans;

THAT the proposed floor area relies on (1) the Public Plaza certification from the City Planning Commission to allow a bonus of 18,072 sq. ft. (1.34 FAR) and (2) the Board's grant for 26,522 sq. ft. (1.97 FAR);

THAT in the absence of the Public Plaza certification from the City Planning Commission and the associated bonus of 18,072 sq. ft., the applicant must seek subsequent review and approval from the Board to increase the floor area from 128,914 sq. ft. to the 146,986 sq. ft. reflected on the Board-approved plans;

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

THAT the conditions of the proposed Public Plaza are subject to review and approval by the City Planning Commission;

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 be completed in accordance with ZR §72-23;

THAT the approved plans 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 9, 2013.

42-10-BZ

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.

SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, 116' west of intersection with Strickland Avenue, Block 8470, Lot 1150, 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 May 7, 2013, at 10 A.M., for decision, hearing closed.

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
ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for deferred decision.

50-12-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.
COMMUNITY BOARD #12Q
ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for adjourned hearing.

63-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.
SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.
PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27th Street and Avenue N. Block 7663, Lot 6. 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 May 21, 2013, at 10 A.M., for decision, hearing closed.

72-12-BZ
APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.
SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.
PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.
COMMUNITY BOARD #6BK
ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for adjourned hearing.

138-12-BZ
APPLICANT – Harold Weinberg, for Israel Cohen, owner.
SUBJECT – Application April 27, 2012 – Special Permit (§73-622) for the legalization of an enlargement to a single family residence, contrary to side yard requirement (§23-461). R-5 zoning district.
PREMISES AFFECTED – 2051 East 19th Street, between Avenue U and Avenue T, Block 7324, Lot 64, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for continued hearing.

139-12-BZ
APPLICANT – Gerald J. Caliendo, RA, AIA, PC, for Alvan Bisnoff/Georgetown Realty Corp., owner.
SUBJECT – Application April 30, 2012 – Special Permit (§73-53) to allow the enlargement of an existing non-conforming manufacturing building, contrary to use regulations (§22-00). R5 zoning district.
PREMISES AFFECTED – 34-10 12th Street, southwest corner of 34th Avenue and 12th Street, Block 326, Lot 29, 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 May 14, 2013, at 10 A.M., for decision, hearing closed.

148-12-BZ
APPLICANT – Eric Palatnik, P.C., for Esther Kuessous, owner.
SUBJECT – Application May 8, 2012 – Special Permit (§73-621) for the enlargement of an existing single family semi-detached residence, contrary to floor area, lot coverage and open space (ZR23-141(b)). R4 zoning district.
PREMISES AFFECTED – 981 East 29th Street, between Avenue I and Avenue J, Block 7593, Lot 12, Borough of Brooklyn.
COMMUNITY BOARD #14BK
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for continued hearing.

238-12-BZ
APPLICANT – Harold Weinberg, for Stuart Ditchek, owner.
SUBJECT – Application August 1, 2012 – Special Permit (§73-622) for the enlargement of single family home contrary floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 1713 East 23rd Street, between Quentin Road and Avenue R, Block 6806, Lot 86, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for continued hearing.

242-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Toldos Yehuda*), contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.
PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, Borough of Brooklyn.
COMMUNITY BOARD #12BK
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for deferred decision.

284-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Jack Cayre, owner.
SUBJECT – Application September 25, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) requirements. R2X (OP) zoning district.
PREMISES AFFECTED – 2047 East 3rd Street, eastern side of East 3rd Street, between Avenue S and Avenue T, Block 7106, Lot 122, Borough of Brooklyn.
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for continued hearing.

293-12-BZ
APPLICANT – Eric Palatnik, P.C., for Mr. and Mrs. Angelo Colantuono, owners.
SUBJECT – Application October 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(a)) regulations. R3X zoning district.
PREMISES AFFECTED – 1245 83rd Street, north side of 83rd Street, between 12th Avenue and 13th Avenue, Block 6302, Lot 60, Borough of Brooklyn.
COMMUNITY BOARD #10BK
ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

294-12-BZ
APPLICANT – Eric Palatnik, P.C., for David Katzive, owner; Thomas Anthony, lessee.
SUBJECT – Application October 11, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Everyday Athlete*). C5-2A/DB special zoning district.
Special Permit (§73-36) to allow a physical culture establishment (*Everyday Athlete*). C5-2A/DB special zoning district.
PREMISES AFFECTED – 130 Clinton Street, aka 124 Clinton Street, between Joralemon Street and Aitken Place, Block 264, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #2BK
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for deferred decision.

298-12-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.
SUBJECT – Application October 17, 2012 – Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university use (*New York University*), contrary to use regulations. M1-5B zoning district.
PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4th Street, Block 545, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for deferred decision.

3-13-BZ
APPLICANT – Ellen Hay/Wachtel Masyr Missry LLP, for Greenridge 674 Inc., owner; Fitness International LLC DBA LA Fitness, lessees.
SUBJECT – Application January 11, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*LA Fitness*). C4-1 (SRD) zoning district.
PREMISES AFFECTED – 3231-3251 Richmond Avenue, aka 806 Arthur Kill Road, east side Richmond Avenue between Arthur Kill Road, Getz and Gurley Avenues, Block 5533, Lots 47, 58, 62, 123, Borough of Staten Island.
COMMUNITY BOARD #3SI
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 7, 2013, at 10 A.M., for decision, hearing closed.

4-13-BZ
APPLICANT – Francis R. Angelino, Esq., for 1625 Flatbush, LLC, owner; Global Health Clubs, LLC, owner.
SUBJECT – Application January 11, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*). C8-2 zoning district.
PREMISES AFFECTED – 1623 Flatbush Avenue, East 32nd Street and New York Avenue, Block 7578, Lot 49, 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 May 7, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on March 19, 2013, under Calendar No. 201-10-BZY and printed in Volume 98, Bulletin No. 12, is hereby corrected to read as follows:

201-10-BZY
APPLICANT – Kramer Levin Naftalis & Frankel, for 180 Orchard LLC., owner.
SUBJECT – Application January 18, 2013 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which will expire on March 15, 2013. C4-4A zoning district.
PREMISES AFFECTED – 180 Orchard Street, Orchard Street to Ludlow Street, Block 412, Lot 5, Borough of Manhattan.
COMMUNITY BOARD #3M
ACTION OF THE BOARD – Application granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in *The City Record*, and then to decision on March 19, 2013; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, the subject site is an L-shaped through lot with frontage on Orchard Street and Ludlow Street, between Houston Street and Stanton Street, within a C4-4A zoning district; and

WHEREAS, the subject site has 128'-3" of frontage along Orchard Street, 50'-1" of frontage along Ludlow Street, a depth ranging from 87'-10" to 175'-8", and a total lot area of 41,501 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 24-story building containing approximately 246 hotel rooms, community facility uses, retail stores on the lower levels and an accessory underground parking garage (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of 154,519.6 sq. ft.; and

WHEREAS, the applicant states that the owner will be filing an application with the City Planning Commission ("CPC") requesting a special permit pursuant to ZR § 13-561 to expand the size of the underground accessory parking garage at the site; and

WHEREAS, the applicant represents that the proposed CPC special permit for the garage has no effect on the subject

proposal and that the plans for the garage, as approved by the Department of Buildings ("DOB"), have not changed; and

WHEREAS, the development complies with the former C6-1 zoning district parameters; and

WHEREAS, on November 23, 2005, New Building Permit No. 104297850-01-NB (hereinafter, the "Permit") was issued by the DOB permitting construction of the Building; and

WHEREAS, however, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site from C6-1 to C4-4A; and

WHEREAS, accordingly, the Building does not comply with the current zoning with respect to floor area ratio, building height and street wall location; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the two years subsequent to the Enactment Date, construction was not completed and a certificate of occupancy was not issued; and

WHEREAS, accordingly, an application was filed with the Board for an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 15, 2011, the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy under the subject calendar number; and

WHEREAS, accordingly, the applicant had until March 15, 2013 to complete construction and obtain a certificate of occupancy; and

WHEREAS, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the Board notes that the subject site was initially vested by DOB in 2008, granted an extension of time to complete construction and obtain a certificate of occupancy by the Board in 2011, and now seeks an additional extension under ZR § 11-332; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated February 1, 2011, 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 has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant, and directed the applicant to exclude pre-permit expenditures; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the original permit includes: 100 percent of the excavation, footings and foundation; 100 percent of the underground parking garage and cellar levels; and 100 percent of the first and second floor retail space; and

WHEREAS, the applicant states that work on the proposed development subsequent to the Board's March 15, 2011 extension of time to complete construction under the permit includes: installation of sprinklers in the sub-cellar, ground and second floors; installation of concrete and masonry block in the sub-cellar, cellar and ground floors, construction of columns throughout the cellar and sub-cellar; construction of additional support for columns below grade; installation of a new glass storefront; reconfiguration of elevator and stair cores; and installation of roof protection on the adjacent properties; and

WHEREAS, additionally, the applicant has substantially revised the plans to comply with changes in applicable codes since 2005, including: the 2010 ADA Code; the life safety provisions of the 2008 NYC Construction Codes; and the NYC Energy Conservation Code; and

WHEREAS, in support of these statements, the applicant has submitted the following: a breakdown of the construction costs by line item; plans showing recent foundation, sub-cellar, cellar, ground, mezzanine and second-story work; copies of cancelled checks; invoices; photographs of the site; and court actions taken in furtherance of continuing construction; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is $25,205,136, or 36.5 percent, out of the $69,014,234 cost to complete; and

WHEREAS, further as to costs, the applicant represents of the $25,205,136 expended to date, $6,612,054 has been expended since the Board's March 15, 2011 extension of time to complete construction; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permit, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104297850-01-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 the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 19, 2015.

Adopted by the Board of Standards and Appeals, March 19, 2013.

***The resolution has been amended to correct part of the APPLICANT, clause and to change the filing date of the Application. Corrected in Bulletin Nos. 13-15, Vol. 98, dated April 17, 2013.**

BULLETIN

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102-13-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

MAY 7, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 7, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

30-02-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Trump Park Avenue, LLC, owner; Town Sports International dba New York Sports Club, lessee.
SUBJECT – Application January 28, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment/health club (*New York City Sports Club*) which expired on July 23, 2012; Amendment to permit the modification of approved hours and signage; Waiver of the Rules. C5-3, C5-2.5(Mid) zoning district.
PREMISES AFFECTED – 502 Park Avenue, northwest corner of Park Avenue and East 59th Street, Block 1374, Lot 7502(36), Borough of Manhattan
COMMUNITY BOARD # 8M

328-02-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Park Avenue Building Co., LLP, owner; Town Sports International dba New York Sports Club, lessee.
SUBJECT – Application January 30, 2013 – Extension of Term of a previously granted Special Permit (ZR 73-36) for the continued operation of a Physical Culture Establishment/Health Club (New York Sports Club) which expired on January 1, 2013. C5-3/C1-9 zoning district.
PREMISES AFFECTED – 3 Park Avenue, southeast corner of Park Avenue and East 34th Street, Block 889, Lot 9001, Borough of Manhattan.
COMMUNITY BOARD # 5M

27-05-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owners.
SUBJECT – Application February 4, 2013 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on April 18, 2011; Amendment to permit the legalization of site layout and operational changes; Waiver of the Rules. C2-4/R6 zoning district.
PREMISES AFFECTED – 91-11 Roosevelt Avenue, north side of Roosevelt Avenue between 91st and 92nd Street, Block 1479, Lot 38, Borough of Queens.
COMMUNITY BOARD #3Q

APPEALS CALENDAR

317-12-A
APPLICANT – Eric Palatnik, P.C., for 4040 Management, LLC, owner.
SUBJECT – Application November 29, 2012 –Appeal seeking common law vested rights to continue construction commenced under the prior M1-3D zoning district regulations. M1-2/R5B zoning district.
PREMISES AFFECTED – 40-40 27th Street, between 40th Avenue and 41st Avenue, Block 406, Lot 40, Borough of Queens.
COMMUNITY BOARD #1Q

346-12-A
APPLICANT – Eric Palatnik, P.C., for Woodpoint Gardens, LLC, owners.
SUBJECT – Application December 12, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior R6 zoning district .R6B zoning district.
PREMISES AFFECTED – 179-181 Woodpoint Road, between Jackson Street and Skillman Avenue, Block 2884, Lot 4, Borough of Brooklyn
COMMUNITY BOARD #1BK

60-13-A
APPLICANT – NYC Department of Buildings.
OWNER OF PREMISES -71 Greene LLC, 75 Greene LLC, 370 Clermont LLC and Earle F. Alexander.
SUBJECT – Application February 6, 2013 – Appeal seeking to revoke Certificate of Occupancy Nos. 147007 & 172308 as they were issued in error.
PREMISES AFFECTED – 71 & 75 Greene Avenue, aka 370 & 378 Clermont Avenue, northwest corner of Greene and Clermont Avenues, Block 2121, Lots 44, 41, 36, 39, 105, Borough of Brooklyn.
COMMUNITY BOARD #2BK

CALENDAR

ZONING CALENDAR

113-12-BZ
APPLICANT – Mitchell S. Ross, Esq., for St. Paul CongHa-Sang R.C. Church, owners.
SUBJECT – Application April 23, 2012 – Variance (§72-21) to permit parapet wall to exceed 42", and resulting front wall height and related structure contrary to §24-521 & 24-51. R2A zoning district.
PREMISES AFFECTED – 32-05 Parsons Boulevard, northeast corner of Parsons Boulevard and 32nd Avenue, Block 4789, Lot 14, Borough of Queens.
COMMUNITY BOARD #7Q

206-12-BZ
APPLICANT – George Guttmann, for Dmitriy Kotlarsky, owner.
SUBJECT – Application July 2, 2012– Variance (72-21) to legalize the conversion of the garage into a recreation space totaling the increase of 200 square feet of additional floor area contrary to ZR §23-141. R3-1 zoning district.
PREMISES AFFECTED – 2373 East 70th Street, between Avenue W and Avenue X, Block 8447, Lot 67, Borough of Brooklyn.
COMMUNITY BOARD #18BK

13-13-BZ & 14-13-BZ
APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.
SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow a single family residential building contrary to use regulations §42-00. M1-1 zoning district.
PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, Borough of Brooklyn.
COMMUNITY BOARD #6BK

63-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Cel-Net Holdings, Corp., owner; The Cliffs at Long Island City, LLC, lessee.
SUBJECT – Application February 11, 2013 – Special Permit (§73-36) to permit the operation of rock climbing gymnasium (*The Cliffs*), which is considered a physical culture establishment. M1-4/R7A (LIC) zoning district.
PREMISES AFFECTED – 11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street, Block 447, Lot 13, Borough of Queens.
COMMUNITY BOARD #2Q

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, APRIL 16, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

390-61-BZ
APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.
SUBJECT – Application January 5, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously approved variance permitting UG8 parking garage and an auto rental establishment (UG8) in the cellar level, which expired on December 13, 2012. R8B zoning district.
PREMISES AFFECTED – 148-150 East 33rd Street, southside of E. 33rd Street, 151.9' east of Lexington Avenue, Block 888, Lot 51, 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 Montanez 5
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 previously granted variance for a parking garage which expired on December 13, 2012; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, and then to decision on April 16, 2013; and

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

WHEREAS, the site is located on the south side of East 33rd Street, approximately 151 feet east of Lexington Avenue; and

WHEREAS, the site is located in an R8B zoning district and is occupied with a four-story and cellar structure for use as a parking garage for not more than 149 cars; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 18, 1961, when, under the subject calendar number, the Board granted a variance for the construction of the parking garage 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, on January 29, 2008, the term was extended for an additional ten years, to expire on March 3, 2018; and

WHEREAS, on December 13, 2011, the grant was amended to allow the conversion of the cellar level from a parking garage to an auto rental establishment; and

WHEREAS, one condition of the grant was that a new certificate of occupancy be obtained by December 13, 2012; and

WHEREAS, the applicant states that the work has been performed and inspected, but requests an additional 18 months to obtain the new certificate of occupancy; and

WHEREAS, the applicant confirmed that the roof stackers had been removed; 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 *reopens* and *amends* the resolution, as adopted on July 18, 1961, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for a period of 18 months from the date of this grant, *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT a new certificate of occupancy be obtained by October 16, 2014;

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)/configuration(s) not related to the relief granted."
(N.B. 46-61)

Adopted by the Board of Standards and Appeals, April 16, 2013.

167-95-BZ
APPLICANT – Walter T. Gorman, P.E., for Springfield L. I. Cemetery Society, owners.
SUBJECT – Application September 21, 2012 – Extension of Term of a previously approved variance (§72-21) which permitted the maintenance and repairs of motor-operated cemetery equipment and accessory parking and storage of motor vehicles which expired on February 4, 2012; amendment to reduce the size of the area covered by the variance. R3A zoning district.
PREMISES AFFECTED – 121-20 Springfield Boulevard, west side of Springfield Boulevard, 166/15' south of 121st Avenue, Block 12695, Lot 1, 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 Montanez 5
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 variance to allow the repair and parking of cemetery equipment use to remain, which expired on February 4, 2012, and for an amendment to reduce the size of the site; and

WHEREAS, a public hearing was held on this application on February 5, 2013, after due notice by publication in *The City Record*, with a continued hearing on March 19, 2013, and then to decision on April 16, 2013; and

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

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the site is located on the west side of Springfield Boulevard, south of 121st Avenue, within an R3A zoning district; and

WHEREAS, the site is currently occupied by accessory uses to the Montefiore Cemetery; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 17, 1961 when, under BSA Cal. No. 416-60-BZ, the Board granted a variance to permit in a retail and residence use district, the construction of a one-story building to be used for the repair of motor operated cemetery equipment and a locker room for cemetery employees with the parking and storage of motor vehicles in an area partly within the retail district and partly in the residence district; and

WHEREAS, the grant was subsequently extended and amended at various times; and

WHEREAS, on February 4, 1997, under BSA Cal. No. 167-95-BZ, the Board granted an application to allow for the enlargement of the zoning lot to include Lot 15 and the continued use of Lot 21 and a substantial portion of Lot 1 (the remainder of Lot 1 became Lot 87) for the noted cemetery purposes; the grant was for a term of 15 years, to expire on February 4, 2012; and

WHEREAS, the applicant states that subsequent to the 1997 grant, it realized that its request for enlargement of the variance site was overly ambitious and the circumstances at the cemetery were changing; specifically, the number of visitors was diminishing and no additional parking space was required; and

WHEREAS, accordingly, the applicant seeks to reduce the area covered by the variance by eliminating Lots 15 and 21, and the majority of Lot 1 (tentative Lot 101); and

WHEREAS, the proposed change to the site reflects a reduction in the lot area from 122,219 sq. ft. to 36,602 sq. ft.; and

WHEREAS, the applicant seeks to revert the noted portions of the site to potential future conforming use; and

WHEREAS, the applicant also seeks a ten-year extension of term for the remaining site that still requires the use variance for the maintenance of cemetery vehicles; and

WHEREAS, at hearing, the Board directed the applicant to perform necessary measures to comply with the conditions of the approval including (1) paving the drywell area; (2) replacing or repairing sidewalk flags; and (3) installing fencing at the perimeter of the site; and

WHEREAS, the applicant states that it has cleaned up the site including removing graffiti and fixing signs, and provided a timetable for the remainder of the site work; and

WHEREAS, specifically, the applicant states that the drywell installation and paving, the fence installation, and flag repair and replacement will all be completed within 12 weeks from the date of this grant; and

WHEREAS, at the Board's direction, the applicant also tabulated the floor area and described the uses of the buildings at the site; and

WHEREAS, based upon 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 4, 1997, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from the expiration of the prior grant and to allow amendments as described; *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 7, 2012'-(2) sheets and 'March 25, 2013'-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on February 4, 2022;

THAT the floor area of the buildings on the site will be limited to the existing 7,157 sq. ft.;

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

THAT the conditions above and the conditions from the prior resolutions will be noted on the certificate of occupancy;

THAT compliance with all conditions, namely drywell work and paving, fencing, and flag repair be completed by July 16, 2013;

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. 420616630)

Adopted by the Board of Standards and Appeals, April 16, 2013.

18-02-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 8610 Flatlands Realty, LLC, owner.
SUBJECT – Application August 17, 2012 – Extension of Term (§11-411) of an approved variance for the continued operation of an automotive laundry (UG 16B) which expired on August 13, 2012. C2-3/R5D zoning district.
PREMISES AFFECTED – 8610 Flatlands Avenue, southwest corner of intersection of Flatlands Avenue and 87th Street, Block 8023, Lot 39, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for an extension of term for an automotive laundry, which expired August 13, 2012; and

WHEREAS, a public hearing was held on this application on January 15, 2013, after due notice by publication in *The City Record*, with continued hearings on February 12, 2013 and March 3, 2013, and then to decision on April 16, 2013; 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 18, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of Flatlands Avenue and East 87th Street, within a C2-3 (R5D) zoning district; and

WHEREAS, the site is currently occupied by an automotive laundry; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 19, 1957 when, under BSA Cal. No. 652-54-BZ, the Board granted an application pursuant to § 7e of the 1916 Zoning Resolution to permit in a residence district the change of occupancy from garage and dead storage to garage, storage of roofing materials and sheet metal shop; and

WHEREAS, on September 24, 1957, under BSA Cal. No. 652-54-BZ, the Board granted an application pursuant to §§ 7e, 7f, 7i, and 7h of the 1916 Zoning Resolution to permit in a business and residence district the construction and maintenance of a gasoline service station, lubritorium, minor auto repairs, storage, office and sales, parking, and storage of motor vehicles; on October 31, 1972, the term of the 1957 grant was extended for ten years; and

WHEREAS, on August 13, 2002, under the current calendar number (BSA Cal. No. 18-02-BZ), the Board granted an application to permit the change from gasoline service station, lubritorium and automotive repair facility to automotive laundry; the term of this grant was for ten years; and

WHEREAS, on August 13, 2012, the grant expired; and

WHEREAS, the applicant now seeks to extend the term; and

WHEREAS, at hearing, the Board directed the applicant to restore landscaping to the site, properly stripe the parking lot, and remove signage (banners) that did not comply with the Zoning Resolution; and

WHEREAS, in response, the applicant submitted photographs demonstrating compliance with the Board's directions; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated August 13, 2002, so that as amended this portion of the resolution shall read: "to extend the term for a period of 10 years from the date of this grant; *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 17, 2012'- (1) sheet and 'March 15, 2013'- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on August 13, 2022;

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 the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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. 301230004)

Adopted by the Board of Standards and Appeals, April 16, 2013.

551-37-BZ
APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.
SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of approved variance for the continued operation of an automobile repair shop (*Red's Auto Repair*) which expired on July 15, 2012; Waiver of the Rules. R1-2 zoning district.
PREMISES AFFECTED – 233-02 Northern Boulevard, between 234th and 233rd Street, Block 8166, Lot 20, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for adjourned hearing.

135-46-BZ
APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.
SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment (§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.
PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8555, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #18BK
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for adjourned hearing.

11-80-BZ
APPLICANT – Richard Bass, Herrick, Feinstein, LLP, for West 28th Street Owners LLC.
SUBJECT – Application January 10, 2013 – Amendment of previously approved variance (§72-21) which allowed conversion of the third through seventh floor from commercial to residential use. Amendment would permit the additional conversion of the second floor from commercial to residential use. M1-6 zoning district.
PREMISES AFFECTED – 146 West 28th Street, south side of West 28th Street, between 6th and 7th Avenues, Block 803, Lot 65, 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 May 7, 2013, at 10 A.M., for decision, hearing closed.

130-88-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application August 13, 2012 – Extension of Term of approved Special Permit (§73-211) for the continued operation of UG 16B gasoline service station (*Gulf*) which expired on January 24, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on October 12, 2003; Waiver of the Rules. C2-2/R4 zoning district.
PREMISES AFFECTED – 1007 Brooklyn Avenue, aka 3602 Snyder Avenue, southeast corner of the intersection formed by Snyder and Brooklyn Avenues, Block 4907, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #17BK
ACTION OF THE BOARD – Laid over to May 7, 2013, at 10 A.M., for adjourned hearing.

326-02-BZ
APPLICANT – Sheldon Lobel, P.C., for 2230 Church Avenue Realty, LLC, owner; 2228 Church Avenue Fitness Group, LLC, lessee.
SUBJECT – Application November 27, 2012 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of physical culture establishment (*Planet Fitness*) which expires on November 5, 2013; Amendment to allow the extension of use to the building's first floor, and change in ownership. C4-4A zoning district.
PREMISES AFFECTED – 2228-2238 Church Avenue, south side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot 36, 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 May 14, 2013, at 10 A.M., for decision, hearing closed.

341-02-BZ
APPLICANT – Sheldon Lobel, P.C., for 231 East 58th Street Associates LLC, owners.
SUBJECT – Application January 25, 2013 – Extension of Term of a previously approved Variance (§72-21) for the continued UG6 retail use on the first floor of a five-story building, which expired on April 8, 2013. R-8B zoning district.
PREMISES AFFECTED – 231 East 58th Street, northwest corner of the intersection of Second Avenue and East 58th Street, Block 1332, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #6M
ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

150-04-BZ
APPLICANT – Sheldon Lobel, P.C., for Shun K. and Oi-yee Fung, owners.
SUBJECT – Application January 25, 2013 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to build a new four-story residential building with a retail store and one-car garage, which expired on March 29, 2009; Waiver of the Rules. C6-2G LI (*Special Little Italy*) zoning district.
PREMISES AFFECTED – 129 Elizabeth Street, west side of Elizabeth Street between Broome and Grand Street, Block 470, Lot 17, 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 May 14, 2013, at 10 A.M., for decision, hearing closed.

55-06-BZ

APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.

SUBJECT – Application March 7, 2013 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a three-story with cellar, office building (UG 6B), which expired on January 23, 2011; Waiver of the Rules. C1-1(NA-1) zoning district.

PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot 92, 93, 94, 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 May 14, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

310-12-A

APPLICANT – Mitchell A. Korbey, Esq./Herrick, Feinstein, for 141 East 88th Street LLC, owners.

SUBJECT – Application December 12, 2012 – Appeal to the Multiple Dwelling Law section 310(2)(a) to permit the reclassification of a partially occupied residential building, a rehabilitation and a rooftop addition. C1-8X zoning district.

PREMISES AFFECTED – 141 East 88th Street, south-east corner of East 88th Street and Lexington Avenue, Block 1517, Lot 20, 50, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 7, 2013, acting on Department of Buildings Application No. 121094289 reads, in pertinent part:

1) The existing building does not comply with MDL 26.5 which requires that every window shall open onto either:
   1- a lawful inner or outer court; [or]
   2- a side yard or rear yard with a depth of 30 feet in one direction. [MDL 26.5]
2) The existing courts do not comply with minimal dimensional requirements of MDL 26.7. [MDL 26.7]
3) The existing building does not comply with MDL 102.1 which requires that entrances to fire stairs be at least 15 feet apart. The entrances to the available stairs in the north portion of the building are less than 15 feet apart. [MDL 102.1]
4) The existing building does not comply with MDL 103.5 which prohibits egress from any dwelling unit from opening into any stair except through a vestibule or public hall. [MDL 103.5]
5) The proposed enlargement that increases the height to a height greater than 125 feet does not comply with MDL 102.2. [MDL 102.2]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310, to vary the noted sections of the MDL in order to allow for the proposed renovation, enlargement of existing penthouses to create a 12th story, and construction of a partial 13th level (new penthouse), contrary to MDL §§ 26.5, 26.7, 102.1, 103.5, and 102.2; and

WHEREAS, a public hearing was held on this application on March 12, 2013, after due notice by publication in *The City Record*, and then to decision on April 16, 2013; 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 subject site is located on the east side of Lexington Avenue for the entire block between East 88th Street and East 89th Street, within a C1-8X zoning district; and

WHEREAS, the site has 201.42 feet of frontage on Lexington Avenue, 100 feet of frontage on East 88th Street, 91.58 feet of frontage on East 89th Street, and a total lot area of 19,294 sq. ft.; and

WHEREAS, the site is occupied by an 11-story fireproof New Law Tenement building, with retail space on the first story and a total of 96 dwelling units on the second story and above; the building has 167,297 sq. ft. of existing floor area (FAR 8.67) and a building height of 113.73 feet; the applicant notes that the subject building was constructed between 1928 and 1929 in two stages, resulting in a north section and a south section sharing a common lobby but having separate elevator banks, public stairs and Certificates of Occupancy; and

WHEREAS, the applicant proposes to: (1) enlarge the existing penthouses to create a 12th story, and create two new penthouses at the 13th level, which will increase the floor area from 167,297 sq. ft. of existing floor area (FAR 8.67) to 172,347 sq. ft. (FAR 8.93) and the building height from 113.73 feet to 137.14 feet; (2) reduce the number of dwelling units from 96 to 76; and (3) combine the existing building

sections and obtain one Certificate of Occupancy for the entire building; and

WHEREAS, in addition, the applicant proposes to install new elevators, extend elevator service to the 12th story, install new sprinkler systems for the accessory residential spaces in the basement and the newly constructed areas on the 12th story and penthouses, enclose an existing open stairwell in the south portion of the building with a three-hour fire-rated partition and fireproof, self-closing doors, upgrade electric and HVAC services, and construct new common areas, including a roof terrace, club room, exercise room and children's play room; and

WHEREAS, the applicant notes that MDL § 211 prohibits the construction of a New Law Tenement beyond a height equal to one-and-one-half times the width of the street on which it fronts; and

WHEREAS, accordingly, the applicant states that the subject building would be limited not by the Zoning Resolution but by MDL § 211, to a maximum height of 112.5 feet, because Lexington Avenue measures 75 feet in width; and

WHEREAS, the applicant states that in order to accomplish the proposed height increase without triggering the height limitations per the MDL, it was necessary to reclassify the building from New Law Tenement to Hereafter Erected Class A Multiple Dwelling ("HAEA"), in accordance with DOB review; and

WHEREAS, the applicant states that as an HAEA, the maximum permitted height of the building is determined not by the MDL but by the applicable provisions of the Zoning Resolution; and

WHEREAS, the applicant states that the proposed enlargement is in compliance with the applicable provisions of the Zoning Resolution; however, as an HAEA, DOB determined that the building does not comply with MDL §§ 26.5, 26.7, 102.1, 103.5, and 102.2; thus, the proposed enlargement is not permitted unless the building is brought into compliance with these provisions or compliance is waived by the Board; and

WHEREAS, MDL § 26.5 requires that every required window open into either: (1) a lawful inner or outer court; or (2) a side or rear yard with a minimum width or depth of 30 feet in one direction; and

WHEREAS, MDL § 26.7 requires that an inner court have a minimum width of four inches per foot for each foot of height of such court, but in no event less than 15 feet in width at any point, and that the area of such inner court be twice the square of the width of the court dimension based on the height of such court, but in no event less than 350 square feet in area; however, the area of such court need not exceed 1,200 square feet provided that the minimum horizontal distance between any required window of a living room opening on an inner court is not less than 30 feet from any wall opposite such window; and

WHEREAS, MDL § 102.1 requires that entrances to fire-stairs be at least 15 feet distant from each other and from the entrance to every other fire-stair or fire-tower, except that the distance between two such entrances may be less if they are on opposite sides of an elevator vestibule or other public hall or are separated by an elevator shaft; and

WHEREAS, MDL § 103.5 requires that no means of egress from any apartment open into any stair, fire-stair or fire-tower required under the provisions of this section except through a vestibule or public hall; and

WHEREAS, MDL § 102.2 requires that, in a dwelling exceeding 125 feet in height, every required fire-stair be at least 3'-8" in clear width from the entrance story up to a floor level not more than 100 feet below the ceiling of the highest story, that above such level every fire-stair be at least 3'-0" in clear width, and that every stair landing at every floor level be at least 3'-8" in clear width in every direction; and

WHEREAS, because the applicant sought to reclassify the subject building as an HAEA, the DOB determined that it is subject to all provisions relating to an HAEA and, as such, fails to comply with the requirements of MDL §§ 26.5, 26.7, 102.1, 103.5, and 102.2; 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 between 1928 and 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) – required open spaces, 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 complying with the requirement for every required window to open into either a lawful inner or outer court or a side or rear yard with a minimum width or depth of 30 feet in one direction under MDL §§ 26.5 and 26.7 is impractical and logistically and structurally difficult; and

WHEREAS, the applicant states that the existing courts have the following dimensions: a center court with a width of 17'-2" and an area of 952.2 sq. ft.; a north court with a width of 17'-0" and an area of 518.4 sq. ft.; and a south court with a width of 17'-0" and an area of 580 sq. ft.; and

WHEREAS, the applicant represents that in order to comply with MDL §§ 26.5 and 26.7, the north and south courts would have to be eliminated and the center court would have to be expanded to a minimum of 34 feet wide and 2,312 sq. ft. in area; and

WHEREAS, the applicant states that where existing dwelling units have required windows opening upon the north and south courts, such units would have to be eliminated entirely or reconfigured to obtain the required light and ventilation from other windows; and

WHEREAS, the applicant states that where existing dwelling units are adjacent to the center court, such units would also have to be reconfigured; and

WHEREAS, the applicant represents that providing courts in compliance with MDL §§ 26.5 and 26.7 would require a substantial reconfiguration of at least 53 apartments at the rear of the subject building at all floor levels from the ground to the main roof; and

WHEREAS, further, the applicant states that providing courts in compliance with MDL §§ 26.5 and 26.7 would be so extensive structurally as to be effectively the same as constructing a new building; the applicant also notes that, because the building is occupied, virtually no portion of the court work could be done without relocating the existing tenants, at considerable expense; and

WHEREAS, the applicant represents that modifying the existing 11'-2" wide north fire stair to provide the required 15'-0" separation under MDL § 102.1 is impossible to satisfy without removing significant additional area from apartments in the north section of the subject building (to allow for the relocation of Stair E), and simultaneous reconfiguration of the "H"-line apartments on all stories; and

WHEREAS, the applicant further represents that, because the building is occupied, virtually no portion of the work necessary to create the required 15'-0" separation could be done without relocating the existing tenants, at considerable expense; and

WHEREAS, the applicant states that creating a vestibule or public hall to satisfy the requirements of MDL § 103.5 would necessitate the sealing or removal of five existing door openings upon stairs on every story; and

WHEREAS, the applicant represents that, because the building is occupied, the sealing and/or removal of doors on every floor would be significantly disruptive to the tenants; and

WHEREAS, finally, the applicant states that the required widening of stairs pursuant to MDL § 102.2 would necessitate the widening of existing 3'-3" wide stairs on the first through fourth stories by five inches and the widening of all existing 3'-3" wide stair landings by five inches; and

WHEREAS, the applicant represents that the stair widening work would reduce the rentable space on the affected stories, be enormously disruptive to the tenants, and, in the case of three of five stair systems, require structural modification due to the location of existing columns and mechanical shafts (resulting in some kind of adverse effect on every unit in the subject building); and

WHEREAS, the applicant also submitted a cost analysis from a real estate appraiser estimating that the cost of the fully-MDL compliant scenario for the subject building is $63,342,127, including the cost of relocating tenants; and

WHEREAS, the applicant represents that because the proposed enlargement is not permitted due to the window, court and stairway non-compliances, 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 that the zoning district allows an addition of approximately 10,000 sq. ft. of floor area to the subject lot; and

WHEREAS, based on the above discussion of the hardship, 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 §§ 26.5, 26.7, 102.1, 103.5, and 102.2 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 a building completed in 1929; 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, the applicant states that the objections cited by DOB are all existing conditions in a legally occupied building, and the proposal to convert the existing tenement to an HAEA and increase the height to accommodate a new penthouse level 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 number of dwelling units—and hence, the occupant load upon the stairs for the building as a whole—is being reduced from 96 to 76, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; the applicant also notes that the subject building is unlike most tenements constructed at the time, in that it is of fireproof construction, has elevators, and provides significantly more light and ventilation and larger courts than most New Law Tenements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the enclosure of an existing open stairwell in the southern portion of the subject building, (2) construction of a three-hour fire-rated partition in the same stairwell, including the installation of fireproof, self-closing doors; and (3) a new sprinkler system for the accessory residential spaces in the cellar; 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, based on the above, the Board finds that the proposed variance to the requirements of MDL §§ 26.5, 26.7, 102.1, 103.5, and 102.2 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 the requirements of MDL §§ 26.5, 26.7, 102.1, 103.5, and 102.2 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated February 7, 2013, is 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 April 15, 2013"- sixteen (16) 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 existing open staircase in the southern portion of the subject building is enclosed, provided with a three-hour fire-rated partition, and provided with fireproof, self-closing doors;

THAT a new sprinkler system is installed in the accessory residential spaces in the cellar and in the enlarged portions of the buildings;

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

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

Adopted by the Board of Standards and Appeals, April 16, 2013.

493-73-A

APPLICANT – Sheldon Lobel, P.C., for 83rd Street Associates LLC, owner.

SUBJECT – Application October 4, 2012 – Extension of Term of an approved appeal to Multiple Dwelling Law Section 310 to permit a superintendent's apartment in the cellar, which expired on March 20, 2004, an amendment to eliminate the term, an extension of time to obtain a Certificate of Occupancy, and a waiver of the Rules. R10A /R8B Zoning District.

PREMISES AFFECTED – 328 West 83rd Street, West 83rd Street, approx. 81'-6" east of Riverside Drive, Block 1245, Lot 40, 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 May 14, 2013, at 10 A.M., for decision, hearing closed.

267-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for Robert McGivney, owner.

SUBJECT – Application September 5, 2012 – Appeal from Department of Buildings' determination that the sign is not entitled to continued non-conforming use status as an advertising sign. M1-2 & R6A zoning district.

PREMISES AFFECTED – 691 East 133rd Street, northeast corner of Cypress Avenue and East 133rd Street, Block 2562, Lot 94, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

79-13-A

APPLICANT – Law Offices of Howard B. Hornstein, for 813 Park Avenue holdings, LLC, owner.

SUBJECT – Application February 27, 2013 – Appeal from Department of Buildings' determination regarding the status of a zoning lot and reliance on the Certificate of Occupancy's recognition of the zoning lot. R10(Pl) zoning district.

PREMISES AFFECTED – 807 Park Avenue, East side of Park Avenue, 77.17' south of intersection with East 75th Street, Block 1409, Lot 72, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

313-12-BZ
CEQR #13-BSA-055K
APPLICANT – Troutman Sanders LLP, for Flatbush Delaware Holding LLC, owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application November 20, 2012 – Special permit (§73-36) to allow the continued operation of the existing physical culture establishment (*Bally's Total Fitness*). C4-2/C4-4A zoning district.
PREMISES AFFECTED – 1009 Flatbush Avenue, block bounded by Flatbush Avenue, Albermarle Road, Bedford Avenue and Tilden Avenue, Block 5126, Lot 1, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 8, 2013, acting on Department of Buildings Application No. 320693905, reads in pertinent part:

> The existing physical culture establishment (PCE) expired on September 14, 2009. Consequently, seek and obtain from the NYC Board of Standards and Appeals a new special permit, pursuant to Section 73-36 of the Zoning Resolution of the City of New York, to permit the continuation of the existing PCE at this site; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially located in a C4-2 zoning district and partially located in a C4-4A, the operation of a physical culture establishment ("PCE") on the first story, mezzanine, cellar and lower cellar of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 5, 2013, after due notice by publication in *The City Record*, and then to decision on April 16, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

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

WHEREAS, the subject site is located on the southeast corner of the intersection of Flatbush Avenue and Tilden Avenue; and

WHEREAS, the site has 63 feet of frontage on Flatbush Avenue, 491.61 feet of frontage on Tilden Avenue, and a total lot area of 107,142 sq. ft.; and

WHEREAS, the site is occupied by a one-story commercial building with a mezzanine, a cellar and a sub-cellar and approximately 141,599 sq. ft. of floor area; and

WHEREAS, on September 14, 1999, the Board granted a special permit for the operation of a PCE at the subject site under BSA Cal. No. 48-99-BZ; this grant was for a term of ten years, and authorized the PCE to occupy 7,776 sq. ft. of floor area on the first story, 13,112 sq. ft. of floor space on the cellar level, 5,376 sq. ft. of floor area on the mezzanine level, and 4,704 sq. ft. of floor space on the lower cellar level, for a total of 30,968 sq. ft. of combined floor area and floor space; and

WHEREAS, on September 14, 2009, the prior grant expired; and

WHEREAS, accordingly, the applicant seeks a new special permit for the PCE;

WHEREAS, the applicant proposes certain changes which will result in 8,365 sq. ft. of floor area on the first story, 14,800 sq. ft. of floor space on the cellar level, 6,047 sq. ft. of floor area on the mezzanine level, and 6,464 sq. ft. of floor space on the lower cellar level, for a total of 35,676 sq. ft. of combined floor area and floor space; and

WHEREAS, the PCE will continue to be operated as Bally's; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be Monday through Thursday, from 6:00 a.m. to 11:00 p.m., Friday, from 6:00 a.m. to 10:00 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, 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA055K, dated August

16, 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 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 partially located in a C4-2 zoning district and partially located in a C4-4A, the operation of a physical culture establishment ("PCE") in the first story, mezzanine, cellar and lower 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 February 8, 2013" – Five (5) sheets and *on further condition*:

THAT the term of this grant will expire on April 16, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, April 16, 2013.

314-12-BZ
CEQR #13-BSA-056M
APPLICANT – Troutman Sanders LLP, for New York Communications Center Associates, L.P. c/o George Comfort & Sons Inc., owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application November 20, 2012 – Special permit (§73-36) to allow the continued operation of the existing physical culture establishment (*Bally's Total Fitness*). C6-4 (CL) zoning district.
PREMISES AFFECTED – 350 West 50th Street, block bounded by West 49th Street, Ninth Avenue, West 50th Street and Eighth Avenue, Block 1040, Lot p/1 Condo Lot 1003, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 31, 2013, acting on Department of Buildings Application No. 121474984, reads in pertinent part:

> Continued use as a physical culture establishment beyond the . . . expiration of the special permit granted by the Board of Standards and Appeals . . . requires a renewal of the existing permit or the issuance of a new special permit . . . pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-4 zoning district within the Special Clinton District, the operation of a physical culture establishment ("PCE") on the ground floor and sub-cellars two and three of a 41-story residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 5, 2013, after due notice by publication in *The City Record*, and then to decision on April 16, 2013; and

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

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a 41-story residential and commercial building located within the World Wide Plaza development, which consists of 14 high- and low-rise residential and commercial buildings occupying the entire

block bounded by West 49th Street, Ninth Avenue, West 50th Street and Eighth Avenue; and

WHEREAS, the entire development contains approximately 626,494 sq. ft. of floor area; and

WHEREAS, on January 10, 1989, the Board granted a special permit for the operation of a PCE at the subject site under BSA Cal. No. 421-88-BZ; this grant was for a term of ten years, and authorized the construction of a PCE on sub-cellar levels two and three of the building; and

WHEREAS, on January 10, 1999, the prior grant expired; and

WHEREAS, accordingly, the applicant seeks a new special permit for the PCE; and

WHEREAS, the PCE occupies a total of 35,676 sq. ft. of floor space and is located on the ground floor and sub-cellars two and three; and

WHEREAS, the PCE will be operated as Bally's; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement, including a swimming pool; and

WHEREAS, the hours of operation for the PCE will be Monday through 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.; 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA056M, dated August 16, 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 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 C6-4 zoning district within the Special Clinton District, the operation of a physical culture establishment ("PCE") on the ground floor and sub-cellars two and three of a 41-story residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 8, 2013" – Five (5) sheets and *on further condition*:

THAT the term of this grant will expire on April 16, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, April 16, 2013.

316-12-BZ
CEQR #13-BSA-058Q
APPLICANT – Eric Palatnik, P.C. for Prince Plaza LLC, owner; L'Essence de Vie LLC d/b/a Orient Retreat, lessee.
SUBJECT – Application November 21, 2012 – Special Permit (§73-36) to allow a proposed physical culture establishment (*Orient Retreat*). C4-2 zoning district.
PREMISES AFFECTED – 37-20 Prince Street, west side of Prince Street between 37th Avenue and 39th Avenue, Block 4972, Lot 43, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 25, 2012, acting on Department of Buildings Application No. 420598062, reads in pertinent part:

> Proposed Physical Culture Establishment required to obtain special permit at BSA under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-2 zoning district, the operation of a physical culture establishment ("PCE") on the third story of a 15-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 12, 2013, after due notice by publication in *The City Record*, and then to decision on April 16, 2013; and

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

WHEREAS, the subject site is located on the west side of Prince Street, between 37th Avenue and 39th Avenue; and

WHEREAS, the site has 142.68 feet of frontage on Prince Street, and a total lot area of 22,453 sq. ft.; and

WHEREAS, the site is occupied by a 14-story mixed residential and commercial building with 107,266 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy 6,563.20 sq. ft. of floor area on the third story; and

WHEREAS, the PCE will be operated as Orient Retreat; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; the PCE will specialize in therapeutic massage and body treatments; and

WHEREAS, the hours of operation for the proposed PCE will be Monday through Sunday, from 10:00 a.m. to 8:00 p.m.; 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA058Q, dated November 21, 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 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 C4-2 zoning district, the operation of a physical culture establishment ("PCE") on the third story of a 15-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 February 26, 2013" – Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on April 16, 2023;

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 all massages must be performed by New York State licensed massage therapists;

THAT the hours of operation will be Monday through Sunday, from 10:00 a.m. to 8:00 p.m.;

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

Adopted by the Board of Standards and Appeals, April 16, 2013.

341-12-BZ
CEQR #13-BSA-069X

APPLICANT – Sheldon Lobel, P.C., for 403 Concord Avenue, Inc., owner.

SUBJECT – Application December 17, 2012 – Special Permit (§73-19) to permit a Use Group 3 school to occupy an existing building, contrary to use regulations (§42-00).

M1-2 zoning district.

PREMISES AFFECTED – 403 Concord Avenue, southwest corner of the intersection formed by Concord Avenue and East 144th Street, Block 2573, Lot 87, Borough of Bronx.

COMMUNITY BOARD #1BX

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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated December 10, 2012, acting on Department of Buildings Application No. 220139918, reads in pertinent part:

Schools not permitted in M1 district. Provide special permit from Board of Standards and Appeals per Article VII, Chapter 3 prior to approval of this application; 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 conversion of an existing three-story manufacturing building to a Use Group 3 school, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on March 5, 2013, after due notice by publication in the *City Record*, and then to decision on April 16, 2013; 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 1, Bronx, recommends approval of this application; and

WHEREAS, the application is brought by the applicant on behalf of the Heketi Community Charter School (the "School"), a not-for-profit school; and

WHEREAS, the site is located on a corner lot bounded by East 144th Street to the north, and Concord Avenue to the east, in an M1-2 zoning district within the Port Morris Industrial Business Zone; and

WHEREAS, the site has a lot area of 10,000 sq. ft. and 100 feet of frontage on both East 144th Street and Concord Avenue; and

WHEREAS, the site is currently occupied by a three-story commercial and light manufacturing building with 28,551 sq. ft. of floor area (2.85 FAR); the first story is occupied by an electronic component distribution company and the second and third stories are vacant and were recently occupied by a woodworking company; and

WHEREAS, the applicant proposes to renovate all three stories of the existing building to allow a Use Group 3 school with 28,551 sq. ft. of floor area (2.85 FAR); 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 states that the renovated building will serve an estimated 150 kindergarten and first grade students and approximately 13 employees in the School's inaugural year (2013-2014), with the intention of reaching full capacity by the 2016-2017 school year, at which point the School anticipates having approximately 305 students in kindergarten through fifth grade (depending on attrition) and approximately 30 employees; and

WHEREAS, the applicant states that the School's program requires a building with approximately 100 sq. ft. of space per student, and that the subject building is an ideal size (28,500 sq. ft.) and number of stories (three) to accommodate

the School's target size of approximately 300 students; and

WHEREAS, the applicant states that School's program includes an extended day and extended year program with data-driven instruction, a focus on literacy and support for English language learners, and heavy investment in social and emotional support for students and families; the applicant notes that the mission of the School is to prepare its students for New York City's most competitive high schools; and

WHEREAS, the applicant states that based on its program, the School requires 12 classrooms, four small group rooms, a performing arts room, a 3,500 sq. ft. multipurpose room, and administrative offices and bathrooms throughout the building; and

WHEREAS, the applicant represents that it conducted a 20-month search within Community School District 7 in the Mott Haven section of the South Bronx with the following site criteria: (1) the presence of a usable existing structure to minimize costs; (2) a minimum 10,000 sq. ft. footprint for efficient classroom layouts; (3) a minimum of 30,000 sq. ft. of floor area; and (4) proximity to recreation (parks, playgrounds, and athletic facilities) and transportation; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of four buildings within Community School District 7: 300 East 140th Street; 3118 Third Avenue; 521 Bergen Avenue; and 3144 Third Avenue, all four of which, the applicant notes, are on lots where Use Group 3 is permitted as-of-right; and

WHEREAS, the applicant represents that each building was unsuitable for the School, in that: the landlord for 300 East 140th Street would only entertain a short-term lease; 3118 Third Avenue, a vacant lot with ample space, required new construction, which the School cannot afford; 521 Bergen Avenue required extensive work (installation of egress stairs, elevators and new mechanical, plumbing, electrical, and fire protection systems, and a new roof) that could not be completed with the School's timeline for occupancy; and 3144 Third Avenue lacked the desired footprint (it is only 6,000 sq. ft.), required significant renovations, and is located eight blocks from the subway, which is not ideal for student access; 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 from an R7-1 zoning district, less than 100 feet to the north, 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 between 65 and 70 dB(A), which is identified in the CEQR Technical Manual as marginally acceptable; therefore, the installation of sound-attenuating exterior wall and window construction is not required; and

WHEREAS, the applicant represents that the addition of floors, drop ceilings, furniture, window shades, and other interior renovations will further satisfy the requirement for a suitably quiet interior; 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 states that based on its consultant's transportation analysis, 60 percent of the School's students will walk to school, 5 percent will take the subway or city bus, 30 percent will take the school bus and 5 percent will be dropped off by private automobile during peak hours; the School's faculty and staff are excepted to arrive by either subway, city bus or private auto; and

WHEREAS, the applicant also states that the transportation analysis indicated that traffic volumes on East 144th Street and Concord Avenue are "very low," and that the intersection of these streets is controlled by stop signs; the analysis also indicated that a crosswalk is marked across Concord 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 March 27, 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, as to the site being within an Industrial Business Zone ("IBZ"), the applicant states that the proposed development will not negatively impact surrounding industrial uses or frustrate the policy goals of the IBZ; specifically, the School plans to maintain the existing manufacturing building envelope and perform interior renovations and minor façade work; as such, the building could fairly easily be returned to industrial use should the School decide to leave; the applicant further states that several industrial and manufacturing uses in the vicinity have submitted memoranda in support of the proposed school, including Miller Druck Specialty Construction, Inc. (located at 383 Concord Avenue) and I Move Green, LLC (located at 370 Concord Avenue); and

WHEREAS, the applicant notes that although the site is zoned M1-2, the surrounding area is primarily mixed-use, consisting of one- and two-family residences with limited local commercial and light manufacturing uses; that St. Mary's Park (which the School hopes to utilize) is located to the immediate west of the site; that other uses in the area include wholesale distribution and light fabrication uses, as well as two high schools (Samuel Gompers High School and Bronx School for Career Development) just one block north of the site; 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. 13BSA069X, dated April 10, 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 April 2013 site-specific 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 requested that at the completion of the proposed renovation work additional air sampling be required, and that an Investigative Protocol summarizing the proposed sampling activities should be submitted to DEP for review and approval; and

WHEREAS, DEP reviewed the applicant's February 2013 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, DEP reviewed the applicant's noise assessment and determined that the proposed project is not anticipated to result in significant noise 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; 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 proposed operation of a Use Group 3 school, on a site within an M1-2 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 April 11, 2013" – eleven (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 be limited to 28,551 sq. ft. of floor area (2.85 FAR);

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

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;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

Resolution, the 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 16, 2013.

135-11-BZ/136-11-A
APPLICANT – Eric Palatnik, P.C., for Block 3162 Land LLC, owner.
SUBJECT – Application September 7, 2011 – Variance (§72-21) to allow for the construction of a commercial use (UG6), contrary to use regulations (§22-00).
Proposed construction is also located within a mapped but not built portion of a street (Clove Road and Sheridan Avenue), contrary to General City Law Section 35. R3-2 zoning district.
PREMISES AFFECTED – 2080 Clove Road, southwest corner of Clove Road and Giles Place, Block 3162, Lot 22, Borough of Staten Island.
COMMUNITY BOARD #2 SI
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 11, 2013, at 10 A.M., for decision, hearing closed.

56-12-BZ
APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.
SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.
PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, 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 May 14, 2013, at 10 A.M., for decision, hearing closed.

59-12-BZ/60-12-A
APPLICANT – Mitchell S. Ross, Esq., for Ian Schindler, owner.
SUBJECT – Application March 15, 2012 – Variance (§72-21) to allow the enlargement of an existing home, contrary to front yard (§23-45) regulations.
Proposed construction is also located within a mapped but unbuilt portion of a street, contrary to General City Law Section 35. R1-2 zoning district.
PREMISES AFFECTED – 240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue, Block 8103, Lot 25, 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 May 21, 2013, at 10 A.M., for decision, hearing closed.

195-12-BZ
APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.
SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.
PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.
COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for adjourned hearing.

250-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Carla Zeitouny and Raymond Zeitouny, owners.
SUBJECT – Application August 13, 2012 – 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); less than the required rear yard (§23-47) and perimeter wall height (§23-631). R3-2 zoning district.
PREMISES AFFECTED – 2410 Avenue S, south side of Avenue S, between East 24th and Bedford Avenue, Block 7303, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

321-12-BZ
APPLICANT – Dennis D. Dell'Angelo, for Jay Lessler, owner.
SUBJECT – Application December 6, 2012 – 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 (§23-141); perimeter wall height (§23-631) and rear yard (§23-47) regulations R3-1 zoning district.
PREMISES AFFECTED – 22 Girard Street, west side of Girard Street, 149.63' south of Shore Boulevard, Block 8745, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

324-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Taxiarnis Davanelos, Georgia Davanelos, Andy Mastoros, owners.
SUBJECT – Application December 7, 2012 – Special permit (§73-622) for the enlargement of an existing single family home, contrary to floor area regulations (23-141(b)). R3-1 zoning district.
PREMISES AFFECTED – 45 76th Street, north side of 76th Street between Narrows Avenue and Colonial Road, Block 5937, Lot 69, Borough of Brooklyn.
COMMUNITY BOARD #10BK
ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

325-12-BZ
APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Royal Charter Properties, Inc., for New York Presbyterian Hospital, owner.
SUBJECT – Application December 10, 2012 – Variance (§72-21) to permit a new Use Group 4 maternity hospital and ambulatory diagnostic or treatment health care facility (*New York Presbyterian Hospital*), contrary to modification of height and setback, lot coverage, rear yard, floor area and parking. R10/R9/R8 zoning districts.
PREMISES AFFECTED – 1273-1285 York Avenue, west side of York Avenue bounded by East 68th and 69th Streets, Block 1463, Lot 21, 31, Borough of Manhattan.
COMMUNITY BOARD #8M
ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for deferred decision.

9-13-BZ
APPLICANT – Slater & Beckerman PC, for Alamo Drafthouse Cinemas, owners.
SUBJECT – Application January 18, 2013 – Special Permit (§73-201) to allow a Use Group 8 motion picture theater (*Alamo Drafthouse Cinema*), contrary to use regulations (§32-17). R9A/C1-5 zoning district.
PREMISES AFFECTED – 2626-2628 Broadway, east side of Broadway between West 99th Street and West 100th Streets, Block 1871, Lot 22 and 44, 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 May 14, 2013, at 10 A.M., for decision, hearing closed.

12-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Rosette Zeitoune and David Zeitoune, owners.
SUBJECT – Application January 22, 2013 – Special Permit (§73-622) for the enlargement of a single family home, contrary to side yards (§23-461) and rear yard (§23-47) regulations. R5/Ocean Parkway Special zoning district.
PREMISES AFFECTED – 2057 Ocean Parkway, east side of Ocean Parkway between Avenue T and Avenue U, Block 7109, Lot 66, 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 May 14, 2013, at 10 A.M., for decision, hearing closed.

52-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for LF Greenwich LLC c/o Centaur Properties LLC., owner; SoulCycle 609 Greenwich Street, LLC, lessee.
SUBJECT – Application January 31, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*) within a portion of an existing building. M1-5 zoning district.
PREMISES AFFECTED – 126 Leroy Street, southeast corner of intersection of Leroy Street and Greenwich Street, Block 601, Lot 47, 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 May 14, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on March 19, 2013, under Calendar No. 110-10-BZY and printed in Volume 98, Bulletin No. 12, is hereby corrected to read as follows:

110-10-BZY

APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities LLC, owner.

SUBJECT – Application November 19, 2012 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which expired on October 19, 2012. R5A zoning district.

PREMISES AFFECTED – 123 Beach 93rd Street, western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot 11, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in *The City Record*, and then to decision on March 19, 2013; and

WHEREAS, the site was inspected by Commissioner Hinkson; and

WHEREAS, the subject site is located on the west side of Beach 93rd Street, approximately 211 feet south of Holland Avenue in Rockaway Beach, in an R5A zoning district; and

WHEREAS, the site has 175 feet of frontage along Beach 93rd Street, 167.13 feet of frontage along Beach 94th Street, 107.51 feet of frontage along Shore Front Boulevard (CrossBay Boulevard), and a total lot area of 18,488 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story residential building with 57 dwelling units and 36 accessory parking spaces (the "Building"); and

WHEREAS, the Building complies with the parameters of the former R6 zoning district; and

WHEREAS, on January 8, 2007, New Building Permit No. 402483013-01-NB (hereinafter, the "New Building Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, however, on August 14, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Rockaway Neighborhoods Rezoning, which rezoned the site from R6 to R5A; and

WHEREAS, accordingly, the Building, being neither a one- or two-family detached residence, nor having a floor to area ratio of 1.10 or less, nor a maximum height of 35 feet or less, does not comply with the current zoning; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the two years subsequent to the Enactment Date, construction was not completed and a certificate of occupancy was not issued; and

WHEREAS, accordingly, an application was filed with the Board for an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, on October 19, 2010, the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy under the subject calendar number; and

WHEREAS, accordingly, the applicant had until October 19, 2012 to complete construction and obtain a certificate of occupancy; and

WHEREAS, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms
and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the Board notes that the subject site was initially vested by DOB in 2008, granted an extension of time to complete construction and obtain a certificate of occupancy by the Board in 2010, and now seeks an additional extension under ZR § 11-332; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated August 17, 2010, 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 has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant, and directed the applicant to exclude pre-permit expenditures; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of October 19, 2012 has been considered; and

WHEREAS, the applicant states that work on the Building subsequent to the issuance of the permits includes: 100 percent of the excavation; 100 percent of the foundation (including the installation of over 300 driven piles); and the installation of a complex drainage system; and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; a foundation survey; copies of cancelled checks; invoices; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is $3,011,614 (including $1,474,974 in hard costs), or 17 percent, out of the $17,610,614 cost to complete; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permit, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 402483013-01-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 the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 19, 2015.

Adopted by the Board of Standards and Appeals, March 19, 2013.

***The resolution has been amended to correct part of the 5th WHEREAS. Corrected in Bulletin No. 16, Vol. 98, dated April 24, 2013.**

BULLETIN

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Tuesday, April 23, 2013

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105-13-BZ
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106-13-BZ
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107-13-A
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100/28 West 42nd Street, West side of 6th Avenue between West 41st Street and West 42nd Street, Block 00994, Lot(s) 7501, Borough of **Manhattan, Community Board: 05**. Special Permit (§73-36) to permit the operation of a physical Culture Establishment (PCE) (Equinox). C5-3, C6-6, C6-7 & C5-2 (Mid)(T) zoning district. district.

109-13-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

MAY 14, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 14, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

256-82-BZ
APPLICANT –Vito J. Fossella, P.E., for Philip Mancuso, owner.
SUBJECT – Application December 24, 2012 –Extension of Term of a previously granted Special Permit (§73-44) for the continued operation of a veterinary clinic, dental laboratory and general UG6 office use in an existing two (2) story building with a reduction of the required parking which expired on November 23, 2012. C2-1/R3-1 zoning district.
PREMISES AFFECTED – 1293 Clove Road, north side of Clove Road, corner formed by the intersection of Glenwood Avenue and Clove Road, Block 605, Lot 8, Borough of Staten Island.
COMMUNITY BOARD #2SI

102-94-BZ
APPLICANT – C.S. Jefferson Chang, for BL 475 Realty Corp., owner.
SUBJECT – Application January 9, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continuous use retail (Use Group 6) grocery store which expired on June 20, 2005; Waiver of the Rules. R-5 zoning district.
PREMISES AFFECTED – 475 Castle Hill Avenue, south side of Lacombe Avenue and West of the corner formed by the intersection of Lacombe Avenue and Castle Hill Avenue, Block 3510, Lot 34, Borough of Bronx.
COMMUNITY BOARD #9BX

APPEALS CALENDAR

268-12-A thru 271-12-A
APPLICANT – Eric Palatnik, P.C., for Mr. Frank Naso, owner.
SUBJECT – Application September 6, 2012 – Proposed construction of a four single family semi -detached building not fronting a mapped street is contrary to General City Law Section 36. R3-1 zoning district.

PREMISES AFFECTED – 8/10/16/18 Pavillion Hill Terrace, corner of Homer Street and Swan Street, Block 569, Lot 318, 317, 316, 285, Borough of Staten Island.
COMMUNITY BOARD #1SI

ZONING CALENDAR

54-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Ricky Novick, owner.
SUBJECT – Application January 31, 2013 – Variance (§72-21) for the enlargement of the existing single-family residence at contrary §§23-141 (lot coverage and open space), 113-543 (minimum required side yards), and 23-461a (side yards for single-or two-family residences). R5/OPSD zoning district.
PREMISES AFFECTED – 1338 East 5th Street, western side of East 5th Street between Avenue L and Avenue M, Block 6540, Lot 23, Borough of Brooklyn.
COMMUNITY BOARD #12BK

56-13-BZ
APPLICANT – Francis R. Angelino, Esq., for 200 East Tenants Corporation, owner; In-Form Fitness, LLC, lessee.
SUBJECT – Application February 4, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Inform Fitness*) within a portion of an existing building. C6-6(MID) C5-2 zoning district.
PREMISES AFFECTED – 201 East 56th Street aka 935 3rd Avenue, East 56th Street, Third Avenue and East 57th Street, Block 1303, Lot 4, Borough of Manhattan
COMMUNITY BOARD # 6M

62-13-BZ
APPLICANT – Sheldon Lobel, P.C., for BXC Gates, LLC, owner.
SUBJECT – Application February 7, 2013 – Special Permit (§73-243) seeking to legalize the existing Wendy's eating and drinking establishment with an accessory drive-through facility at the premises. C1-2/R6 zoning district.
PREMISES AFFECTED – 2703 East Tremont Avenue, property fronts on St. Raymond's Avenue to the northwest, Williamsbridge Road to the northeast, and East Tremont

Avenue to the southwest, Block 4076, Lot 12, Borough of Bronx.

COMMUNITY BOARD #10BX

72-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Western Beef Properties, Inc., owner; Euphora-Citi, LLC, lessee.

SUBJECT – Application February 14, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Euphora Health Medi-Spa and Salon*) within the existing building. M1-1/C4-2A zoning district.

PREMISES AFFECTED – 38-15 Northern Boulevard, north side of Northern Boulevard between 38th Street and Steinway Street, Block 665, Lot 5 and 7, Borough of Queens.

COMMUNITY BOARD #1Q

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, APRIL 23, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

543-91-BZ
APPLICANT – Eric Palatnik P.C., for George F. Salamy, owner.
SUBJECT – Application December 20, 2012 – Extension of Term of a previously approved variance (§72-21) permitting a one-story household appliance store (*P.C. Richards*) which expired on July 28, 2012; Waiver of the Rules. C4-2A/R4-1 zoning district.
PREMISES AFFECTED – 576-80 86th Street, between Fort Hamilton Parkway, Brooklyn Queens Expressway, Block 6053, Lot 14, Borough of Brooklyn.
COMMUNITY BOARD #10BK
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
Adopted by the Board of Standards and Appeals, April 23, 2013.

62-99-BZ
APPLICANT – Akerman Senterfitt LLP, for Starlex LP, owner; Bliss World LLC, lessee.
SUBJECT – Application June 19, 2012 – Extension of Term of a previously-approved Special Permit (§73-36) for the continued operation of a physical cultural establishment (*Bliss*) which expired on January 31, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on February 1, 2004; Waiver of Rules. C6-6 zoning district.
PREMISES AFFECTED – 541 Lexington Avenue, east side of Lexington Avenue, between E. 49th Street and E. 50th Streets, Block 1304, Lot 20, 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 Montanez 5
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 special permit to operate a physical culture establishment ("PCE"), which expired on January 31, 2009, for an additional term of ten years; and

WHEREAS, a public hearing was held on this application on March 5, 2013, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2013, and then to decision on April 23, 2013; and

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

WHEREAS, the site is located on the east side of Lexington Avenue between East 49th Street and East 50th Street, within a C6-6 zoning district within the Special Midtown District; and

WHEREAS, the site is currently occupied by 15-story hotel; the PCE occupies 13,705 sq. ft. of floor area on the fourth floor of the hotel, and is operated as Bliss Spa; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 1, 2000, when, under the subject calendar number, the Board granted a special permit for the operation of a PCE; and

WHEREAS, by resolution dated September 14, 2004, under the subject calendar number, the PCE was expanded in size from the 8,000 sq. ft. permitted under the original grant to 21,000 sq. ft.; the applicant represents that the PCE has since been reduced in size and currently occupies, as noted above, 13,705 sq. ft. on the fourth floor; and

WHEREAS, based upon 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 1, 2000, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from the expiration of the prior grant and to allow amendments as described; *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 March 26, 2013- (1) sheet; and *on further condition*:

THAT the term of this grant will expire on January 31, 2019;

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

THAT the conditions above and the conditions from the prior resolutions 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."

Adopted by the Board of Standards and Appeals, April

23, 2013.

211-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Hoffman & Hoffman, LLC, owner.

SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the legalization of residential units on the second through fourth floors of a mixed use (UG 17 & 2) four-story building, which expired on April 17, 2005; Amendment for minor modification to the approved plans; Waiver of the Rules. M1-2 zoning district.

PREMISES AFFECTED – 252 Norman Avenue, southeast corner of the intersection of Norman Avenue and Monitor Street, Block 2657, Lot 1, Borough 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of time to complete construction and obtain a certificate of occupancy in accordance with a variance, which expired on April 17, 2005, and an amendment to permit minor modifications to the prior approval; and

WHEREAS, a public hearing was held on this application on February 5, 2013, after due notice by publication in *The City Record*, with continued hearings on March 5, 2013, and April 9, 2013, and then to decision on April 23, 2013; and

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

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

WHEREAS, the site is located on the south side of Norman Avenue, between Monitor Street and Kingsland Avenue, within an M1-2 zoning district; and

WHEREAS, the site is currently occupied by a four-story building with a furniture refinishing and repair center on the ground floor, and four dwelling units on each of the second through fourth floors, for a total of 12 dwelling units; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 17, 2001 when, under the subject calendar number, the Board granted a variance to legalize previously constructed residential units (Use Group 2) on the second through fourth floors; the conforming manufacturing use (Use Group 17) on the ground floor was permitted to remain; and

WHEREAS, as of April 17, 2005 substantial construction had not been completed; accordingly, on that date, per ZR § 72-23, the variance lapsed; and

WHEREAS, as to the proposed modifications to the variance, the applicant seeks to legalize the following as-built deviations from the prior approval: (1) the conversion of the former trash room and adjacent storage room to part of one residential unit; (2) the layout of the kitchens and bathrooms in each unit; (3) the creation of an electrical meter room on the ground floor; (4) the removal of the non-required elevator and conversion of the space to storage at each floor; and (5) the installation of hallway trash rooms at each floor; additionally, the plans have been amended to reflect the correct number of windows, which are original to the building; and

WHEREAS, at hearing, the Board directed the applicant to provide: (1) photographs of the sprinkler and fire alarm systems and the smoke detectors; and (2) a more detailed description of the nature of the manufacturing use at the ground floor, including an explanation of how the spray paint booth is vented and whether air quality has been sufficiently tested; and

WHEREAS, in response, the applicant provided: (1) evidence of the fire and life safety systems; and (2) a sufficiently detailed explanation of the nature of manufacturing use and its impacts on air quality; and

WHEREAS, the Board notes that the residents of the building were notified of this application and did not provide testimony; and

WHEREAS, based upon 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 April 17, 2001, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for a period of two years from April 23, 2013, to expire on April 23, 2015, and to permit the noted modifications to the site; on condition that all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received February 19, 2013- (12) sheets; and on further condition:

THAT construction will be completed and a certificate of occupancy obtained by April 23, 2015;

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

THAT the number of dwelling units, floor area and FAR for the proposed building will be in accordance with the terms of this grant;

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, April 23, 2013.

853-53-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Knapp, LLC, owner; Bolla Management Corp., owners.

SUBJECT – Application January 18, 2013 – Amendment (§11-412) to a previously-granted Automotive Service Station (*Mobil*) (UG 16B), with accessory uses, to enlarge the use and convert service bays to an accessory convenience store. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, southwest corner of Avenue X, Block 7429, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

410-68-BZ

APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of approved variance which permitted the operation of (UG16B) automotive service station (*Citgo*) with accessory uses, which expired on November 26, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.

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

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

718-68-BZ

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

SUBJECT – Application May 31, 2011 – Amendment to a previously-granted Special Permit (§73-211) for an automotive service station. The amendment proposes additional fuel dispensing islands and conversion of existing service bays to an accessory convenience store. C2-2/R5 zoning district.

PREMISES AFFECTED – 71-08 Northern boulevard, South side of Northern Boulevard between 71st and 72nd Street, Block 1244, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

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 21, 2013, at 10 A.M., for decision, hearing closed.

103-91-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.

SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

292-01-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Villa Mosconi Restaurant, owner.

SUBJECT – Application January 17, 2013 – Extension of Term of a previously-granted Variance (§72-21) which permitted the legalization of a new dining room and accessory storage for a UG6 eating and drinking establishment (*Villa Mosconi*), which expired on January 7, 2013. R7-2 zoning district.

PREMISES AFFECTED – 69/71 MacDougal Street, west side of MacDougal Street between Bleecker Street and West Houston Street, Block 526, Lot 33, 34, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

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 – Laid over to June 11, 2013, at 10 A.M., for continued hearing.

197-08-BZ
APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.
SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.
PREMISES AFFECTED – 341-349 Troy Avenue, aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #9BK
ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for adjourned hearing.

58-10-BZ
APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner; Eckford II Realty Corp., lessee.
SUBJECT – Application March 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously-granted Special Permit (§73-36) for a physical culture establishment (*Quick Fitness*), which expired on February 14, 2013. M1-2/R6A zoning district.
PREMISES AFFECTED – 16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, 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 May 21, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

297-12-A
APPLICANT – Law Office of Fredrick A. Becker, for 28-20Astoria Blvd LLC, owners.
SUBJECT – Application October 17, 2012 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to complete construction commenced under the prior R6 zoning district. R6-A/C1-1 zoning district.
PREMISES AFFECTED – 28-18/20 Astoria Boulevard, south side of Astoria Boulevard, approx. 53.87' west of 29th Street, Block 596, Lot 45, 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 Montanez 5
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 seven-story mixed residential and commercial building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

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

WHEREAS, the site is located on the south side of Astoria Boulevard, between 28th Street and 29th Street; and

WHEREAS, the site has a lot area of 6,701 sq. ft. and 45.85 feet of frontage along Astoria Boulevard; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed residential and commercial building with an FAR of 3.0, and 28 dwelling units (the "Building"); and

WHEREAS, the subject site is currently located partially within an R6B zoning district and partially within an R6A (C1-3) zoning district, but was formerly located within an R6 (C1-2) zoning district; and

WHEREAS, the Building complies with the former R6 (C1-2) zoning district parameters; specifically with respect to floor area; and

WHEREAS, however, on May 25, 2010 (the "Enactment Date"), the City Council voted to adopt the Astoria Rezoning, which rezoned the site to partially R6B and partially R6A (C1-3), as noted above; and

WHEREAS, as a result of the rezoning, the Building does not comply with the district parameters regarding

maximum floor area; 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, the applicant states that New Building Permit No. 402604669-01-NB (the "Permit") was issued to the owner by the Department of Buildings ("DOB") on February 13, 2008; and

WHEREAS, the applicant notes that ZR § 11-31(c)(1) classifies the construction authorized under the Permit as a "minor development"; and

WHEREAS, the applicant notes that, per ZR §§ 11-331 and 11-332, where all work on foundations for a minor development has been completed prior to the effective date of an applicable amendment to the Zoning Resolution, work may continue for two years, and if after two years, construction has not been completed and a certificate of occupancy has not been issued, the permit shall automatically lapse and the right to continue construction shall terminate; and

WHEREAS, the applicant states that, as of the Enactment Date, the entire foundation for the building was completed; and

WHEREAS, accordingly, the applicant states, DOB recognized the owner's right to continue construction under the Permit for two years until May 25, 2012, pursuant to ZR § 11-331; and

WHEREAS, however, as of May 25, 2012, construction was not complete and a certificate of occupancy had not been issued; therefore, on that date the Permit lapsed by operation of law; and

WHEREAS, by letter dated December 28, 2012, DOB confirmed that the Permit was lawfully issued; and

WHEREAS, the Board notes that when work proceeds under a valid 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 to substantial construction, the applicant states that prior to May 25, 2010, the owner had completed the following work: demolition, excavation, footings and the entire foundation for the building, including foundation bracing and strapping, and underpinning existing foundations; since May 25, 2010, the applicant states that the entire structural steel framework for the building has been completed; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: invoices, concrete delivery slips, construction contracts, plans highlighting the work completed, and photographs of the site showing certain aspects of the completed work; 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, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; 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 states that prior to the Enactment Date, the owner expended $1,539,000, including hard and soft costs and irrevocable commitments, out of $4,583,000 budgeted for the entire project; and

WHEREAS, the applicant states that since the Enactment Date, the owner has expended $148,285.45, including $31,823.54 in soft costs; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 30 percent of the projected total cost; 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 if the owner is not permitted to vest under the former R6 (C1-2) zoning, the maximum permitted residential floor area ratio would decrease from the approved 3.0 FAR for the entire lot to 3.0 FAR for the R6A portion of the lot and 2.0 FAR for the R6B portion of the lot, representing a loss of 1,313 sq. ft. of buildable residential floor area in the building; the applicant also notes that while the maximum permitted commercial floor area ratio is the same (2.0 FAR) under the former and current zoning, the maximum permitted community facility floor area ratio has been decreased from 4.8 FAR for the entire lot to 3.0 FAR for the R6A portion of the lot and 2.0 FAR for the R6B portion of the lot; and

WHEREAS, the applicant further states that complying with the current zoning would result in a reduction of dwelling units from 28 to 24, and the elimination of the community facility and commercial spaces at the site; and

WHEREAS, the applicant represents that the 1,313 sq. ft. loss in residential floor area, the loss of four units, and the elimination of the community facility and commercial spaces in the building would reduce the annual rental income from approximately $884,500 to $576,000; in addition, such changes to the building decrease its market value from $10,614,000 to $6,912,000; and

WHEREAS, the applicant states these decreases in income and market value exceed 30 percent of the original projected income and market value, while the difference in construction costs between completing the building as originally designed and completing the building to comply with the current zoning is only three percent; as such, the applicant asserts, the owner faces a serious financial hardship if a vested right to complete construction is not recognized; and

WHEREAS, the Board agrees that the reduction in the floor area and dwelling units of the building results in a significant loss of income and market value, which constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; the Board also notes that the owner would incur additional costs in redesigning the building to comply with the current zoning; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the building had accrued to the owner of the premises.

Therefore it is Resolved that this application made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 402604669, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, April 23, 2013.

326-12-A thru 337-12-A

APPLICANT – Gibson Dunn, for Contest Promotions-NY LLC by Jessica Cohen

OWNER OF PREMISES: Lily Fong, Michael A. Maidman, Thomas Young, George Aryeh, Lily Fong,Vincent J. Ponte, Hung Ling Yung, David R. Acosta, James B. Luu, Fred G. Eng.

SUBJECT – Applications December 11, 2012 – Appeals challenging the Department of Buildings determination to revoke 12 permits previously issued permitting business accessory signs on the basis that they are appear to be advertising signs.

PREMISES AFFECTED –

52 Canal Street, Block 294, Lot 22, C6-2 zoning district, Manhattan

1560 2nd Avenue, Block 1543, Lot 49, C1-9 zoning district, Manhattan

2061 2nd Avenue, Block 1655, Lot 28, R8A zoning district, Manhattan

2240 1st Avenue, Block 1709, Lot 1, R7X zoning district, Manhattan

160 East 25th Street, Block 880, Lot 50, C2-8 zoning district, Manhattan

289 Hudson Street, Block 594, Lot 79, C6-2A zoning district, Manhattan

127 Ludlow Street, Block 410, Lot 17, C4-4A zoning district, Manhattan

1786 3rd Avenue, Block 1627, Lot 33, R8A zoning district, Manhattan

17 Avenue B, Block 385, Lot 1, R7A zoning district, Manhattan

173 Bowery, Block 424, Lot 12, C6-1 zoning district, Manhattan

240 Sullivan Street, Block 540, Lot 23, R7-2 zoning district, Manhattan

361 1st Avenue, Block 927, Lot 25, C1-6A zoning district, Manhattan

COMMUNITY BOARD #2/3/6/8/9/11M

ACTION OF THE BOARD – Appeals Denied.

THE VOTE TO GRANT –

Affirmative: 0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

THE RESOLUTION –

WHEREAS, the subject appeals come before the Board in response to the determinations of the Manhattan Borough Commissioner of the Department of Buildings ("DOB"), dated November 14, 2012, to revoke Permit Nos. 120975454, 120993283, 120993363, 120993452, 120993327, 121037939, 120975427, 120993354, 120993345, 120853736, 120993318, and 120993130 for signs at the subject sites (the "Final Determinations"); and

WHEREAS, the Final Determinations read, in pertinent part:

> By letter dated September 12, 2012, the Department of Buildings (the "Department") notified you of its intent to revoke the approval and permit issued for work at the premises in connection with the application referenced above. 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 Section 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.
>
> In the event an order to stop work is not currently in effect, you are hereby ordered to STOP ALL WORK IMMEDIATELY AND MAKE THE SITE SAFE; and

WHEREAS, a public hearing was held on this application on March 5, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

WHEREAS, the 12 subject sites are occupied by (1) Newsstand Grocery (52 Canal Street, C6-2 zoning district), (2) formerly Hungarian Meat Market/now Elite Cleaners (1560 Second Avenue, C1-9 zoning district), (3) Triple A Diner (2061 Second Avenue, C1-5 zoning district), (4) Rims Tires and Hub Caps (2240 First Avenue, C1-5 zoning district), (5) Jimmy's House Vietnamese restaurant (160 East 25th Street, C2-8 zoning district), (6) Ellen's Deli & Grocery (289 Hudson Street, C6-2A zoning district), (7) M.A. Grocery (127 Ludlow Street, C4-4A zoning district), (8) Next Evolution Mixed Martial Arts Academy (1786 Third Avenue, C1-5 zoning district), (9) Cornerstone Café (17 Avenue B, C1-5 zoning district), (10) formerly Lighting Craftsman/now vacant (173 Bowery, C6-1 zoning district), (11) J.W. Market grocery store/deli (240 Sullivan Street, C1-5 zoning district), and (12) Dunkin Donuts-Baskin Robbins (361 First Avenue, C1-6A zoning district); and

WHEREAS, each site is also occupied by a sign with the surface area in the range of 80 to 250 sq. ft., which the applicant represents are complying parameters for accessory signs in the respective zoning districts (the "Signs"); and

WHEREAS, the Signs all include a narrow border at the top and bottom with the name and address of the respective business, a solicitation to enter the store to enter the sweepstakes, and arrows in the direction of the store; the main part of the Signs include multiple smaller posters (from three to 18) advertising items such as movies, television shows, music, and clothing stores; and

WHEREAS, accessory signs are permitted for the noted businesses, but advertising signs are not; and

WHEREAS, these appeals are brought on behalf of the lessee of the Signs, Contest Promotions Incorporated (the "Appellant," "Contest Promotions," or "CPI"); and

WHEREAS, the Appellant seeks a reversal of DOB's determinations that the Signs are advertising signs and therefore not permitted at the subject sites, based on the Appellant's contention that the Signs are accessory to the businesses at the sites; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

PROCEDURAL HISTORY

WHEREAS, on March 17, 2010, DOB and the Appellant met in response to Appellant's request to discuss its proposed advertising sign plan and how it believed its signs constituted accessory signs pursuant to the ZR § 12-10 definition of accessory; and

WHEREAS, on March 30, 2010, the Appellant wrote a follow up letter to DOB, which included a rendering of a typical sign with a picture of a large advertisement for Tropicana Orange Juice; at the top of the ad, it said "Roberto's Groceries" and then in smaller type "Enter our Sweepstakes Inside for a Chance to Win These Products;" and at the bottom of the sign in even smaller type "No purchase necessary. Void Where Prohibited. Open to legal residents of 50 U.S. and D.C. 18 and Over. See Store for Official Rules;" and

WHEREAS, on May 18, 2010, DOB responded to CPI's March 30, 2010 letter stating that it was DOB's position that CPI's proposed sign did not qualify as an accessory sign "simply because it depicts a product that is sold or may be won via a raffle contest, on the zoning lot;" the letter noted that the product displayed – orange juice – directed attention to a product that was sold in grocery stores throughout the City, and was not the principal use of the zoning lot and thus was an advertising sign and stated that "It is the Department's well-settled position that a sign may refer primarily to a product rather than the business itself, only where the business at the site is readily identifiable by the product."; and

WHEREAS, on June 30, 2010, CPI submitted another letter to DOB, with an image of an actual sign at 132 Eldridge Street and sought a final determination about whether the proposed signs qualify as accessory signs; and

WHEREAS, on July 28, 2010, DOB responded that "an accessory sign at a grocery store must direct attention to the name and/or purpose of such store and not to any product sold at the store" and that "a final determination for purposes of an appeal to the Board of Standards and Appeals (BSA) may only be issued in connection with a specific job application" and was directed to forward the request to the Borough Commissioner so that his determination could be appealed to the Board; and

WHEREAS, the Appellant filed eight of the 12 professionally-certified permit applications on March 1, 2012, two on February 10, 2012, and the others on October 13, 2011 and April 16, 2012, respectively; and

WHEREAS, on September 12, 2012, DOB issued letters of intent to revoke the permits; and

WHEREAS, on November 14, 2012, DOB revoked the permits; the permit revocations serve as the basis for the appeal; and

CONTEST PROMOTIONS LITIGATION

WHEREAS, on September 17, 2010, DOB filed a declaratory judgment action in New York State Supreme Court seeking a ruling that its two signs – its business model – constituted accessory signs, Contest Promotions-NY LLC v. New York City Department of Buildings et al, Index No. 112333/10 (Sup Ct NY Co) (Rakower J) ("CPI I"); and

WHEREAS, on October 15, 2010, after the submission of papers and hearing oral argument, the Court ruled in CPI's favor and on December 10, 2010 the Court entered a judgment finding that signs consistent with CPI's business model meet the definition of accessory use and it is unlawful for DOB to reject outright permit applications submitted for any signs consistent with CPI's business model; and

WHEREAS, DOB appealed the December 10, 2010 decision; and

WHEREAS, on March 6, 2012, the Appellate Division, First Department agreed with DOB's position and unanimously reversed Justice Rakower's decision, ruling that "failure to exhaust its administrative remedies precludes judicial review of its nonconstitutional claims" and barred the claim because sign permit applications that are disapproved should be appealed to the Board, Contest Promotions-NY LLC v. NYC DOB et al 93 AD3d 436 (1st Dept 2012); and

WHEREAS, the Appellant asserts that the Appellate Division's reversal is limited to the narrow issue of exhaustion but that Justice Rakower's decision still stands in every other way and that Justice Rakower's original decision upheld its model sign as an accessory sign and that any sign that is consistent with its model must be approved by DOB despite the ruling of the First Department; and

WHEREAS, the decision in CPI I includes the following:

> Judgment . . . declaring that signs consistent with petitioner's business model qualify as 'accessory' signs under New York City Zoning Resolution (ZR) §12-10 … unanimously reversed on the law, without costs, the judgment vacated, the petition denied, and the proceeding dismissed. Id.; and

WHEREAS, DOB's position is that no part of Justice Rakower's January 12, 2011 judgment or October 15, 2010 decision stands and there is no judicial determination that CPI's model signs are to be considered legal accessory signs; and

WHEREAS, DOB states that if the Appellate Division desired to uphold Justice Rakower's underlying legal interpretation, it would have stated so in its Decision and Order instead of making a blanket declaration of null and void; and

WHEREAS, secondly, DOB states that the Appellant is incorrect in its assertion that Justice Rakower finds that any sign that meets the "model" must be accepted as a legitimate accessory sign even where there has been no demonstration of the actual accessory nature of the sign; and

WHEREAS, DOB asserts that in CPI I, Justice Rakower specifically stated that the legality of each sign was to be determined by itself and that the signs must meet the three-prong test of the Zoning Resolution's accessory definition; and

WHEREAS, approximately one year after Justice Rakower's initial decision, but prior to the Appellate Division ruling declaring the initial decision null and void, Justice Rakower ruled on an Order to Show Cause Motion challenging DOB's issuance of advertising violations and permit revocations to signs following CPI's model, which CPI alleged DOB violated; Justice Rakower dismissed the motion; and

WHEREAS, on September 21, 2012, Contest Promotions-New York LLC v. NYC DOB et al Index Nos. 112333/10 and 103868/12 (Sup Ct NY Co) (Rakower J) (CPI II) CPI sought a declaration by the court that its signs qualified as accessory signs and asked that DOB be prohibited from rejecting applications for permits for signs that met its model; CPI also challenged four ECB Appeals Board determinations regarding DOB NOVs for four signs in Brooklyn; and

WHEREAS, initially, the ECB Administrative Law Justice had concluded that he was constrained to follow Justice Rakower's decision of October 15, 2010 in CPI I; however, after the First Department's decision in March 2012, the ECB Appeals Board, on August 30, 2012, upheld the DOB NOVs for these signs, finding them to be advertising; and

WHEREAS, on November 9, 2012, Justice Rakower issued a ruling in CPI II and found the ECB Appeals violations to be arbitrary and capricious; and

WHEREAS, the Appellant asserts that through the ruling in its favor in CPI II, the court approved the model sign; and

WHEREAS, DOB asserts that the court in CPI II was limited to the four ECB determinations and did not have broader application; and

WHEREAS, DOB has appealed the decision in CPI II to the Appellate Division, where it is pending; and

WHEREAS, DOB asserts that in Justice Rakower's final proceeding on the matter, on November 9, 2012, she evaluated four violations issued under ZR § 32-63, she determined that CPI signs at a pharmacy and a restaurant in Brooklyn were improperly sustained as advertising signs and, contrary to CPI's allegations, there is currently no judicial determination holding that CPI's business model is a valid accessory sign which the City is constrained to follow; and

WHEREAS, the Appellant and DOB contest the precedential value of the ongoing Contest Promotions litigation; and

WHEREAS, the Appellant relies heavily on the decisions by and record of Justice Rakower in CPI I and II and asserts that the prior determinations mandate the

Board's approval of the Signs; and

WHEREAS, DOB asserts that the Appellant mischaracterizes Justice Rakower's decisions; (1) first, the Appellant's assertion that the Appellate Division's decision has no impact on the Board's review of the Signs; (2) the assertion that Justice Rakower determined that CPI's model is a valid accessory sign, which would render the entire administrative process meaningless; and (3) that DOB is flouting Justice Rakower's rulings by issuing advertising sign violations and permit revocations for these purported accessory signs; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 *Definitions*

Accessory use, or accessory (2/2/11)

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 (4/8/98)

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#; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant seeks for the Board to issue a ruling that makes clear that signs that meet Contest Promotions' business model—including the 12 at issue--are, in fact, "accessory" signs, providing legal clarity and binding precedent for both Contest Promotions and DOB going forward; and

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) the Signs satisfy all three prongs of the ZR § 12-10 definition of accessory and (2) because they follow the model; and

WHEREAS, the Appellant asserts that DOB's interpretation is contrary to the plain language of the statutory text and is inconsistent with New York State case law as well as the decisions in CPI I and CPI II with respect to signs that it finds to be identical for all relevant purposes to the Signs at issue in this appeal; and

A. The Signs Relate to the Business on the Same Zoning Lot as the Principal Use

WHEREAS, as to the first prong of the accessory use analysis, the Appellant says that it applies because the requirement is only that an accessory sign be located on "the same zoning lot as the principal use" and the Signs plainly meet this requirement; and

WHEREAS, the Appellant states that DOB imports new requirements into this prong that are nowhere found in the text of the Zoning Resolution, stating that in order to qualify as an accessory sign, "the text of the ads . . . for movies, jeans, concerts, TV shows, a boutique etc." must be "directly related to the principal uses of the zoning lots in question;" and

WHEREAS, the Appellant states that the Zoning Resolution does not require that the "text of the ads" or the "products" relate to the principal use, only that the sign *itself* is located on the same zoning lot as the principal use establishment to which it directs attention; and

WHEREAS, further, the Appellant asserts that even if there were such a requirement, that requirement would be met by Contest Promotions signs because it is the sweepstakes contest itself that is the "product," and that product *is* available at each primary use establishment; and

WHEREAS, additionally, the Appellant asserts that there is no requirement under any prong that the sweepstakes must be the principal use of the zoning lot, and it does not argue that the principal use of the premises is as a "sweepstakes contest store;" rather, the principal uses are, uses like a household appliance store, an eating and drinking establishment, or a newsstand; and

WHEREAS, the Appellant states that the Signs are each related to these principal uses because they direct attention to a sweepstakes that can be entered at the principal use, and they include the name and address of the principal use, arrows pointing towards the principal use facility, and an exhortation to come inside to win prizes; and

B. The Signs are "Clearly Incidental to" and "Customarily Found in Connection with" the Small Businesses Contest Promotions Serves

WHEREAS, as to the second prong, the Appellant asserts that the Supreme Court found that the Contest Promotions model signs on which the Signs at issue here were based satisfy this standard and the Signs at issue here are identical to the model signs the Supreme Court found meet the definition of an "accessory sign" under the Zoning Resolution; and

WHEREAS, the Appellant asserts that the use is "incidental" where it is "subordinate" and has a "reasonable relationship" to the primary use, citing to Gray v. Ward, 74 Misc. 2d 50, 54–55, 343 N.Y.S.2d 749, 753 (Sup Ct Nassau Co 1973); and

WHEREAS, the Appellant asserts that the proper application of the Zoning Resolution results in a conclusion

that a modest sign, hung on the exterior wall of the building is "subordinate" to the primary use establishment itself and the subordinate nature of the Signs in relation to the primary use is ensured by the fact that the signs conform to the size and height regulations that are applicable in the underlying zoning district—namely, a maximum size of 150-200 sq. ft. *See* ZR §§ 32-642, 32-655; and

WHEREAS, the Appellant also references the Board's decision BSA Cal. No. 151-12-A (the "Ham Radio Case") in which the Board granted an appeal that concluded that a ham radio tower is accessory to the principal use of the residential building; and

WHEREAS, the Appellant cites to the Ham Radio Case for the conclusion that amateur radio towers are "customarily found" in connection with residences and are therefore an accessory use under the Zoning Resolution and that the Board considered evidence submitted of nine ham radio towers maintained throughout the City as "a representative sample" of the radio towers maintained throughout the City, and accepted this evidence as establishing that radio antennas are "customarily found" in connection with the primary use residences, in fulfillment of this second prong of the accessory use test; and

WHEREAS, the Appellant states that the Board noted that the relevant inquiry is not whether the use is a "common accessory use," but rather whether, "when amateur radio antennas are found, they are customarily found" in connection with the primary use; and

WHEREAS, the Appellant asserts that the Ham Radio Case clarified that the relevant inquiry in this case is not how common signs like the ones at issue are against the totality of possible accessory uses, but rather, whether, when signs that identify an establishment and direct potential customers inside using product images and sweepstakes prizes are found, they are customarily found in connection with the kinds of small storefront locations at issue here; and

WHEREAS, the Appellant states that there is a direct relationship between the Signs and the primary use on the zoning lot as the Signs prominently feature the name of the store, information about the sweepstakes located inside the store, and a depiction of the sweepstakes prize or related item and the Signs expressly direct onlookers to go into the store to enter the sweepstakes; and

WHEREAS, the Appellant asserts that there is not any "proportionality" test to measure the size of a sign against the primary use, only that there be a "reasonable relationship" to the primary use, as set forth in the Zoning Resolution and case law; and

WHEREAS, the Appellant asserts that where the Signs feature the name of the store, information about a sweepstakes located inside the store, a depiction of a sweepstakes prize, and direct onlookers to go inside there is far more than a "reasonable" relationship; and

WHEREAS, the Appellant rejects DOB's assertion that the proportionality between the copy that "directs attention to the business" and the copy that "directs attention to products sold" is not consistent with its prior decision on the Fresh Direct sign or in any relevant case law; and

WHEREAS, the Appellant asserts that even if DOB were correct, the sign space is "predominantly devoted to" promoting the primary use establishment, as the copy in the center of the signs "refers to products offered at the store—the sweepstakes;" and

WHEREAS, the Appellant adds that the Signs each include the address and phone number of the store and arrows that direct passersby to the store entrance; the Appellant states that by size, location, and design, the Signs direct and draw customers to the establishment, increasing foot traffic and visibility; and

WHEREAS, the Appellant states that the Supreme Court held twice, and the Board should find that signs such as the ones at issue here are "incidental to" the principal use under the Zoning Resolution and reinstate the Permits; and

WHEREAS, the Appellant states that it is equally clear that accessory signs containing the name of an establishment and directing potential customers into the establishment using product images and sweepstakes prizes, are "customarily" found "in connection with" such stores; and

WHEREAS, the Appellant asserts that Signs such as the ones used by businesses working with Contest Promotions can be found in every borough of the City in connection with small retailers such as the proprietors here, as the examples submitted with Contest Promotions' two Article 78 petitions—both historical and contemporary—reflect; and

WHEREAS, the Appellant distinguishes the case law on which DOB relies, finding that in Mazza v. Avena, Index No. 14304/97 (Sup Ct Queens Co 1998), the sign at issue was classified as an advertising sign rather than an accessory sign because of "the *size* of the sign, because the sign *does not promote business* for the store on the premises, does not direct attention to the premises, and the sign *faces only an arterial highway* and is *not visible to those in the immediate vicinity* of the premises." No. 14304/97 (Sup Ct Queens Co 1998), *aff'd*, 261 A.D.2d 546, 687 N.Y.S.2d 909 (2d Dept 1999) (emphases added) and in NYP Realty Corp. v. Chin, Index No. 119194/99 (Sup Ct NY Co 2000), the sign was more than 1,200 sq. ft., had "no direct connection to the subject premises," and did not "direct attention to a use on the subject lot;" and

WHEREAS, the Appellant states that its Signs are between 88 and 240 sq. ft. in surface area, explicitly promote and direct attention to the business, and are easily seen by passersby; and

WHEREAS, the Appellant cites to the examples it submitted in court of storefront sweepstakes and Lotto signs, as well as signs containing logos and name brands as a means of drawing customers into a store to support its assertion that the Signs are customarily found; and

WHEREAS, the Appellant states that for the Signs, the representative evidence submitted by Appellant and credited by the Supreme Court—as well as the notice taken of Lotto and other similar signs throughout the City—easily

establishes that signs displaying the name of a store along with images and/or contests that seek to drive customers into the store are "customarily found" in connection with such primary use establishments; and

WHEREAS, the Appellant distinguishes Fresh Direct in that the Signs are all similarly proximate to the sweepstakes located inside the site while Fresh Direct is an online retailer, and the Fresh Direct sign sits atop a distribution center, not a retail site and, thus, it cannot drive customers into the physical location on the zoning lot as Contest Promotions' signs do; and

WHEREAS, the Appellant states that DOB must rely on its determination that the Fresh Direct sign is accessory; and

WHEREAS, the Appellant states that if the Fresh Direct sign is an accessory sign even though it does not and cannot exhort the onlooker to go into the primary use establishment, even though no products or services are available to the general public at the primary use, and even though the only connection between the sign and the primary use is that the sign sometimes includes products that are sold by, or a logo of, the business that owns the primary use food processing plant, then Contest Promotions signs must be accessory signs too.

WHEREAS, the Appellant compares its signs to McDonald's promotional Monopoly sweepstakes and the Lotto and does not see any relevant distinction between those two kinds of campaigns and its own Signs; and

WHEREAS, the Appellant asserts that Lotto signs are not all within windows or otherwise exempt from signage regulations; and

WHEREAS, the Appellant offers 7-11 sweepstakes and instant win campaigns as other examples of such enterprises; in the contest, the winners received 7-11 products, which the Appellant says did not relate to the principal use of the establishment; and

WHEREAS, the Appellant cites to other examples retail stores in New York – Lacoste, Murray's Cheese, Modell's Sporting Goods, and 7-11, where customers have had a chance to win shopping sprees or other prizes related to the business hosting the prize, to support the assertion that the Signs are customarily found; and

C. The Signs Are Substantially for the Benefit of the Stores' Owners, Employees, Customers, and Visitors

WHEREAS, as to the third prong, the Appellant states that the Signs satisfy the requirement in that they are "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;" and

WHEREAS, the Appellant asserts that its affidavits from business owners establish that the Signs are for the benefit of business owners, occupants, employees or customers; and

WHEREAS, the Appellant asserts that it is the Signs that must benefit the owners or their customers and not the movies, television shows, concerts or clothing being advertised; and

WHEREAS, the Appellant identifies the benefits as including driving customers into the store and for the customers winning prizes; and

WHEREAS, the Appellant states that it is not simply that the owners benefit through rental payments; and

WHEREAS, further, the Appellant asserts that there is no requirement under the Zoning Resolution that the business owner benefits equally to or more than the building owner; and

WHEREAS, the Appellant asserts that business owners benefit from increased visibility and foot traffic and from satisfied customers and they benefit from the remuneration received in exchange for hosting the contests; and

WHEREAS, the Appellant states that in reaching this conclusion in 2010, the Court credited the affidavit of a business owner who discussed "what the Contest Promotions sign has done for his business and how he sees the benefit is so substantial to him to have people brought into the store in this way;" and

WHEREAS, the Appellant asserts that definitive proof of these benefits is that business owners voluntarily enter into agreements with Contest Promotions to host such signs and sweepstakes and if these arrangements were not "substantially for" the store owners' and occupants' "benefit," they would not enter into them; and

WHEREAS, the Appellant concludes that the Signs, like the signs approved by Justice Rakower in CPI II, each mirror the Contest Promotions business model and plainly satisfy the Zoning Resolution's "accessory sign" definition; thus, DOB's determinations revoking these permits are arbitrary, capricious, and contrary to law, and must be reversed; and

DOB'S POSITION

WHEREAS, as to the classification of the Signs, DOB asserts that the ZR § 12-10 definitions of advertising sign and accessory use establish the necessary distinctions between the two classifications of signs; and

WHEREAS, first, DOB notes that all 12 permit applications were filed pursuant to AC § 28-104.2.1, meaning that DOB accepted the applications and issued permits based not on its own examinations of the applications, but rather on the job applicants' professional certification that the applications complied with all applicable laws; and

WHEREAS, DOB states that it revoked the 12 sign permits that had been issued through professional certification process 12 signs that were not accessory at the time of permit, and are not currently accessory to any principal use at the premises; and

WHEREAS, DOB asserts that the determination of whether each of these 12 signs is an accessory sign must be made on an individual basis because the definition of an "accessory use" requires a site-specific analysis; and

WHEREAS, specifically, DOB asserts that the facts

are different for each case, so it is necessary to review them individually; and

WHEREAS, DOB notes that an accessory sign must, (1) relate to a use conducted on the same zoning lot, (2) be clearly incidental to and customarily found in conjunction with the principal use of the zoning lot, and (3) be in the same ownership as the principal lot or maintained on the same zoning lot substantially for the benefit of the owner of the principal use; and

WHEREAS, DOB notes that the accessory sign definition is conjunctive and each of its three prongs must be independently satisfied for a sign to be considered an accessory sign; and

A. The Signs are not Related to the Principal Use on the Zoning Lots

WHEREAS, DOB asserts that the first prong of the Zoning Resolution's accessory use definition requires that the sign's copy be directly related to the principal use on the zoning lot; and

WHEREAS, DOB asserts that one of the locations - 173 Bowery - Manhattan, is associated with a business, the Lighting Craftsman, that was closed on May 4, 2012 just two weeks after the Appellant self-certified an application for an accessory sign and a second location – 1560 Second Avenue – was occupied by the Hungarian Meat Market which was destroyed by fire and is now occupied by Elite Cleaners; and

WHEREAS, accordingly, DOB asserts that it is impossible to have a contest take place at a store that has closed and that the Signs cannot meet the ZR § 12-10 "accessory use" definition if they do not relate to a use located on the zoning lot; and

WHEREAS, DOB notes that the other ten locations are occupied by (1) a martial arts academy, (2) a tire and hubcap store, (3) a Dunkin Donuts/Baskin Robbins, (4) three diner/cafes/restaurants – Triple A Diner, Jimmy's House (Vietnamese restaurant) and Cornerstone Café, and (5) four of the "mom and pop" newsstands or small groceries which the Appellant alleges are the stores it aims to help attract customers; and

WHEREAS, DOB states that at the time of the permit submissions, ten of the signs advertised movies – eight "Wrath of the Titans", one "The Thing" and one "Dark Shadows"; one ad is for "True Religion" brand jeans and another ad is for "Celine" a boutique on Madison Avenue; and

WHEREAS, DOB notes that, however, none of the locations feature movies; none of the ten signs that direct attention to movies could be considered an accessory sign; and likewise, the sign that directed attention to a boutique was at a newsstand and was not accessory to it, and the sign for jeans was not accessory to the grocery where it was displayed; and

WHEREAS, DOB cites to Operations Policy and Procedure Notice (OPPN) #10/99 of December 30, 1999 Sign Applications and Permits" states that in seeking a permit for an Accessory Sign "the applicant must establish the accessory relationship between the proposed sign and the use on the zoning lot on which the sign is being erected (the 'principal use'.)"; and

WHEREAS, DOB adds that pursuant to the OPPN, the documentation required is the "name of the owner of the principal use (i.e. the name of the business owner)" and a "lease demonstrating the amount of space leased at the zoning lot by the owner of the principal use and how the space is to be used" and the OPPN goes on to note that the "proposed sign is [must be] clearly incidental to the principal use;" and

WHEREAS, accordingly, DOB states that the OPPN is consistent with the Zoning Resolution requirement that an accessory sign have an accessory relationship with the principal use; and

WHEREAS, DOB asserts that the Signs do not have the required relationship with the principal use of the zoning lots because the products being advertised have no relationship to the principal use and the contest noted on the sign border is one of many products available on the particular zoning lot in question – it is not the principal use of the zoning lot; and

B. The Signs are not Clearly Incidental to and Customarily Found in Connection with the Uses on these Zoning Lots

WHEREAS, DOB asserts that the second prong of the Zoning Resolution's accessory sign definition requires that the sign be "clearly incidental to" and "customarily found in connection with" the principal use and the Signs fail to meet the requirement; and

WHEREAS, DOB asserts that the Signs are meant to, and do, primarily promote movies, TV shows, concerts, a boutique and jeans -- not the principal use of these zoning lots, such as a lighting store, a diner, martial arts academy, or a Dunkin Donuts; and

WHEREAS, DOB says that the purpose is apparent because the sign space is predominantly devoted to these products, while the copy concerning the various stores is not the central focus of the Signs and is less noticeable to a passerby; and

WHEREAS, DOB states that here, the principal use and over-all character of the properties in issue is that of various Use Group 6 uses; the accessory use in question – a sign for a contest – is not clearly incidental to and customarily found in connection with those uses; and

WHEREAS, DOB cites to Matter of 7-11 Tours v. BZA of Town of Smithtown 90 AD2d 486 (2d Dept 1982) in which the Court found that a travel agency was not customary nor incidental to the primary use of the premises as a motel; in so doing it set forth general definitions for "incidental" and "customary:"

> Incidental when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant. To ignore this latter aspect of 'incidental' would be to permit any use

which is not primary, no matter how unrelated it is to the primary use Id at 486; and

WHEREAS, DOB states that the Appellant ignores this latter aspect of the definition of "accessory" by insisting that the sweepstakes use is incidental even though it is completely unrelated to the primary use of the premises; and

WHEREAS, DOB cites to the 7-11 Tours court's definition of "customarily":

> Courts have often held that the use of the word 'customarily' places a duty on the board or court to determine whether it is usual to maintain the use in connection with the primary use … The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use. Id at 488; and

WHEREAS, DOB states that CPI alleges that its signage refers to products offered at the store – a sweepstakes, but it cannot be said that sweepstakes have commonly, habitually and by long practice been established as reasonably associated with any of the uses at issue in the matters before the Board--a Dunkin Donuts store, a martial arts academy, a lighting store, a meat market, a tire store, a diner or a Vietnamese restaurant; consequently, the sweepstakes signs in question are not accessory to the principal use of the zoning lots at issue; and

WHEREAS, additionally, DOB asserts that it is not customary for a true accessory sign to change its text as frequently as once a month; and

WHEREAS, DOB asserts that the fact that in CPI II Justice Rakower reversed the four ECB determinations on the issue of "clearly incidental to" and "customarily found in connection with" has no precedential effect herein, the City is appealing this ruling and it nevertheless remains the case that Justice Rakower was explicit in her decision that her ruling was narrowly limited to four ECB determinations at two locations in Brooklyn; and

WHEREAS, as far as the Lotto, DOB states that the Appellant makes much of the fact that there are newsstands and delis which have ads for Lotto in their windows; and

WHEREAS, DOB asserts that the distinctions between the Signs and Lotto signs are significant including that Lotto signs often appear in windows which is a specifically legislated exemption and, otherwise are non-commercial signs (because the State created the Lotto a revenue-generating enterprise to help fund educational purposes) entitled to greater First Amendment protection; on the contrary, Contest Promotions signs are never in the window and are commercial signs controlled by a private entity with advertising sign permits separate and apart from the advertising profits made at the sweepstakes locations; and

WHEREAS, further, DOB asserts that if Contest Promotions signs were truly similar to Lotto signs, the Contest Promotions logo of crossed and checkered flags would be used to announce a sweepstakes; instead, that logo is nowhere to be found on any CPI sign or location nor are the words "Contest Promotions" anywhere on the Signs before the Board; and

WHEREAS, DOB notes that the Appellant has not argued or offered evidence that Lotto or any other contests are commonly found or incidental to the eight zoning lots before the Board which are not convenience stores – such as a martial arts academy, a tire store, a Baskin Robbins, or a meat market other than to say that Lotto logos are ubiquitous; and

WHEREAS, DOB also distinguishes the Appellant's McDonald's Monopoly example as in those cases, the sign is not advertising the "Monopoly" board game, but a game that occurs in McDonald's and, in fact, McDonald's gives its customers a custom-tailored version of the game which results "mostly in food prizes" that can be used at the McDonald's where the Monopoly game piece is offered; and

WHEREAS, DOB asserts that it is common for convenience stores to have signs for products such as magazines and cigarettes in their store windows; however, these are not signs within the ZR §12-10 (c) definition of "sign": "A sign shall include writing, representation or other figures of similar character, within a building, only when illuminated and located in a window;" thus, any non-illuminated writing in a store window is not a sign under the Zoning Resolution; and

WHEREAS, DOB asserts that its position in the subject appeal is consistent with its position in Fresh Direct, which it distinguishes on its facts; and

WHEREAS, specifically, DOB states that the Fresh Direct sign is a non-conforming use located on the same zoning lot as Fresh Direct's food processing and supply plant; and

WHEREAS, DOB asserts that it is clear that the sign is accessory to a legitimate principal use, specifically a Use Group 17 food processing plant and that its permit application contains no references to off-premises products or services and does not offer a sweepstakes; and

WHEREAS, DOB cites to Fresh Direct's statements that "the entire surface area of the Sign has been devoted to copy and images relating to Fresh Direct, products available on the Premises, and public service announcements…the Sign has not been used to display copy and images relating to products which are not sold on the Premises;" and

C. CPI Does not Own the Zoning Lots and its Signs Are not Substantially for the Benefit or Convenience of Those Tied to the Principal Use of the Zoning Lot

WHEREAS, DOB notes that the third prong of the accessory sign definition requires that the Signs be in the same ownership or operated substantially for the benefit or convenience of owners, occupants, employees, customers or visitors of the principal use of the zoning lot; and

WHEREAS, first, DOB notes that the Signs are not under the same ownership or control as the zoning lots; the Signs are under the ownership and control of CPI; and

WHEREAS, DOB notes that instead of promoting a specific business or entertainment conducted on the zoning lot, the signs promote products available for purchase at

sites other than the zoning lot and there has been no demonstration that the movies, TV shows, concerts or jeans being advertised substantially benefit the owners of these establishments or their customers; and

WHEREAS, DOB notes that CPI has submitted affidavits from several business owners who concede that they benefit by being paid by CPI to display CPI's signs at their stores; DOB asserts that mere rental payment is not the type of "benefit" to the zoning lot contemplated by the ZR; and

WHEREAS, DOB asserts that the building owner, not the business owner/lessee disproportionately benefits from the contract with CPI and this makes sense since the sign is on the side of the building controlled by the building owner not the lessee; and

WHEREAS, DOB asserts that the building owners earn many times more income for the Signs than do the proprietors, some of whom do not receive any payment; and

D. The Signs Meet the Advertising Sign Definition

WHEREAS, DOB asserts that the Signs are not accessory and that the ZR § 12-10 defines an "advertising sign" as "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;" and

WHEREAS, DOB states that consistent with the Appellant's model, each of the Signs, are large wall signs that direct attention to a product off the zoning lot; specifically, ten of the permits authorized signs that direct attention to a movie shown in theaters on other zoning lots, (including eight for the same movie "Wrath of the Titans"), one permit directs attention to "Tru Religion" brand jeans not even sold at the premises and one directs attention to a boutique located at a significant distance away on the Upper East Side; and

WHEREAS, DOB asserts that even if posters of the movies, or the particular brand of jeans, were sold at the on-site stores, the court in Mazza & Avena ruled that a sign that directs attention to one product within the store does not make the sign an accessory sign; and

WHEREAS, DOB asserts that not only does it offend the Zoning Resolution, but it offends common sense and logic to conclude that "Wrath of the Titans" signs are accessory to the noted businesses or that the Celine clothing sign, which specifically directs the passerby to a boutique by repeating the address "870 Madison Avenue" three times could also be accessory to any of the noted businesses; and

WHEREAS, DOB states that in contrast, examples of accessory signs include those on awnings located above the entrance to the premises for the convenience of those visiting the establishment; furthermore, the names of the businesses appear prominently on the signs in bright clear letters, with fonts, symbols and logos unique to type of business the accessory sign is referring to, not in miniscule, generic, faded, and dirty yellow font like the Appellant's signs and, they are not dominated by advertising posters for off-premises offerings like the Signs; and

WHEREAS, DOB concedes that a very small edge of the Signs indicates the principal use occupying the premises along with language of a purported "sweepstakes contest" offered there, the dominant portion of the sign is directing attention to a use off the zoning lot, which takes the Signs outside the realm of accessory signage and into the realm of advertising signage; and

WHEREAS, DOB concludes that, at best, the limited perimeter of the Signs is accessory to an accessory use on the zoning lot; and

SUPPLEMENTAL ARGUMENTS

WHEREAS, in addition to the effect of the CPI litigation on the subject appeal and the application of the accessory use definition, the Appellant and DOB present opposing positions on several other issues including primarily whether CPI is a legitimate business or a sham and whether its sweepstakes practices comply with New York State Law; and

WHEREAS, CPI presented evidence regarding its business practices including affidavits from representatives of the businesses and employees of CPI and accounting for the contests all of which DOB called into question; and

WHEREAS, the Board does not find it necessary to address the facts and evidence associated with CPI's business practices as those can be addressed in another forum and are not relevant to an analysis of the Signs' content and relationship with the associated businesses; and

CONCLUSION

WHEREAS, the Board agrees with DOB and finds that the Signs do not satisfy any of the three prongs set forth in the ZR § 12-10 definition of accessory use; and

WHEREAS, specifically, the Board finds that the Signs (1) are not related to the principal use on the zoning lots (ZR § 12-10(a)); (2) are not clearly incidental to and customarily found in connection with the principal uses (ZR § 12-10(b)); and (3) are not in the same ownership as or operated for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal uses (ZR § 12-10(c)); and

WHEREAS, the Board finds that the Signs are not accessory signs; they are advertising signs and fit squarely into the ZR § 12-10 definition of an advertising sign that directs attention to a "business,…commodity, service or entertainment conducted, sold, or offered elsewhere" and "is not accessory to a use located on the zoning lot;" and

WHEREAS, as far as ZR § 12-10-(a), the Board finds that the Appellant's focus on the mere coexistence of the principal use and the sign on the same zoning lot is misplaced as the location on the same zoning lot is meaningless without the second requirement of the first prong that the uses be related; and

WHEREAS, the Board notes that accessory business signs are allowed in many more zoning districts than advertising signs and are subject to numerous restrictions; those restrictions include, significantly, the content, per the ZR § 12-10 definition; and

WHEREAS, the Board finds that an essential element of an accessory sign is that it is related to the principal use; in fact, the sign must be a part of the business and be indistinguishable from it; and

WHEREAS, the Board cites to Matter of 7-11 Tours Inc. v. Board of Zoning Appeals of the Town of Smithtown, 90 A.D.2d 486 (2d Dept 1982) citing Lawrence v. Zoning Bd. of Appeals of Town of North Branford, 158 Conn. 509, 512-513 (1969) for the principle that an accessory use must not be just subordinate to the primary use but also concomitant; and

WHEREAS, the Board finds that the cases Mazza and NYP Realty strongly support its conclusion that the Signs are advertising rather than accessory; specifically, in Mazza (the Newport case), the sign directed attention to a product (Newport cigarettes) generally sold throughout the City, even though the product was also sold at the business on the zoning lot, it was deemed to be advertising because the sign must be designed so that it is clear that it is "accessory" to and directing attention to the business on the zoning lot as opposed to the sale of the product generally; and

WHEREAS, the Board further notes that in its underlying review in Mazza, DOB considered a variety of factors in determining that the large Newport advertising sign was not accessory to the convenience store including that it was not satisfied that such a sign was "customarily found" in connection with a comparable type of retail store; additionally, the Board agreed with DOB's interpretation "that a sign may refer to a product rather than a business name, where the business at the site is readily identified by the product;" such a conclusion was not possible in the Newport example for a store which sold many products; and

WHEREAS, the Board finds the NYP Realty case to be directly on point as the New York Post sought to have the sign recognized as an accessory business sign since it referenced the newspaper which was published in the subject building but DOB determined that it was an advertising sign because the citation to the New York Post was not the focus of the sign; and

WHEREAS, the Board notes that in the New York Post example, the sign's primary purpose was to advertise the New York Life Company (and was not directly related to the principal newspaper business on the site), a business and product available elsewhere than the zoning lot and that the mention of the New York Post at the bottom of the sign did not suffice to extinguish the advertising nature of the sign, within the ZR § 12-10 definition; and

WHEREAS, the Board finds that proportionality is a relevant element in the analysis because the relationship between principal and accessory use is inherently about proportions in some form; and

WHEREAS, the Board notes that the NYP Realty court has recognized that proportionality is relevant in its holding that a mere writing of a business name or address is not sufficient; and

WHEREAS, the Board finds that the presence of the business' name on the Signs', if it serves any purpose at all, cannot alone tip the scale of the analysis to it being accessory; and

WHEREAS, as to ZR § 12-10(b), the Board again agrees with DOB that the Signs are not clearly incidental to or customarily found in connection with the principal uses; and

WHEREAS, the Board finds that the Appellant is disingenuous at best to say that a sign with posters for television programs, movies, other entertainment, and clothing companies are incidental to, customarily found in connection with, or have any other relationship to a martial arts studio, tire store, lighting store, or Vietnamese restaurant, most obviously, or even to small grocery stores/newsstands; and

WHEREAS, as to ZR § 12-10(c), the Board rejects the Appellant's broad reading of the concepts of ownership and benefit; and

WHEREAS, specifically, the Board finds that the Signs are not in the same ownership as the businesses and the Appellant has failed to demonstrate that they are for the benefit of any of the named parties at ZR § 12-10(c); and

WHEREAS, the Board finds that even if the Signs were related to the business, the Appellant is incorrect that a benefit to the building owner satisfies the condition because the building as a whole and the landlord have no connection to the business and are not part of the analysis for whether it is accessory; and

WHEREAS, further, the Board notes that the question is not whether the Signs are accessory to the building; the Appellant is unpersuasive to say that the sign must be on the same zoning lot as the business and related, incidental, and customarily found *with the business* and then to say that it does not have to benefit the business and can benefit some unknown independent building owner; all three prongs must be rooted in the same enterprise, either the building or the business; and

WHEREAS, the Board notes that the only affidavits are from representatives of the businesses, who are potentially biased since they have relationships with the building owners; affidavits from unbiased customers of the businesses about the function of the Signs might tell a different story; and

WHEREAS, the Board rejects the Appellant's analogy to Lotto signs and to other contests; and

WHEREAS, the Board finds that the Lotto signs reflect logos that in most cases do not even qualify as signs because they are within windows and, further, are non-commercial; and

WHEREAS, also, the Lotto signs do not depict other products or entertainment, therefore, they would not enter into the realm of being unrelated to the principal commercial use; and

WHEREAS, the Board notes that the Appellant's examples of store promotions (Lacoste, Murray's Cheese, Modell's Sporting Goods, McDonald's, and 7-11) involved prizes of store merchandise or other direct connections to the business' products so, again, there was a clear

relationship to the principal use; and

WHEREAS, the Board finds that the question is not whether the small business can advertise sweepstakes or businesses of any size can conduct or advertise their own prize offerings, but rather whether a sweepstakes company's advertisement of its prizes, completely unrelated to the host business, goes beyond being accessory and actually advertises those products independent from the host business or the participation in a sweepstakes; and

WHEREAS, the Board distinguishes the Ham Radio Case in that in the Ham Radio case, it recognized ham radio antennas may not be commonly found but, when they are found, they are consistent with the conditions of other ham radio antennas; and

WHEREAS, in contrast, the Board notes that even if sweepstakes contests like CPI's were customarily found at the subject businesses, the Signs – posters reflecting entertainment and clothing companies - are not consistent with accessory signs; and

WHEREAS, the Board also distinguishes the Fresh Direct sign which bears a clear relationship to the Fresh Direct warehouse on the zoning lot; and

WHEREAS, the Board agrees with DOB's characterization of the CPI I and II litigation and concludes that the Appellate Division vacated the CPI I decision and the CPI II decision had narrow applicability to the four signs at issue there; and

WHEREAS, additionally, the Board finds that there would be no utility in and it would be an inefficient use of judicial resources for the Appellate Division to require that the Appellant seek an appeal to the Board and then not allow the Board to exercise its expertise in reviewing a question of zoning interpretation by restricting it to the Supreme Court's recent holding on the matter; and

WHEREAS, finally, the Board does not find it necessary to consider whether CPI is a sham or to otherwise evaluate its business practices because the Appellant's arguments fail regardless of how genuine its business practices are; however, the Board agrees that DOB's inquiry casts certain doubts on the business; and

WHEREAS, therefore, the Board finds that DOB properly revoked the Signs' permits because they are advertising signs.

Therefore it is resolved that the subject appeals, seeking a reversal of the Final Determinations of the Department of Buildings, dated November 14, 2012, are hereby denied.

Adopted by the Board of Standards and Appeals, April 23, 2013.

89-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for adjourned hearing.

92-07-A thru 94-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for adjourned hearing.

95-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for adjourned hearing.

144-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f). R8B zoning district.

PREMISES AFFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Off Calendar.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

153-12-BZ
CEQR #12-BSA-135K
APPLICANT – Harold Weinberg, for Ralph Bajone, owner.
SUBJECT – Application May 10, 2012 – Special Permit (§73-36) to legalize a physical culture establishment (*Fight Factory Gym*). M1-1/OP zoning district.
PREMISES AFFECTED – 23/34 Cobek Court, south side, 182.0' west of Shell Road, between Shell Road and West 3rd Street, Block 7212, Lot 59, Borough of Brooklyn.
COMMUNITY BOARD #13BK
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 23, 2012, acting on Department of Buildings Application No. 320269482, reads in pertinent part:

> The use of the premises as a physical culture establishment (gymnasium) in an M1-1 district . . . requires a special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-1 zoning district within the Special Ocean Parkway District, the operation of a physical culture establishment ("PCE") on the first story and mezzanine level of a one-story manufacturing building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on February 12, 2013, after due notice by publication in *The City Record*, with a continued hearing March 19, 2013 on and then to decision on April 23, 2013; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a one-story manufacturing building located on Cobek Court between Shell Road and West Third Street, with 118.92 feet of frontage on Cobek Court; and

WHEREAS, the subject site has 11,892 sq. ft. of lot area and the building has 13,401 sq. ft. of floor area (FAR 1.13) on the first story and mezzanine level; and

WHEREAS, the applicant notes that on February 23, 1966, under BSA Cal. No. 1041-65-BZ, the Board granted a special permit pursuant to ZR § 73-50, authorizing the construction of the building "encroaching on the required rear yard along the district boundary"; and

WHEREAS, the PCE will be operated as Fight Factory Gym; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the PCE will be Saturday and Sunday, from 7:00 a.m. to 10:00 p.m.; 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 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 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 PCE has been in operation since December 2010, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between December 2010 and the date of this grant; 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.12BSA135K, dated May 10, 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 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 an M1-1 zoning district within the Special Ocean Parkway District, the operation of a physical culture establishment ("PCE") on the first story and mezzanine level of a one-story manufacturing building, contrary to ZR § 42-10; *on condition* that all work will substantially conform to drawings filed with this application marked "Received March 13, 2013" – Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on December 1, 2020;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, April 23, 2013.

295-12-BZ
CEQR #13-BSA-045Q
APPLICANT – Sheldon Lobel, P.C., for Laura Danoff and Scott Danoff, owners.
SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district.
PREMISES AFFECTED – 49-33 Little Neck Parkway, Block 8263, Lot 110, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 13, 2012, acting on Department of Buildings Application No. 420463698, reads in pertinent part:

> No structural alterations (ZR 52-22) shall be made in a building or other structure substantially occupied by a non-conforming use (ZR 22-14), except to accommodate a conforming use. The degree of non-conformity on the zoning lot shall not be increased; and

WHEREAS, this is an application under ZR § 72-21, to permit the enlargement of an existing, non-conforming Use Group 4 dentist's office located within a one-story and cellar building in an R1-2 zoning district, contrary to ZR §§ 22-14 and 52-22; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in the *City Record*, with continued hearings on February 26, 2013, and March 19, 2013, and then to decision on April 23, 2013; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, Councilmember Daniel J. Halloran, III (19th District, Queens), recommends approval of this application; and

WHEREAS, the Little Neck Pines Civic Association, Inc., a not-for-profit civic organization, recommends approval of this application; and

WHEREAS, the site is a rectangular interior lot located on the north side of Little Neck Parkway between Bates Road and Annadale Lane, within an R1-2 zoning district; and

WHEREAS, the site has 100 feet of frontage along Little Neck Parkway and a total lot area of 7,949 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story dentist's office (Use Group 4) containing approximately 1,596 sq. ft. of floor area (0.20 FAR); the applicant notes that the maximum permitted community facility FAR in an R1-2 district is 3,975 sq. ft (0.50 FAR), per ZR § 24-111(a); and

WHEREAS, the applicant states that the building's existing side yards with widths of 8'-2" and 16'-6" comply with the requirements for community facilities in R1-2 districts (two 8'-0" side yards are required, per ZR § 24-35); that the front yard is complying for the portion of the lot in front of the dentist's office (21'-6") but non-complying for the portion of the lot in front of the garage (18'-5") (a 20'-0" front yard is required, per ZR § 24-35); that the rear yard is non-complying (27'-11") (a 30'-0" rear yard is required, per ZR § 24-36); and that the existing open space ratio of 369 percent is

complying (150 percent is required, per ZR § 23-141); and

WHEREAS, the applicant states that the subject building was originally constructed as a single-family dwelling with an accessory garage around 1950; that on January 13, 1993, it was converted to a dentist's office; and that, on September 9, 2004, the dentist's office became non-conforming due to an amendment to the Zoning Resolution that prohibited certain community facilities in R1 districts as-of-right; and

WHEREAS, the applicant proposes to: (1) demolish the existing garage; (2) extend the dentist's office into the area formerly occupied by the garage and into the existing concrete patio at the rear of the building; and (3) extend the cellar to match the footprint of the proposed first story; and

WHEREAS, the applicant represents that the proposal would increase the floor area of the building from 1,596 sq. ft. (0.20 FAR) to 2,171 sq. ft. (0.27 FAR), decrease the open space ratio from 369 percent to 255 percent, comply with side and front yard requirements, and maintain the degree of non-compliance with respect to the rear yard; however, the proposed demolition, reconstruction, and enlargement of this building is contrary to ZR § 52-22 (Structural Alterations), because, as noted above, the building is substantially occupied by a non-conforming use; accordingly, the applicant requests the subject variance; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the history of development at the site; (2) the underdevelopment of the site; and (3) the obsolescence of the building for its current lawful use; and

WHEREAS, as to the history of development at the site, the dentist's office use has existed at the site for the past 20 years and was conforming when commenced, but became non-conforming in 2004; accordingly, the building cannot be structurally altered or enlarged, which prohibits meaningful development of the lot and prevents the owner from modernizing his practice; and

WHEREAS, as to the underdeveloped nature of the site, the existing floor area of the building, 1,596 sq. ft. (0.20 FAR), is less than half of the 0.50 FAR permitted for community facilities that are allowed as-of-right in R1-2 districts; and

WHEREAS, the underdevelopment nature is distinctive in that, according to a study submitted by the applicant, there are four dentist's or doctor's offices along Little Neck Parkway with significantly greater FAR than the subject building's 0.20; these offices have FARs of 0.34, 0.39, 0.52 and 1.40; and

WHEREAS, in addition, the applicant represents that utilizing the building's existing floor area by converting the attached former garage in accordance with the certificate of occupancy to usable dental office space is not feasible; and

WHEREAS, specifically, such a conversion would require elevating the garage floor 4'-5" to match the floor of the office, elevating the garage roof plane three feet to provide adequate headroom, replacing the existing garage overhead door with a masonry wall, and installing insulation, HVAC and windows; such work would be cost prohibitive and only yield an additional 411 sq. ft. of floor area; and

WHEREAS, likewise, an as-of-right development on the underdeveloped site—either conversion and enlargement of the existing building or construction of a new residence—while resulting in a floor area of 3,638 sq. ft (0.46 FAR) would be infeasible due to the premium costs of demolition and construction associated with removing the existing legal community facility space, and/or reinforcing the existing structure; and

WHEREAS, as to the obsolescence of the building for its current lawful use, the one-story building is unsuitable to accommodate the large equipment required for a modern dental facility, which the applicant represents is necessary for the practice to remain attractive to current and prospective patients; and

WHEREAS, based upon the above, the Board finds that, in the aggregate, the noted conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant analyzed the feasibility of three conforming scenarios: (1) maintaining the building as-is; (2) converting the building to a one-family residence and enlarging it; and (3) converting the existing attached garage space to dental office use without any enlargement; and

WHEREAS, the applicant also considered whether a lesser variance was feasible; namely, the applicant examined a scenario in which the owner obtained a use variance and constructed a two-family residence on the site (the subject R1-2 district does not allow a two-family residence as-of-right); and

WHEREAS, the applicant represents that none of these four scenarios would provide a reasonable rate of return; and

WHEREAS, the applicant asserts that only the proposal results in an acceptable rate of 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 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; and

WHEREAS, the applicant states that the dentist's office has existed in the neighborhood for the past 20 years, and that four non-conforming Use Group 4 facilities exist within a 600-foot radius of the subject lot; and

WHEREAS, as to bulk, the applicant states that the proposal is modest and well within the requirements for permitted community facilities in R1-2 district, in that: (1) the proposed increase in floor area from 1,596 sq. ft. (0.20 FAR) to 2,171 sq. ft. (0.27 FAR) results in an FAR that is

approximately half of the maximum FAR permitted in the district (0.50 FAR); (2) the proposed decrease in open space ratio from 369 percent to 255 percent, provides over 100 percent more open space than is required (150 percent); and (3) the proposed changes to the footprint of the building will maintain compliance with the side yard requirements, bring the lot into compliance with the front yard requirement, and maintain the existing non-complying rear yard; and

WHEREAS, the applicant notes that construction under the subject variance would leave the appearance of the building—i.e. its residential façade and building envelope, which are harmonious with the other buildings on the predominantly residential street—practically unchanged; and

WHEREAS, the applicant represents that, based on a study of existing patient patterns, even if the proposal resulted in a doubling of the number of patients in the practice, the maximum number of patients visiting the office at any given time would be only eight; and

WHEREAS, in addition, the applicant provided a parking survey, which indicated that there were always at least seven available parking spaces (with an average of 15 available) on the portion of Little Neck Parkway directly in front of the site during regular business hours; and

WHEREAS, the applicant also notes that the site fronts on Little Neck Parkway, a 80'-0" wide, busy thoroughfare that can reasonably accommodate any increase in vehicular and pedestrian traffic that would result from the proposal; 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 applicant states that the hardship was not created by the owner or a predecessor in title, but is the result of the use becoming non-conforming in 2004; 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 unique physical conditions; and

WHEREAS, the applicant states that the proposal is the minimum variance necessary to afford relief, in that it seeks to add only 575 sq. ft. (FAR 0.07), reduce the non-compliance of the front yard, and in all other respects comply with the bulk regulations applicable to community facilities that are allowed in R1-2 districts; 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 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. 13BSA045Q dated December 21, 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 makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit the enlargement of an existing, non-conforming Use Group 4 dentist's office located within a one-story and cellar building in an R1-2 zoning district, contrary to ZR §§ 22-14 and 52-22; *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 March 26, 2013"– eight (8) sheets; and *on further condition;*

THAT the following shall be the bulk parameters of the building: 2,171 sq. ft. (0.27 FAR), a minimum rear yard depth of 27'-11", a minimum front yard depth of 20'-0", two side yards with a minimum width of 8'-0"; and a total height of 23'-0", as indicated on the BSA-approved plans;

THAT all signage at the site shall be in accordance with 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 23, 2013.

323-12-BZ
CEQR #13-BSA-063M

APPLICANT – Sheldon Lobel, P.C., for 25 Broadway Office Properties, LLC, owner; 25 Broadway Fitness Group LLC, lessees.

SUBJECT – Application December 7, 2012 – Special Permit (§73-36) to allow a proposed physical culture establishment (*Planet Fitness*). C5-5LM zoning district.

PREMISES AFFECTED – 25 Broadway, southwest corner

of the intersection formed by Broadway and Morris Street, Block 13, Lot 27, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 13, 2012, acting on Department of Buildings Application No. 121414193, reads in pertinent part:

> Proposed change of use to a physical culture establishment . . . is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-5 zoning district within the Special Lower Manhattan District, the operation of a physical culture establishment ("PCE") in the sub-cellar, basement and first story of a 23-story mixed-use commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 12, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

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

WHEREAS, the subject site is a 23-story mixed-use commercial and residential building located on Broadway between Morris Street and Battery Place, with 203 feet of frontage on Broadway, 248 feet of frontage on Morris Street, and 231 feet of frontage on Greenwich Street; and

WHEREAS, the subject site has 48,071 sq. ft. of lot area and the building has 809,100 sq. ft. of floor area; and

WHEREAS, the building, known as the Cunard Building, was constructed in 1921; the applicant notes that it was designated as an individual landmark by the Landmarks Preservation Commission ("LPC") in 1995; and

WHEREAS, the PCE is located in the sub-cellar, basement, and first story of the building, and occupies a total of 20,575 sq. ft. of floor space, with 10,105 sq. ft. of floor space in the sub-cellar, 10,055 sq. ft. of floor area in the basement, and 415 sq. ft. of floor area on the first story; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

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

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, dated September 6, 2012, approving the proposed interior alterations at the sub-cellar, basement and first story; in addition, on March 22, 2013, LPC issued a permit for the proposed signage at the site; 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA063M, dated December 6, 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 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 located in a C5-5 zoning district within the Special Lower Manhattan District, the operation of a physical culture establishment ("PCE") in the sub-cellar, basement and first story of a 23-story mixed-use commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 26, 2013" – Seven (7) sheets and "Received April 19, 2013" – One (1) sheet and *on further condition*:

THAT the term of this grant will expire on April 23, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, April 23, 2013.

1-13-BZ
CEQR #13-BSA-074M
APPLICANT – Sheldon Lobel, P.C., for Dryland Properties, LLC, owner; Reebok CrossFit 5th Avenue, L.P., lessee.
SUBJECT – Application January 7, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Reebok Crossfit*) at the cellar of an existing building. C5-3 zoning district.
PREMISES AFFECTED – 420 Fifth Avenue, aka 408 Fifth Avenue, between West 37th Street and West 38th Street, Block 839, Lot 7501, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 7, 2012, acting on Department of Buildings Application No. 121400876, reads in pertinent part:

> Proposed change of use to a physical culture establishment . . . is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to 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 cellar level of a 30-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

WHEREAS, Community Board 5, Manhattan, has no objection to the approval of this application; and

WHEREAS, the subject site is a 30-story commercial retail and office building located on Fifth Avenue between West 37th Street and West 38th Street, with 197.5 feet of frontage on Fifth Avenue, 145 feet of frontage on West 37th Street and 145 feet of frontage on West 38th Street; and

WHEREAS, the subject site has 28,638 sq. ft. of lot area and the building has 686,415 sq. ft. of floor area; and

WHEREAS, the PCE is located in the cellar level and occupies a total of 9,173 sq. ft. of floor space; and

WHEREAS, the PCE will be operated as Reebok CrossFit; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:00 a.m. to 9:00 p.m. and Saturday, from 9:00 a.m. to 12:00 p.m.; the PCE will be closed on Sunday; 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 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 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 also finds that the PCE use is consistent with the Special Midtown District purposes and provisions pursuant to ZR § 81-13, in that the PCE is: (1) located within an existing building's cellar; (2) accessed from Fifth Avenue by an existing stairwell; and (3) does not utilize any Fifth Avenue ground level retail space; 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.13BSA074M, dated March 5, 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 C5-3 zoning district within the Special Midtown District, the operation of a physical culture establishment ("PCE") on the cellar level of a 30-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 7, 2013" – One (1) sheet and "Received April 10, 2013" – Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on April 23, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, April 23, 2013.

7-13-BZ
CEQR #13-BSA-080K
APPLICANT – Law Office of Fredrick A. Becker, for Sharon Sofer and Daniel Sofer, owners.
SUBJECT – Application January 15, 2013 – Special Permit (§73-621) for the enlargement of a single-family home, contrary to floor area, open space and lot coverage (§23-141). R3-2 zoning district.
PREMISES AFFECTED – 1644 Madison Place, south side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot 58, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 14, 2012, acting on Department of Buildings Application No. 320583695, 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 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 March 19, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

WHEREAS, the subject site has a total lot area of 3,100 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,437 sq. ft. (0.46 FAR); and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the cellar, first and second stories at the rear of the building; and

WHEREAS, the applicant seeks an increase in the floor area from 1,437 sq. ft. (0.46 FAR), to 2,000 sq. ft. (0.65 FAR); the maximum floor area permitted is 1,860 sq. ft. (0.60 FAR); and

WHEREAS, the applicant represents that the proposed floor area exceeds the maximum permitted floor area by 8.33 percent; and

WHEREAS, the applicant seeks a decrease in the open space ratio from 73 percent to 62.4 percent; 65 percent is the minimum required; and

WHEREAS, the applicant represents that the proposed open space ratio is not less than 90 percent of the minimum required; and

WHEREAS, the applicant seeks an increase in lot coverage from 27 percent to 37.6 percent; 35 percent is the maximum permitted; and

WHEREAS, the applicant represents that the proposed lot coverage does not exceed 110 percent of the maximum permitted; and

WHEREAS, as a threshold matter, in R3-2 zoning districts, ZR § 73-621 is only available to enlarge homes that existed on June 30, 1989; and

WHEREAS, the applicant represents, and the Board accepts, that the building existed in its pre-enlarged state prior to June 30, 1989; 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 ratio results in an open space ratio that is 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 represents that the proposed floor area is 108.33 percent of the maximum permitted; and

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

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 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 14, 2013"–(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,000 sq. ft. (0.65 FAR), a minimum open space ratio of 62.4 percent, and a maximum lot coverage of 37.6 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, April 23, 2013.

35-11-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.
SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.
PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.
COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 4, 2013, at 1:30 P.M., for adjourned hearing.

16-12-BZ
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
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 4, 2013, at 10 A.M., for decision, hearing closed.

199-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.
SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.
PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

238-12-BZ
APPLICANT – Harold Weinberg, for Stuart Ditchek, owner.
SUBJECT – Application August 1, 2012 – Special Permit (§73-622) for the enlargement of single family home contrary floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 1713 East 23rd Street, between Quentin Road and Avenue R, Block 6806, Lot 86, 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 May 21, 2013, at 10 A.M., for decision, hearing closed.

315-12-BZ
APPLICANT – Akerman Senterfitt, LLP, for Pali Realty LLC, owner.
SUBJECT – Application November 20, 2012 – Special Permit (§73-50) to allow for a community facility building, contrary to rear yard requirements (§33-29). C4-3 zoning district.
PREMISES AFFECTED – 23-25 31st Street, east side of 31st Street, between 23rd Avenue and 23rd Road, Block 835, Lot 27 & 31, 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 May 21, 2013, at 10 A.M., for decision, hearing closed.

8-13-BZ
APPLICANT – Lewis E. Garfinkel, for Jerry Rozenberg, owner.
SUBJECT – Application January 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141(a)); and side yard (§23-461) regulations. R2 zoning district.
PREMISES AFFECTED – 2523 Avenue N, corner formed by the intersection of the north side of Avenue N and west of East 28th Street, Block 7661, Lot 1, 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 May 21, 2013, at 10 A.M., for decision, hearing closed.

10-13-BZ & 11-13-BZ
APPLICANT – Friedman & Gotbaum LLP, by Shelly Friedman, Esq., for Stephen Gaynor School and Cocodrilo Development Corporation, owners.
SUBJECT – Application January 18, 2013 – Variance (§72-21) to permit an enlargement to an existing school (*Stephen Gaynor School*), contrary to lot coverage (§24-11), rear yard (§24-36/33-26), and height and setback (§24-522) regulations. C1-9 & R7-2 zoning districts.
PREMISES AFFECTED – 175 West 89th Street (South Building) and 148 West 90th Street (North Building), between West 89th Street and West 90th Street, 80ft easterly from the corner formed by the intersection of the northerly side of West 89th Street and the easterly side of Amsterdam Avenue, Block 1220, Lots 5 and 7506, 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 May 21, 2013, at 10 A.M., for decision, hearing closed.

53-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Walker Memorial Baptist Church, Inc., owner; Grand Concourse Academy Charter School, lessee.
SUBJECT – Application January 31, 2013 – Variance (§72-21) to permit the enlargement of an existing UG 3 school (*Grand Concourse Academy Charter School*), contrary to rear yard regulations (§§24-36 and 24-33(b). R8 zoning district.
PREMISES AFFECTED – 116-118 East 169th Street, corner of Walton Avenue and East 169th Street with approx. 198.7' of frontage along East 169th Street and 145.7' along Walton Avenue, Block 2466, Lots 11, 16, & 17, Borough of Bronx.
COMMUNITY BOARD #4BX
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 21, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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112-13-BZY
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113-13-BZY
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126-13-A
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128-13-BZ
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129-13-BZ
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130-13-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

MAY 21, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 21, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

799-62-BZ
APPLICANT – Sahn Ward Coschignano & Baker, PLLC, for 350 Condominium Association, owners.
SUBJECT – Application March 28, 2013 – Extension of Term permitting the use of unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which expired on November 9, 2012; Waiver of the Rules. C2-5/R8, R7B zoning district.
PREMISES AFFECTED – 501 First Avenue aka 350 East 30th Street, below-grade parking garage along the west side of First Avenue between East 29th Street and 30th Street, Block 935, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD # 6M

200-00-BZ
APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owners.
SUBJECT – Application April 18, 2013 – Extension of Time to obtain a Certificate of Occupancy of a variance (§72-21) to operate a Physical Culture Establishment (Squash Fitness Center) which expired on April 25, 2013. C1-4(R6B) zoning district.
PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, aka 37-16 108th Street, Block 1773, Lot 10, Borough of Queens.
COMMUNITY BOARD #3Q

93-08-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Worlds fair Development LLC, owner.
SUBJECT – Application February 5, 2013 – Extension of Time to Complete Construction of a previously granted Variance ZR §72-21 for the construction of a six-story transient hotel (UG 5) which expired on January 13, 2013; Amendment to construct a sub-cellar. R6A zoning district.
PREMISES AFFECTED – 112-12/24 Astoria Boulevard, southwest corner of intersection of Astoria Boulevard and 112th Place, Block 1706, Lot 5, 9, 11, Borough of Queens.
COMMUNITY BOARD #3Q

APPEALS CALENDAR

245-12-A & 246-12-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. Also, seeking a determination that the owner of the property has acquired a common law vested right to complete construction under the prior R7-2 zoning. 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

345-12-A
APPLICANT – Barrry Mallin, Esq./Mallin & Cha, P.C., for 150 Charles Street Holdings LLC c/o Withroff Group, owners.
SUBJECT – Application December 21, 2012 – Appeal challenging DOB's determination that developer is in compliance with ZR 15-41.
PREMISES AFFECTED – 303 West Tenth Street aka 150 Charles Street, West Tenth, Charles Street, Washington and West Streets, Block 636, Lot 70, Borough of Manhattan
COMMUNITY BOARD #2M

ZONING CALENDAR

73-13-BZ
APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub LLC, owner.
SUBJECT – Application February 19, 2013 – Special Permit (§73-49) to allow proposed rooftop parking that is contrary to ZR§36-11 and §44-10. M1-1 and C4-4 zoning districts.
PREMISES AFFECTED – 459 E. 149th Street, northwest corner of Brook Avenue and 149th Street, Block 2294, Lot 60, Borough of Bronx.
COMMUNITY BOARD #1BX

74-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Chelsea W26 LLC, owner; Blink Eighth Avenue, Inc., lessee.
SUBJECT – Application February 20, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within a proposed mixed-use building. C6-2A zoning district.
PREMISES AFFECTED – 308/12 8th Avenue, 252/66

West 26th Street, southeast corner of the intersection of 8th Avenue and West 26th Street, Block 775, Lot 7502, Borough of Manhattan.
COMMUNITY BOARD #4M

80-13-BZ
APPLICANT – Goldman Harris LLC., for Everett Realty LLC c/o Mildred Kayden, owner; Elizabeth Arden New York, lessee.
SUBJECT – Application February 27, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Red Door Spa*) in a C6-4A zoning district.
PREMISES AFFECTED – 200 Park Avenue South, northwest corner of Park Avenue South and East 17th Street, Block 846, Lot 33, Borough of Manhattan.
COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, MAY 7, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

1073-62-BZ
APPLICANT – Peter Hirshman, for 305 East 40th Owner's Corporation, owner; Innovative Parking LLC, lessee.
SUBJECT – Application January 15, 2013 – Extension of Term of a previously approved variance (MDL Section 60 (1d)), permitting 108 tenant parking spaces for transient use within an accessory garage, which expires on March 5, 2013, C1-9/R10 zoning district.
PREMISES AFFECTED – 305 East 40th Street, northeast corner of East 40 Street and Second Avenue, Block 1333, Lot 1, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on March 5, 2013; and

WHEREAS, a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, and then to decision on May 7, 2013; and

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

WHEREAS, Community Board 6, Manhattan, does not object to this application; and

WHEREAS, the subject site is located on the southeast corner of Second Avenue and East 40th Street, partially within an R10 zoning district and partially within a C1-9 zoning district; and

WHEREAS, the site is occupied by a 20-story and penthouse residential building;

WHEREAS, portions of the cellar and first floor are occupied by a 108-space accessory parking garage; and

WHEREAS, on March 5, 1963, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law ("MDL") to permit unused and surplus parking spaces to be used for transient parking for a term of 20 years; and

WHEREAS, most recently, on March 23, 2004, the Board granted a ten-year extension of term, which expired on March 5, 2013; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on March 5, 1963, so that, as amended, this portion of the resolution shall read: "to permit an extension of term for an additional 10 years from the expiration of the prior grant, to expire on March 5, 2023; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked 'Received January 15, 2013- (2) sheets; and *on further condition*:

THAT this term will expire on March 5, 2023;

THAT a sign stating that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days' notice to the owner be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 103634658)

Adopted by the Board of Standards and Appeals, May 7, 2013.

1111-62-BZ
APPLICANT – Peter Hirshman, for 200 East Tenants Corporation, owner; MP 56 LLC, lessee.
SUBJECT – Application January 15, 2013 – Extension of Term of a previously approved variance (MDL Section 60 (3)) permitting the use of tenant parking spaces for transient use within an accessory garage, which expires on March 26, 2013. C6-6, C5-2 and C1-9 zoning district.
PREMISES AFFECTED – 201 East 56 Street, northeast corner of East 56 Street and Third Avenue, Block 1330, Lot

4, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on March 26, 2013; and

WHEREAS, a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, and then to decision on May 7, 2013; 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 6, Manhattan, does not object to this application; and

WHEREAS, the subject site spans the full length of the block on Third Avenue between East 56th Street and East 57th Street, partially within a C6-6 zoning district, partially within a C5-2 zoning district and partially within a C1-9 zoning district; and

WHEREAS, the site is occupied by a 20-story residential building;

WHEREAS, the sub-cellar, and portions of the cellar and first floor are occupied by a 150-space accessory parking garage; and

WHEREAS, on March 26, 1963, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law ("MDL") to permit unused and surplus parking spaces to be used for transient parking for a term of 20 years; and

WHEREAS, most recently, on June 7, 2005, the Board granted a ten-year extension of term, which expired on March 26, 2013; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on March 26, 2013, so that, as amended, this portion of the resolution shall read: "to permit an extension of term for an additional 10 years from the expiration of the prior grant, to expire on March 26, 2023; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked 'Received January 15, 2013- (3) sheets; and *on further condition*:

THAT this term will expire on March 26, 2023;

THAT a sign stating that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days' notice to the owner be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 103829699)

Adopted by the Board of Standards and Appeals, May 7, 2013.

11-80-BZ
APPLICANT – Richard Bass, Herrick, Feinstein, LLP, for West 28th Street Owners LLC.
SUBJECT – Application January 10, 2013 – Amendment of previously approved variance (§72-21) which allowed conversion of the third through seventh floor from commercial to residential use. Amendment would permit the additional conversion of the second floor from commercial to residential use. M1-6 zoning district.
PREMISES AFFECTED – 146 West 28th Street, south side of West 28th Street, between 6th and 7th Avenues, Block 803, Lot 65, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance, which permitted residential use (Use Group 2) on the third through seventh stories of a seven-story building within a manufacturing district; and

WHEREAS, a public hearing was held on this application on March 19, 2013 after due notice by publication in the *City Record* with a continued hearing on April 16, 2013, and then to decision on May 7, 2013; 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 south side of West 28th Street between Avenue of the Americas and Seventh Avenue, in an M1-6 zoning district; and

WHEREAS, the site is occupied by a seven-story commercial and residential building with ground floor retail use (Use Group 6), office use (Use Group 6) on the second story and residences (Use Group 2) on the third through seventh stories; and

WHEREAS, on July 8, 1980, under the subject calendar number, the Board granted a variance to permit residential use on the third through seventh stories in a manufacturing district, contrary to ZR § 42-00; and

WHEREAS, the applicant states that the building is in substantial compliance with all conditions of the prior grant except the second story residential use; and

WHEREAS, the applicant now requests an amendment to permit the conversion of the second story to residential use; the applicant notes that the second story has been occupied by residential use since 1980 and that the instant application would legalize the use; and

WHEREAS, the applicant states that the physical conditions of the building and neighborhood character that made residential use appropriate on the third through seventh stories remain today and apply with equal force with respect to the second story; and

WHEREAS, specifically, the applicant describes these conditions as: (1) narrow building floor plates that are too small and undesirable to accommodate the as-of-right commercial and manufacturing uses; (2) the small, awkward layout of the building's structural elements, stairs and elevators, which further reduce the amount of space for commercial or manufacturing uses; (3) the lack of interest in the space for commercial use and the general decline in the manufacturing sector; and (4) the increasingly mixed-use nature of the neighborhood, which includes many residential uses; and

WHEREAS, the applicant states that residential use is appropriate on the second story for the following reasons: (1) a commercial or manufacturing use on the second story would be incompatible with and detrimental to the residential use in the building; (2) the two small floor plates with approximately 1,600 sq. ft. each of usable space are not conducive to as-of-right uses; (3) there is no freight elevator; consequently, if a commercial or manufacturing use were to occupy the second floors, its occupants would be forced to share the entrances and elevators with the residents of the buildings; and (4) there is no loading dock, which is required for many as-of-right uses; and

WHEREAS, as to the requirement to share elevators, the applicant explored the feasibility of installing a dedicated elevator for the second story, and found that such an installation would eliminate valuable floor area on the ground floor and second and third stories, eliminate window display space at the ground floor (making the commercial space less attractive to potential tenants), impact the cellar and building utilities, and increase cost substantially; and

WHEREAS, as to the impact on the neighborhood character of authorizing the second story residential use, the applicant examined the surrounding area (the subject block and the block directly south) and identified 14 tax lots containing second floor residential use; 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 July 8, 1980, to permit residential use on the second story of the subject building; *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 30, 2013'- two (2) sheets; and *on further condition:*

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

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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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. 121440235)

Adopted by the Board of Standards and Appeals, May 7, 2013.

8-98-BZ

APPLICANT – Sheldon Lobel, P.C., for 106 Associates, LLC, owner.

SUBJECT – Application December 27, 2012 – Amendment of a previously approved variance (§72-21) which permitted limited commercial uses in the cellar of a building located in a residential zoning district. The amendment seeks to permit additional UG 6 uses, excluding restaurant use, expand the limited operation hours, and remove the term restriction. R6 zoning district.

PREMISES AFFECTED – 106-108 West 13th Street, West 13th Street, 120' from the intersection formed by West 13th Street and 6th Avenue, Block 608, Lot 35, 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 5

Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance to permit certain retail uses (Use Group 6) at the cellar level of a six-story building within a residential zoning district; and

WHEREAS, a public hearing was held on this application on April 9, 2013 after due notice by publication in the *City Record*, and then to decision on May 7, 2013; 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 approval of this application; and

WHEREAS, certain members of the community testified in opposition to the application; and

WHEREAS, the site is located on the south side of West 13th Street between Avenue of the Americas and Seventh Avenue, in an R6 zoning district within the Greenwich Village Historic District; and

WHEREAS, the site is occupied by a six-story mixed-use building with cellar retail use and residential use on stories one through six; and

WHEREAS, on August 11, 1998, under the subject calendar number, the Board granted a variance to legalize the retail use that existed in the cellar, limiting the permitted Use Group 6 uses to: "antique store, art gallery, furniture store, or jewelry or art metal craft store" and limiting its size to 1,400 sq. ft.; the Board limited the hours of operation of the use to Tuesday through Friday, 10:00 a.m. to 7:00 p.m., Saturday and Sunday, 11:00 a.m. to 6:00 p.m. and closed Monday; and

WHEREAS, the variance was granted for a term of 20 years, to expire on August 11, 2018; and

WHEREAS, the applicant states that it has substantially complied with all conditions of the grant, except when the space was occupied by an art gallery, which remained open until 7:00 pm on Saturdays (one hour later than was permitted under the grant); and

WHEREAS, the applicant now requests an amendment to permit: (1) any Use Group 6 use in the cellar, except eating and drinking establishments and food stores; (2) an expansion of the hours of operation to Monday through Friday, 9:00 a.m. to 9:00 p.m. and Saturday and Sunday, 10:00 a.m. to 7:00 p.m.; and (3) amend the 20-year term date to begin as of the date of the Board's action in the instant application; and

WHEREAS, the applicant states that the proposed expanded Use Group 6 uses would remain compatible with the neighborhood character and would greatly increase the marketability of the space; and

WHEREAS, in support of this assertion, the applicant represents that it has consulted with real estate brokers about leasing the space but has not been able to find a tenant due to the restrictions on use and hours of operation contained in the prior grant; and

WHEREAS, as to the effect on the neighborhood character, the applicant represents that the expansion in permitted uses will have a minimal impact on the building's appearance; the applicant also notes that the subject building is only 20 feet from a C6-2 zoning district, which permits a wide range of commercial uses; and

WHEREAS, the applicant submitted a Certificate of No Effect ("CNE") from the Landmarks Preservation Commission ("LPC"), dated, January 30, 2013, approving the proposed interior alterations; and

WHEREAS, the Board notes that, initially, the applicant sought an amendment authorizing: (1) any Use Group 6 use, except eating and drinking establishments; (2) expanded hours of Monday through Sunday, 8:00 a.m. to 11:00 p.m.; and (3) the removal of the term of the variance; however, after consulting with Community Board 2, the applicant agreed to amend its request to include: (1) a food store restriction; (2) more limited weekend hours, as noted above; and (3) a 20-year variance term; and

WHEREAS, at hearing, the Board requested clarification regarding whether the applicant sought to retain the existing signage at its current size (18 sq. ft. in surface area) and whether LPC had approved such signage; and

WHEREAS, in response, the applicant submitted a letter indicating that no expansion was requested and that LPC would have to approve the new signage upon a full application for a CNE; the applicant noted that such an application has not yet been filed because the design of the signage will vary depending on the nature of the tenant obtained; 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 August 11, 1998, 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 April 30, 2013'- three (3) sheets; and *on further condition:*

THAT the term of this grant will expire on May 7, 2033;

THAT the commercial use in the cellar will be limited to any of the uses listed in Use Group 6, except eating and drinking establishments and food stores;

THAT the hours of operation will be limited to: Monday through Friday, 9:00 a.m. to 9:00 p.m. and Saturday and Sunday, 10:00 a.m. to 7:00 p.m.;

THAT the signage for the commercial use will be as per previously approved plans and will not exceed 18 sq. ft. in surface area, unless approved by the Board and by LPC;

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

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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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. 121444286)

Adopted by the Board of Standards and Appeals, May 7, 2013.

551-37-BZ
APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.
SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of approved variance for the continued operation of an automobile repair shop (*Red's Auto Repair*) which expired on July 15, 2012; Waiver of the Rules. R1-2 zoning district.
PREMISES AFFECTED – 233-02 Northern Boulevard, between 234th and 233rd Street, Block 8166, Lot 20, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

135-46-BZ
APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.
SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment (§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.
PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8555, Lot 37, 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 4, 2013, at 10 A.M., for decision, hearing closed.

130-88-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application August 13, 2012 – Extension of Term of approved Special Permit (§73-211) for the continued operation of UG 16B gasoline service station (*Gulf*) which expired on January 24, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on October 12, 2003; Waiver of the Rules. C2-2/R4 zoning district.
PREMISES AFFECTED – 1007 Brooklyn Avenue, aka 3602 Snyder Avenue, southeast corner of the intersection formed by Snyder and Brooklyn Avenues, Block 4907, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

30-02-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Trump Park Avenue, LLC, owner; Town Sports International dba New York Sports Club, lessee.
SUBJECT – Application January 28, 2013 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*New York City Sports Club*) which expired on July 23, 2012; Amendment to permit the modification of approved hours and signage; Waiver of the Rules. C5-3, C5-2.5(Mid) zoning district.
PREMISES AFFECTED – 502 Park Avenue, northwest corner of Park Avenue and East 59th Street, Block 1374, Lot 7502(36), Borough of Manhattan
COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for continued hearing.

328-02-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Park Avenue Building Co., LLP, owner; Town Sports International dba New York Sports Club, lessee.
SUBJECT – Application January 30, 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 January 1, 2013. C5-3/C1-9 zoning district.
PREMISES AFFECTED – 3 Park Avenue, southeast corner of Park Avenue and East 34th Street, Block 889, Lot 9001, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

27-05-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owners.
SUBJECT – Application February 4, 2013 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on April 18, 2011; Amendment to permit the legalization of site layout and operational changes; Waiver of the Rules. C2-4/R6 zoning district.
PREMISES AFFECTED – 91-11 Roosevelt Avenue, north side of Roosevelt Avenue between 91st and 92nd Street, Block 1479, Lot 38, Borough of Queens.
COMMUNITY BOARD #3Q
ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

103-12-A
APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.
SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.
PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.
COMMUNITY BOARD #2BK
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 Montanez 5
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 seven-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with continued hearings on July 24, 2012, September 11, 2012, January 8, 2013, February 26, 2013, and April 9, 2013, and then to decision on May 7, 2013; 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 disapproval of this application; and

WHEREAS, City Councilperson Letitia James and State Assembly Member David Weprin, provided testimony in opposition to the vesting application; and

WHEREAS, the Adelphi Street Residents, the Fort Greene Association, and certain neighbors provided testimony in opposition to the application, citing concerns about the limited amount of work performed and raising questions about whether the claimed expenditures were associated with the subject site or other sites controlled by the same owner/contractor; and

WHEREAS, the site is located on the west side of Adelphi Street, approximately 74.12 feet south of Park Avenue; and

WHEREAS, the applicant states that the site comprises two tax lots (Lots 52 and 53) having a lot area of 4,591 sq. ft., and is further augmented by additional floor area (4,116 sq. ft.) obtained through a zoning lot merger with the adjacent Lot 51; and

WHEREAS, the applicant proposes to develop the site with a seven-story residential building with an FAR of 2.63, and 16 dwelling units (the "Building"); and

WHEREAS, the subject site is currently located within an R5B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically with respect to floor area and density; and

WHEREAS, however, on July 25, 2007 (the "Enactment Date"), the City Council voted to adopt the Fort Greene/Clinton Hill Rezoning, which rezoned the site to R5B, as noted above; and

WHEREAS, the Building does not comply with the R5B zoning district parameters as to floor area and density; 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, the applicant states that Permit No. 302384417-EW-OT (the "Alteration Permit"), an Alteration Type 2 permit for the construction of the Building's foundation and structural work, was issued to the owner by the Department of Buildings ("DOB") on July 24, 2007; and

WHEREAS, the applicant states that the Alteration Permit was filed in conjunction with New Building Application No. 302330680, which included complete plans and specifications for the proposed seven-story building, and was originally filed on April 24, 2007 (the "Original Application"); and

WHEREAS, the applicant notes that, subsequent to the Enactment Date, the Original Application was amended through a Post Approval Amendment to reflect a three-story residential building that complies with the R5B zoning district requirements, for which DOB states that a permit was issued on May 8, 2008; and

WHEREAS, the applicant notes that a separate application for the proposed seven-story residential building was filed under New Building Application No. 302360861, for which an NB permit was issued on July 23, 2007; however, that permit was subsequently withdrawn on March

15, 2008 (the "Withdrawn Permit"); and

WHEREAS, the applicant asserts that lawful work commenced under the Withdrawn Permit for the one day differential between the date of its issuance (July 23, 2007) and the issuance of the Alteration Permit (July 24, 2007); and

WHEREAS, the site is the subject of an earlier common law vested rights application to continue construction pursuant to the Withdrawn Permit under BSA Cal. No. 219-10-A; the applicant withdrew BSA Cal. No. 219-10-A by letter dated November 9, 2011; and

WHEREAS; the applicant now seeks to continue construction pursuant to the Alteration Permit; and

WHEREAS, at hearing, the Board questioned the validity of the Alteration Permit for the purposes of vesting the proposed seven-story building, since the Alteration Permit authorizes only foundation and structural work and does not include zoning calculations or complete plans and specifications for the proposed seven-story building; and

WHEREAS, the Board further raised concerns regarding the connection between the Alteration Permit and the Original Application, the latter of which has been amended and now only permits the construction of an R5B compliant building; and

WHEREAS, in response, the applicant notes that the DOB Building Information System describes the job associated with the Alteration Permit as "New foundation and structural drawing details filed in conjunction with new building application at 74 Adelphi Street (Job # 302330680)"; and

WHEREAS, the applicant states that at the time the Alteration Permit was issued, the Original Application contemplated the construction of the proposed seven-story building and included zoning calculations for the seven-story building; therefore, the Alteration Permit's reference to the Original Application served to incorporate by reference the zoning calculations for the proposed seven-story building into the Alteration Permit; and

WHEREAS, the applicant cites to Glenel Realty Corp. V. Worthington (4 A.D.2d 7002, 703 (2d Dep't 1957), where a developer proceeded based on validly issued permits for excavation and foundation work, and the court found that the developer's vested right was not for the completion of the foundation, but rather "a vested right to the erection and use of the specific superstructure for which the foundation was designed;" and

WHEREAS, the applicant asserts that in the subject case, the set of foundation and structural plans associated with the Alteration Permit, which show a framing plan for a seven-story building, make the nature of the superstructure clear, and that case law does not require that the foundation permit or an alteration permit for foundation or structural work include zoning calculations; and

WHEREAS, the applicant notes that the application for the Alteration Permit states that it was filed in conjunction with the Original Application, and therefore the Alteration Permit both: (1) incorporates by reference the plans from the Original Application, which included zoning calculations for the proposed seven-story building; and (2) contains plans for each floor, that reflects the building as contemplated in the Original Application; and

WHEREAS, by letter dated August 10, 2012, DOB confirmed that (1) the Alteration Permit is properly classified as an alteration permit and includes structural plans and foundation plans, (2) construction can commence under the Alteration Permit provided authorization to construct the remainder of the proposed building is obtained in additional permits, to the extent such permits are not already issued, and (3) the Alteration Permit was lawfully issued; and

WHEREAS, the Board has reviewed the record and concludes that the Alteration Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Alteration Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R5B zoning district regulations and DOB determined that the Building's foundation was not complete; and

WHEREAS, the Board notes that when work proceeds under a valid 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 to substantial construction, the applicant initially asserted that prior to the Enactment Date, the owner had completed the following work: the completion of approximately 70 percent of the required excavation work; the installation of 30 percent of the required shoring; and the pouring of 19 yards of concrete in connection with underpinning the adjacent building and installation of certain footings, constituting 40 percent of the concrete required for the underpinning, and 12 percent of the concrete required for the foundation footings; and

WHEREAS, the Board notes that the applicant includes work performed on July 24th and 25th, pursuant to

the Alteration Permit it seeks to proceed under, as well as work performed on July 23rd, pursuant to the Withdrawn Permit it has abandoned and no longer pursues; and

WHEREAS, the Board questions whether the work and expenditures from July 23rd should be included in the analysis for vesting as such work and expenditures were not under the subject relevant permit that was issued prior to the Enactment Date and the applicant seeks to proceed under; and

WHEREAS, in support of representations about the work performed, the applicant submitted the following evidence: excavation slips, concrete delivery slips, construction contracts, a foundation plan, and photographs of the site; and

WHEREAS, at hearing, the Board questioned the applicant's assessments due to the absence of documentation of the amount of completion at the time at the Enactment Date and ultimately the applicant conceded that only approximately 12-14 percent of excavation was complete and that no portion of the foundation walls or footings were constructed; and

WHEREAS, specifically, at hearing, the Board questioned the applicant's representations as to the amount of completed work and provided its own calculations, based on the available evidence, to conclude that (1) a maximum of 10 percent of excavation was completed; (2) a maximum of 20 percent of underpinning was completed; and (3) no shoring, footing, or foundation wall work was completed; and

WHEREAS, as to the excavation, the Board notes that the total site area is 4,600 sq. ft., to be excavated to a depth of 11 feet below grade, which amounts to approximately 1,874 cubic yards measured in place (or 2,435 cubic yards of loose volume); trucking tickets reflect a total removal of 245 cubic yards on July 23, 24, and 25, 2007, which is approximately 10 percent of the total required excavation; and

WHEREAS, the Board notes that if the work performed on July 23rd, pursuant to the Withdrawn Permit is subtracted, only 140 cubic yards (five percent of the total) was removed pursuant to the subject Alteration Permit; and

WHEREAS, as to the underpinning, the Board's analysis, based on the plans approved July 24, 2007, concludes that of the 24 required underpinning pits around the site, a maximum of two sets of pits of the ten required along the north wall could be completed; the concrete delivery tickets of 19 cubic yards on July 24 and 25, 2007 are associated with this work but finds that two days to complete two sets of pits would be extremely rapid progress given the care required to shore the excavated area under the adjacent building, placement of form work, and allowance of sufficient time for concrete to harden before beginning the next set of underpinning pits, so the Board questions whether that subsurface work could have actually been completed; and

WHEREAS, as to shoring, the Board notes that the site perimeter is 292 linear feet and all of the perimeter except 50 linear feet requires shoring; there is not any evidence of completed shoring work in the form of a survey or photograph taken at the time of the rezoning; there is, however, some evidence that no shoring was in place in June 2008; and

WHEREAS, the Board notes that DOB violations and complaints issued in June 2008 note no protection at the sides of the excavation which was 11 feet deep; and

WHEREAS, as to footings, the Board's analysis concludes that no foundation footings were constructed prior to the Enactment Date; in addition to the fact that the owner could not confirm the location of the footings, there is evidence that any footings constructed were placed after the Enactment Date; on May 14, 2008, a DOB inspector noted on complaint number 3264303 that the foundation had not begun; and

WHEREAS, further, as to the footings, the applicant states that a June 20, 2008 DOB violation, reflecting a requirement to stop work was associated with the installation of a footing to vest certain 421(a) tax abatement benefits and that it revised its work schedule to eliminate such post-Enactment Date work, which it had initially represented to be part of the pre-Enactment Date work; and

WHEREAS, the Board notes that after filing the PAA on June 2, 2008 to comply with the new zoning, a partial lift was approved in June 2008 to construct a foundation wall with a length of 15 feet, 15 feet from the adjacent building; this work could be the footing that is visible in the submitted undated photographs; however, there are questions about whether what is in the photograph is a footing at all as it does not appear level and could possibly be a remnant of the former building at the site; and

WHEREAS, the Board finds that there is significant basis to conclude that the amount of work performed as of the Enactment Date pursuant to a valid permit is actually even less based on the following: (1) the permit under which certain work was performed was actually issued after the Enactment Date; (2) the disparity between the photographs, claimed work performed, and work required per the plans; (3) the unreliable nature of the evidence due in part to there not being any distinction between the work performed prior to and after the Enactment Date; and (4) a significant amount of the work claim, including a concrete pour, was performed on the Enactment Date, possibly after the City Council vote; and

WHEREAS, as to the last point, the Board notes that the transcript from the July 25, 2007 City Council hearing reflects that the City Council voted to adopt the Fort Greene/Clinton Hill Rezoning at approximately 3:30 p.m. and no later than 4:45 p.m., so the Permit technically lapsed at that time and any work performed afterwards should not be considered; and

WHEREAS, further, the Board has questions related to the amount of work performed between the time of the permit issuance and the Enactment Date; the concerns arise from the following facts: (1) at the time DOB issued a Stop Work Order in June 2008, it stated that work had not begun;

(2) photographs do not exist of the site as of the Enactment Date; (3) further excavation was performed after the Enactment Date, so it is difficult to say, how much excavation was done then; (4) the photographs show debris, partial shoring and old foundation walls that appear to be part of adjacent properties; (5) there is not enough documentation to establish whether the work performed was pursuant to the July 2007 Alteration Permit or in 2008 according to R5B plans under the New Building Permit; and (6) if the work performed pursuant to the Withdrawn Permit is excluded, then only the work performed on July 24 and 25 should be considered; 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 finds that a nominal amount of work can be substantiated as having been preformed prior to the Enactment Date pursuant to a valid permit; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, an insufficient amount work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the applicant states that prior to the Enactment Date, the owner expended $310,016.34, including hard and soft costs and irrevocable commitments, out of $3,358,912 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred $180,000 for the work performed at the site as of the Enactment Date; and

WHEREAS, the applicant further states that the owner paid an additional approximately $133,448 in soft costs related to the work performed at the site as of the Enactment Date; and

WHEREAS, thus, the expenditures the applicant claims up to the Enactment Date represent approximately nine percent of the projected total cost; 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, at hearing, the Board expressed concerns about reliance on the submitted financial records and asked the applicant to explain its method of payment and recordkeeping; and

WHEREAS, in response, the applicant stated that the $180,000 check for foundation work, which reflects $130,000 in excess of the $50,000 specified in the June 2 contract for such work, was paid to ensure that the contractor would aggressively commence work at the site as soon as the construction permits were issued; and

WHEREAS, the applicant later reduced the $180,000 figure to $135,000 without any documentation to reflect the basis for the new number; and

WHEREAS, the Board notes that the owner of the site is a one-third owner of the contractor business and thus questions the need to incentivize one's own business to perform work at one's own site in order to perform work expeditiously, particularly when no foundation work was actually performed; and

WHEREAS, additionally, the Board notes that the $180,000 check has notations on it for another address, 92 Adelphi Street - $150,000, and $30,000 for yet another project; and

WHEREAS, in response to the Board's concerns, the applicant stated that the notation was a reference to the source of the money (another nearby development project), not its destination (the subject project); and

WHEREAS, the Board is not persuaded that the documentation is evidence that the claimed expenditures are associated with the subject construction rather than with the project noted on the check itself; and

WHEREAS, the Board notes that even if it accepted the full revised $135,000 for foundation costs (an amount that is neither reflected in contract or cancelled check), the total hard cost expenditure is only 5.6 percent of the total hard costs; and if the $135,000 is reduced to $50,000 to reflect the actual contract amount for the foundation work, the amount of hard costs expenditures out of the total required would be 4 percent; and

WHEREAS, as to serious loss, the Board considers 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 if the owner is not permitted to vest under the former R6 zoning, the floor area ratio would decrease from the approved 2.63 FAR (based on the aggregate zoning lot) to 1.35 FAR, representing a loss of 8,591 sq. ft. of buildable floor area in the building; and

WHEREAS, the applicant further states that complying with the R5B zoning would result in a reduction of units from 16 to six, a 63 percent decrease in the total number of units permitted at the site; and

WHEREAS, the applicant represents that the 8,591 sq. ft. loss in floor area and the loss of ten units would reduce the annual rental income from approximately $333,000 to $126,000, a decrease of 62 percent; and

WHEREAS, the applicant also states that the diminution of the site value from the pre-Enactment Date $1,550,000 to the current $750,000 to $800,000 contributes to a finding of serious loss; and

WHEREAS, the applicant asserts that the purchase price should be included in the serious loss analysis and that the Board has considered it in past cases (BSA Cal. Nos.

368-05-A and 300-08-A); and

WHEREAS, the Board does not give any weight to the applicant's assertions about loss to the site value as it finds the figures to be conclusory and lacking any support; and

WHEREAS, the Board acknowledges that it has stated that there is not an impediment to considering the purchase price, but that it has never done so and the two noted cases in which the applicant sought to introduce it satisfied the three-pronged analysis for vesting without consideration of the purchase price; and

WHEREAS, the Board notes that (1) the applicant has not substantiated its claim of diminution in the site value; (2) because so little work has been performed, none of the construction expenditures would be lost if required to resume construction under the current zoning; and (3) no costs of the redesign contribute to the serious loss because the applicant proactively redesigned the project to comply with the current zoning and proceeded under that scenario prior to seeking to vest; and

WHEREAS, the Board notes that the three elements of the common law vested rights analysis are examined as a whole and that certain successful vesting applications may have a minimal amount of work yet are able to establish a greater extent of expenditures or serious loss or vice versa, but, for the reasons cited above, the Board is not persuaded that the applicant has satisfied the three-prong analysis, in the aggregate; and

WHEREAS, the Board finds that (1) the amount of work submitted into the record is minimal, even if all of it were corroborated with evidence, which it is not; (2) the bookkeeping is unreliable and significant expenses cannot be substantiated nor are they clearly related to the actual construction at the site; and (3) absent a sufficient case for the amount of work and expenditure, the serious loss finding, which itself is unpersuasive, cannot stand on its own; and

WHEREAS, the applicant cites to several New York State cases to support its position that the minimal level of work performed at the site may establish a right to vest the Alteration Permit; and

WHEREAS, primarily, the applicant cites to Ageloff v. Young, 282 A.D. 707 (2d Dept 1953) and Hasco Electric Corp. v. Dassler, 144 N.Y.S.2d 857 (Sup. Ct. Westchester County 1955); the applicant notes that in Ageloff, the court recognized vested rights for staking, clearing and excavating a site and contracting for architectural services, while in Hasco, the court recognized clearing trees and billboards, leveling the site, and excavating trenches for footings; and

WHEREAS, the applicant notes that the Board has cited to Ageloff and Hasco in three cases – BSA Cal. Nos. 337-05-A, 45-07-A, and 366-05-A (respectively Hering Avenue, East 19th Street, and 8th Avenue); and

WHEREAS, the applicant also cites to Ortenberg v. Bales, 224 A.D. 87 (2d Dept 1928) in which the court granted vested rights when substantial excavation had been performed and the owner had entered into construction contracts but not performed any foundation work and Pehlham View Apts. v. Switzer, 130 Misc. 545 (Sup. Ct. Westchester County 1927) in which the developer had incurred certain expenses, employed the services of an architect, and excavated the cellar; and

WHEREAS, the applicant cites to two cases where the courts did not find vested rights because the work and expenditures were not deemed to be substantial: Smith v. M. Spiegel Sons, 31 A.D.2d 819 (2d Dept 1969) (demolition of existing houses and retaining of architects not sufficient to vest rights) and Cooper v. Dubow, 41 A.D.2d 843 (2d Dept 1973) (demolition of existing structures, preparation and filing of architect's plans, test borings, securing H.U.D. approval and negotiation with construction contractors not sufficient to vest rights); and

WHEREAS, the applicant asserts that the determining factor in the cases is whether a new development scheme has been physically imposed upon the site and asserts that the subject case with some excavation and underpinning clearly reflects that a new development scheme was being impose don the site at the time of the zoning change; and

WHEREAS, the Board distinguishes the case law and the noted Board precedent and finds that the applicant has failed to satisfy the more recently articulated three-prong analysis; and

WHEREAS, specifically, the Board notes that the Ageloff and Hasco decisions do not provide details about the three prongs, which were not articulated until approximately 20 years after those decisions; and

WHEREAS, the Board notes that in the three instances that it has cited Ageloff or Hasco, it has also cited to the more recent decisions, like Kadin and Putnam, which emphasize the individuality of the cases and the imperative to review each case as a totality of the circumstances; and

WHEREAS, the Board distinguishes Ageloff and Hasco from the subject facts in that (1) both involved sites that were affected by a change of use under the new zoning, which would have supported a more significant argument for serious loss (both sites were rezoned from commercial or industrial use to residential use); (2) the amount of construction required to complete the projects appears to have been less in proportion to the total amount needed than in the current case for a seven-story building; and (3) the amount of work performed in Ageloff (staking and clearing land and excavating trenches for footings) and in Hasco (leveled land and excavated 400 linear feet of trenches for footings) was comparable to or greater than the amount of work on which the applicant can definitively rely; and

WHEREAS, further, the Board distinguishes the three prior Board cases in which it cited Ageloff and Hasco; first, in Hering Avenue (BSA Cal. No. 337-05-A), the applicant established that the excavation, installation of footing forms and rebar, and approximately one-third of the concrete required for the foundation had been poured; in East 19th Street (BSA Cal. No. 45-07-A), the applicant established that partial excavation, seismic monitoring, lagging and shoring of adjacent properties had been performed; and in 8th Avenue (BSA Cal. No. 366-05-A), the applicant

established that installation of 164 of the 200 required piles, dewatering, shoring, and sheeting work had all been performed; and

WHEREAS, the Board notes that the complete excavation work performed in Ortenberg and Pelham View decisively exceeds the amount of work in the subject case, which included only at most 12-14 percent of excavation; and

WHEREAS, the Board finds that the amount of work performed in the two cited unsuccessful vesting cases – Smith and Cooper – is more comparable to the amount of work performed in the subject case; and

WHEREAS, the Board agrees with the applicant that a guiding principle in the common law vesting analysis is whether a new development scheme has been physically imposed upon the site, but the Board reaches the conclusion that the applicant has failed to establish such a scheme through its 12-14 percent of excavation work and purported (although highly questionable) 20 percent of underpinning, both of which could be reused for any development scheme at the site; and

WHEREAS, the Board concludes by noting that the case law is clear that there is no fixed formula and that it must consider the totality of the conditions and the strength (and plausibility) of the evidence as it measures each case in accordance to its own circumstances; and

WHEREAS, the Board must consider the nature of construction, expenditure, and serious loss related to the individual project; and

WHEREAS, the Board has distinguished all of the relevant case law and prior Board cases and finds that the unique facts of this case together fail to match the circumstances of prior successful applications; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and claim of serious loss, and the supporting documentation for such representations, and finds that the applicant has failed to establish that a vested right to complete construction of the Building accrued to the owner of the premises as of the Enactment Date; and

Therefore it is Resolved that this application made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 302384417, 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 denied.

Adopted by the Board of Standards and Appeals, May 7, 2013.

288-12-A thru 290-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orin, Inc., owner.

SUBJECT – Application October 9, 2012 – Proposed construction of three two-family homes not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SRD) zoning district.

PREMISES AFFECTED – 319, 323, 327 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot 2, 3, 4, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated September 7, 2012, acting on Department of Buildings Application Nos. 520110273, 520110282, and 520110291, read in pertinent part:

> The street giving access to proposed building is not placed on the official map of the City of New York, therefore:
>
> No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law; and
>
> 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 27-291 of the NYC Building Code; and

WHEREAS, a public hearing was held on this application on February 26, 2013 after due notice by publication in the *City Record*, with a continued hearing April 9, 2013, and then to decision on May 7, 2013; and

WHEREAS, the applicant proposes to construct three two family homes which do not front on legally mapped streets located north of Ramona Avenue, 72.56 feet west of the intersection of Ramona Avenue and Huguenot Avenue in an R3X zoning district within the Special South Richmond Development District, contrary to General City Law § 36; and

WHEREAS, by letter dated December 4, 2012, the Fire Department states that it has reviewed the proposal and has no objection as long the following conditions are met: (1) the private road section of Ramona Avenue will be maintained open at all times; and (2) no gates or obstructions shall be installed; and

WHEREAS, by letter dated March 27, 2013, the applicant provided a draft Declaration of Easement agreement that includes the Fire Department conditions; the agreement will be recorded against the property upon Board approval; 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 September 7, 2012 acting on Department of Buildings Application Nos. 520110273, 520110282, and 520110291, 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 February 7, 2013 - (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) only;

THAT the Declaration of Easement discussed above be recorded prior to obtaining building permits;

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 May 7, 2013.

304-12-A
APPLICANT – Eric Palatnik, P.C., for Success Team Development, LLC, owner.
SUBJECT – Application October 26, 2012 – Proposed seven-story residential development located within mapped but inbuilt portion of Ash Avenue, contrary to General City Law Section 35. R6A zoning district.
PREMISES AFFECTED – 42-32 147th Street, west side, south of the intersection of Sanford Avenue and 147th Street, Block 5374, Lot 59, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 28, 2012, acting on Department of Buildings Application No. 420600497, reads in pertinent part:

1. The proposed building is in the bed of the mapped street. BSA approval is required; and

WHEREAS, this is an application to permit a seven-story residential development within the bed of mapped but un-built portion of Ash Avenue; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2013, and then to decision May 7, 2013; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; 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 located on the west side of 147th Street, approximately 280 feet south of the intersection of Sanford Avenue and 147th Street within an R6A zoning district; and

WHEREAS, the Board granted an application under GCL § 35 to permit the construction of a two-family house at the subject site on November 19, 1985 in the bed of a mapped street; and

WHEREAS, pursuant to that approval, a two-family house was constructed at the site; and

WHEREAS, the applicant intends to demolish the existing home and replace it with the proposed seven-story residential development; and

WHEREAS, the Fire Department at the on February 26th public hearing on this application raised concerns regarding the development of a seven-story building on a street with a 30-foot width from curb to curb, with parking permitted on both sides of the street; the Fire Department also indicated that the proposal failed to comply with Fire Code ("FC") § 503; and

WHEREAS, in addition, the Fire Department asserted that the narrowness of the street created a substandard condition for its operational needs; specifically, the Fire Department explained that, in the event of a fire, its truck would be impeded from accessing the street, and it would be required to use an aerial ladder instead of portable ladders; and

WHEREAS, the applicant at the hearing agreed to explore additional fire safety measures; and

WHEREAS, by letter dated March 13, 2013, the applicant provided an email between the Fire Department representative and the applicant in which both parties agreed that the placement of a fire hydrant in front of the premises would satisfy the Fire Department's concerns regarding the narrowness of the street; and

WHEREAS, by letter dated April 23, 2013, the Fire Department has stated they have no objections pending compliance of the following condition prior to the issuance of the Certificate of Occupancy: a hydrant be installed 50 feet north of the proposed building site; and

WHEREAS, the Board notes that FC § 503 does not apply to the proposal; and

WHEREAS, by letter dated January 28, 2103, the Department of Transportation ("DOT") stated that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the subject lot is not currently included in the agency's Capital Improvement Program; and

WHEREAS, by letter dated December 28, 2012, the

Department of Environmental Protection ("DEP") states that: (1) there are no existing City sewers or existing City water mains in the bed of Ash Avenue between 147th Street and Parsons Boulevard; and (2) Amended Drainage Plan No. 33A calls for a future 12-inch diameter combined sewer in the bed of Ash Avenue starting west of 147th Street to Parsons Boulevard; and

WHEREAS, DEP further states that according to the Final Tax map, all lots that could benefit from the future 12-inch diameter combined sewer in Ash Avenue between 147th Street and Parsons Boulevard are fronting on either an existing or future sewer on 147th Street, Parsons Boulevard, Sanford Avenue and/or Beech Avenue; therefore, there is no need for the future 12-inch diameter combined sewer in Ash Avenue between 147th Street and Parsons Boulevard; and

WHEREAS, based on the above, DEP has no objections to the proposal; 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 September 28, 2012, acting on Department of Buildings Application No. 420600497, 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 shall substantially conform to the drawing filed with the application marked "Received May 6, 2013 " -(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) only;

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

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

THAT the applicant shall install a fire hydrant approximately 50 feet north of the proposed building site, as reflected on the plans, prior to the issuance of the Certificate of Occupancy; and

THAT the Department of Buildings must ensure compliance 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 7, 2013.

251-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for 330 Associates LLC c/o George A. Beck, owner; Radiant Outdoor, LLC, lessee.

SUBJECT – Application August 14, 2012 – Appeal from Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. C2-5 Zoning District.

PREMISES AFFECTED – 330 East 59th Street, west of southwest corner of 1st Avenue and East 59th Street, Block 1351, Lot 36, Borough of Manhattan.

COMMUNITY BOARD # 6M

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 4, 2013, at 10 A.M., for decision, hearing closed.

317-12-A

APPLICANT – Eric Palatnik, P.C., for 4040 Management, LLC, owner.

SUBJECT – Application November 29, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior M1-3D zoning district regulations. M1-2/R5B zoning district.

PREMISES AFFECTED – 40-40 27th Street, between 40th Avenue and 41st Avenue, Block 406, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

346-12-A

APPLICANT – Eric Palatnik, P.C., for Woodpoint Gardens, LLC, owners.

SUBJECT – Application December 12, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior R6 zoning district regulations. R6B zoning district.

PREMISES AFFECTED – 179-181 Woodpoint Road, between Jackson Street and Skillman Avenue, Block 2884, Lot 4, Borough of Brooklyn

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for continued hearing.

60-13-A
APPLICANT – NYC Department of Buildings.
OWNER OF PREMISES -71 Greene LLC, 75 Greene LLC, 370 Clermont LLC and Earle F. Alexander.
SUBJECT – Application February 6, 2013 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy nos. 147007 & 172308 as they were issued in error. R6B zoning district.
PREMISES AFFECTED – 71 & 75 Greene Avenue, aka 370 & 378 Clermont Avenue, northwest corner of Greene and Clermont Avenues, Block 2121, Lots 44, 41, 36, 39, 105, Borough of Brooklyn.
COMMUNITY BOARD #2BK
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 21, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

42-10-BZ
APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.
SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.
PREMISES AFFECTED – 2170 Mill Avenue, 116' west of intersection with Strickland Avenue, Block 8470, Lot 1150, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 21, 2013, acting on Department of Buildings Application No. 320117949, reads in pertinent part:

1. Proposed multi-family use is not permitted per ZR 22-10
2. Proposed floor area exceeds the maximum permitted per ZR 23-141
3. Proposed lot coverage and open space are less than required per ZR 23-141
4. Proposed dwelling units exceed the maximum permitted by ZR 23-22
5. Proposed front yard on interior portion of zoning lot is less than required per ZR 23-45
6. Proposed planting along Avenue V front yard is less than required per ZR 23-451
7. Proposed wall height and total height exceed the maximums permitted per ZR 23-631; and

WHEREAS, this is an application under ZR § 72-21, to permit the construction of a multi-family residential development partially within an R3-1 zoning district and partially within an R3-1 (C2-2) zoning district, contrary to ZR §§ 22-10, 23-141, 23-22, 23-45, 23-451 and 23-631; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in the *City Record*, with continued hearings on December 11, 2012, and February 12, 2013, and April 9, 2013, and then to decision on May 7, 2013; and

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

WHEREAS, this application originally proposed a mixed residential and commercial building with 96,025 sq. ft. of floor area (2.09 FAR), including 3,760 sq. ft. of commercial floor area, 84 dwelling units, 103 parking spaces, 51.13 percent lot coverage, and a maximum building height of 64'-0"; and

WHEREAS, during the hearing process, at the Board's direction, the applicant revised the proposal several times; and

WHEREAS, the revised proposal now reflects a residential building with 54,615 sq. ft. of floor area (1.19 FAR), 48 dwelling units, 50 parking spaces, 46.54 percent lot coverage and a maximum building height of 41'-1"; and

WHEREAS, Community Board 18, Brooklyn, recommended disapproval of the original version of this application; and

WHEREAS, members of the community appeared at the initial hearing and gave testimony in opposition to the large scale of the original proposal; and

WHEREAS, the subject site is a rectangular interior lot located on the south side of Mill Avenue approximately 116 feet west of its intersection with Strickland Avenue; the majority of the site is within an R3-1 district; the northwest corner of the site is within a C2-2 district mapped within the R3-1 district; and

WHEREAS, the site has 100 feet of frontage along Mill Avenue and a total lot area of 46,000 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant, one-story manufacturing building that contains approximately 8,000 sq. ft. of floor area (0.18 FAR) and measures approximately 30 feet in height; and

WHEREAS, the applicant states that the eastern lot line of the site abuts an unpaved, 60-foot wide right-of-way, hereafter known as the "Avenue V Easement"; and

WHEREAS, the applicant represents that the Avenue V Easement provides access to the industrial properties to the west and south of the site, and is used by members of the public to access the properties on the Mill Basin waterfront; and

WHEREAS, the applicant states that the site is also entitled to use the Avenue V Easement for ingress and egress; and

WHEREAS, the applicant states that the site was historically part of a larger tract of land that was zoned and used for intense manufacturing uses, including lumber storage, a machine shop, an electrical shop, a warehouse, a steel fabrication shop and an open lot for motor vehicle storage; and

WHEREAS, the applicant proposes a multi-family residential building; however, per ZR § 22-10, only one- and two-family dwelling are permitted in the subject R3-1 (C2-2) district; and

WHEREAS, the applicant proposes 54,615 sq. ft. of floor area (1.19 FAR); however, per ZR § 23-141, the maximum permitted floor area is 27,000 sq. ft. (0.60 FAR); and

WHEREAS, the applicant proposes a lot coverage of 46.54 percent and an open space of 53.46 percent; however, per ZR § 23-141, the maximum permitted lot coverage is 35 percent and minimum required open space is 65 percent; and

WHEREAS, the applicant proposes 48 dwelling units; however, per ZR § 23-22, a maximum of 44 dwelling units are permitted; and

WHEREAS, the applicant proposes a front yard with a depth of eight feet along the Avenue V Easement; however, per ZR § 23-45, a front yard must have a minimum depth of 15 feet; and

WHEREAS, the applicant proposes 1,542.83 sq. ft. of front yard planting along the Avenue V Easement; however, per ZR § 23-451, 3,560 sq. ft. of planting is required; and

WHEREAS, the applicant proposes a maximum wall height and maximum building height of 41'-1"; however, per ZR § 23-631, the maximum permitted wall height is 21'-0", and the maximum permitted building height 35'-0"; and

WHEREAS, the applicant states that these non-compliances are the basis for the subject variance; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the environmental remediation required, including the requirements concerning the site's (E) designation; (2) the irregular lot depth and lack of frontage on Mill Basin; (3) the relatively narrow lot width in relation to lot depth; (4) the site's poor soil quality combined with its high water table; and (5) the surrounding commercial and industrial uses; and

WHEREAS, as to the environmental remediation required due to groundwater and soil contamination and the (E) designation (specifically, E-71, per Zoning Resolution Appendix C), the applicant represents that, based on fifteen boring samples, the soil at the site contains elevated concentrations of metals and semi-volatile compounds; additionally, groundwater sampling has revealed the presence of petroleum-related volatile organic compounds at levels above acceptable standards; and

WHEREAS, as to the (E) designation, the applicant states that, on March 21, 1996, the City Planning Commission placed the (E) designation on the site in acknowledgement of its historical manufacturing and industrial uses; pursuant to the designation, development of the site must include remediation of the contaminants and all soil excavation and disposal must be completed in accordance with Office of Environmental Remediation and Department of Environmental Protection standards and protocols; additionally, under the (E) designation, 30bBA of window/wall noise attenuation is required to allow for an indoor noise environment of 45dBA; and

WHEREAS, the applicant represents that environmental remediation, as well as compliance with the (E) designation filing and permitting requirements, will significantly increase the cost of development at the site; and

WHEREAS, as to the irregular lot depth and lack of frontage on Mill Basin, the applicant states that these conditions will require the installation of extensive sanitary sewer and storm water drainage infrastructure, which will be made more expensive by the site's high water table, which is between four and six feet below grade, and its (E) designation; and

WHEREAS, as to the relatively narrow lot width in relation to lot depth (as noted above, the site is 100 feet in width, but 460 feet in depth), the applicant states this condition constrains the configuration of complying buildings to a single row of detached or semi-detached houses; the applicant also notes that, in contrast, the majority of other vacant or predominantly vacant parcels in the R3-1 (C2-2) district have more lot area and greater lot widths, and can therefore, unlike the subject parcel, create an insular subdivision that is sheltered from any nearby commercial or industrial uses; and

WHEREAS, as to the site's poor soil quality and high water table, the applicant represents that the site is underlain by historic fill (sand and silt), and that such soil is unsuitable to support development; the applicant also represents that because the site's water table is between four and six feet below grade, constant dewatering is required during subsurface operations; consequently, the creation of basements or cellars at the site is infeasible due to cost; and

WHEREAS, the applicant further states that the poor quality soil coupled with the high water table makes pile installation necessary, at significant cost; and

WHEREAS, as to the site's location among a mix of commercial and industrial properties, the applicant states that the subject site is surrounded by uses that limit the demand and marketability of low-density residential developments; as a result, the applicant contends that any housing at the site will be discounted in order to compete with similar housing stock in more residential locations within Mill Basin; and

WHEREAS, the applicant notes that the site is unique, in that it is only one of two tax lots out of 50 surveyed in the subject R3-1 (C2-2) district between Mill Basin and Strickland Avenue that does not have an existing usable structure, are burdened by a narrow lot, and do not have frontage on Mill Basin; and

WHEREAS, based upon the above, the Board finds that, in the aggregate, the noted conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant analyzed the feasibility of one conforming scenario and three lesser variance scenarios; and

WHEREAS, the applicant represents that a conforming development of the lot would consist of 16 two-story, single-family, semi-detached homes with the following bulk parameters: lot areas of approximately 2,800 sq. ft. per lot, floor areas of approximately 1,680 sq. ft. per home and two off-street parking spaces; the applicant notes that such a development would require General City Law § 36 waivers from the Board, because the buildings in the development would not front upon a mapped street; and

WHEREAS, the applicant states that the following lesser variance scenarios were analyzed: (1) a development comprising three-family buildings that complies with the bulk regulations of an R5 zoning district; (2) a two-story commercial building requiring a use variance; and (3) a multiple dwelling with a lower FAR and fewer dwelling units than the sought under this application; and

WHEREAS, as to the three-family development scenario, the applicant analyzed the feasibility of constructing 18 three-family, attached or semi-detached buildings, each with a floor area of approximately 3,000 sq. ft., 55 percent lot coverage and three parking spaces; and

WHEREAS, as to the commercial variance scenario, the applicant analyzed the feasibility of constructing a two-story commercial building with 22,932 sq. ft. of floor area (0.50 FAR) and 80 on-grade parking spaces; a variance is necessary because, as noted above, the majority of the lot is solely within an R3-1 district; and

WHEREAS, as to the smaller multiple dwelling, the applicant analyzed the feasibility of constructing a multiple dwelling with 40 dwelling units and an FAR of 0.99; and

WHEREAS, the applicant represents that neither the as-of-right scenario, nor the three lesser variance scenarios would provide a reasonable rate of return; and

WHEREAS, the applicant asserts that only the proposal results in an acceptable rate of 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 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; and

WHEREAS, the applicant states that the proposal is similar in bulk to the two existing buildings directly to the south along the Mill Basin waterfront; specifically, 2184 Mill Avenue is a four-story manufacturing building with 59,000 sq. ft. of floor area (1.74 FAR) and a building height of 76'-9", and 2186 Mill Avenue is a three-story community facility building with 60,242 sq. ft. of floor area (0.52 FAR) and a building height of 45'-0"; as such, the buildings are not out of context with their immediate neighbors in terms of size and shape; and

WHEREAS, the applicant states that the proposal has yards that meet or significantly exceed the minimum required along lot lines that are shared with potential residential development sites; and

WHEREAS, the applicant states that the proposed building's fourth story is set back from Mill Avenue approximately 105 feet, which mitigates the impact of the noncomplying height upon the surrounding area; and

WHEREAS, the applicant represents that the proposed density (48 dwelling units) only minimally exceeds that which is permitted as-of-right for this oversized lot (44 dwelling units); this minor deviation in density mitigates the fact that the dwelling units are, contrary to the use regulations, contained within one multiple dwelling building on the lot rather than spread among multiple one- and/or two-family dwellings on the lot; as noted above, a multiple dwelling is the most efficient use of the available density for the lot; and

WHEREAS, as to the impact of the use variance upon the surrounding neighborhood, the applicant asserts that it is necessary not because residential use is prohibited in the district, but because multiple dwellings are not permitted as-of-right; moreover, nearby areas—such as along Strickland Avenue—allow multiple dwellings with bulk similar to the proposal as-of-right; and

WHEREAS, the applicant notes that the overall bulk of the proposal complies with the majority of the requirements for R5 districts, which are mapped extensively in the vicinity and which City Planning had originally deemed appropriate for this area in connection with the Southeastern Brooklyn Rezoning; and

WHEREAS, in addition, the applicant notes that although its front yard along the Avenue V Easement is eight feet in depth instead of the required 15 feet and will have less than the required planting, the Avenue V Easement, as discussed above, is not a public street but an unpaved access road without significant pedestrian traffic; accordingly, the reduced front yard depth and diminished plantings will minimally impact the surrounding community; moreover, the applicant states that providing complying plantings is not feasible, because it must provide multiple curb cuts and a walkway with building access along the Avenue V Easement; 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 applicant states that the hardship was not created by the owner or a predecessor in title, but is the result of the configuration of the lot and the history of development at the site; 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 unique physical conditions; and

WHEREAS, the applicant notes that the original proposal was for a mixed residential and commercial building with 96,025 sq. ft. of floor area (2.09 FAR), including 3,760 sq. ft. of commercial floor area, 84 dwelling units, 103 parking spaces, 51.13 percent lot coverage, and a maximum building height of 64'-0"; and

WHEREAS, the applicant states that the proposal was revised several times in response to the comments and concerns of the Board; and

WHEREAS, the applicant states that the current proposal is the minimum variance necessary to afford relief, in that, the building's lot coverage and open space are now within 15 percent of that required, its density (48) is only four dwelling units greater than what is permitted (44), its maximum height of 41'-0" is only 6'-1" higher than the maximum height of ridge line allowed in the district (35'-0"), and its required yards and plantings are either complying or appropriately reduced in light of the irregularities of the site; and

WHEREAS, accordingly, 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 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. 10BSA057K dated April 12, 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 makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit the construction of a multi-family residential development in partially within an R3-1 zoning district and partially within an R3-1 (C2-2) zoning district, contrary to ZR §§ 22-10, 23-141, 23-22, 23-45, 23-451 and 23-631; *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 11, 2013"– nine (9) sheets; and *on further condition;*

THAT the following shall be the bulk parameters of the building: 54,615 sq. ft. of floor area (1.19 FAR), a maximum perimeter wall height and building height of 41'-1", a Mill Avenue street wall height of 29'-9", a front yard with a depth of eight feet along the Avenue V Easement, a front yard with a depth of 25 feet along Mill Avenue, a rear yard with a depth of 30 feet, 48 dwelling units, 1,542.83 sq. ft. of front yard planting along the Avenue V Easement, and 50 on-grade parking spaces, as indicated on the BSA-approved plans;

THAT all signage at the site shall be in accordance with the BSA-approved plans;

THAT all requirements associated with the (E-71) designation, as set forth in the EAS and in Zoning Resolution Appendix C, are satisfied;

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, May 7, 2013.

148-12-BZ
CEQR #12-BSA-131K

APPLICANT – Eric Palatnik, P.C., for Esther Kuessous, owner.

SUBJECT – Application May 8, 2012 – Special Permit (§73-621) for the enlargement of an existing single family semi-detached residence, contrary to floor area, lot coverage and open space (ZR§23-141(b)). R4 zoning district.

PREMISES AFFECTED – 981 East 29th Street, between Avenue I and Avenue J, Block 7593, Lot 12, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 17, 2012, acting on Department of Buildings Application No. 320458492, reads, in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio exceeds .75;
2. Proposed plans are contrary to ZR 23-141(b) in that the proposed open space does not meet the 55% minimum requirement;
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the 45% maximum requirement; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a single-family 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 January 29, 2013, after due notice by publication in *The City Record*, with a continued hearing on March 5, 2013, and April 9, 2013, and then to decision on May 7, 2013; and

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

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

WHEREAS, the subject site is located on the east side of East 29th Street, between Avenue I and Avenue J; and

WHEREAS, the subject site has a total lot area of 2,100 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,726.3 sq. ft. (0.72 FAR); and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the cellar, first, and second stories at the rear of the building, and construct an attic level; and

WHEREAS, the applicant seeks an increase in the floor area from 1,726.3 sq. ft. (0.72 FAR), to 2,079 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,890 sq. ft. (0.90 FAR); and

WHEREAS, the applicant seeks a decrease in open space ratio from 58.71 percent to 53.95 percent; the minimum required open space ratio is 55 percent; and

WHEREAS, the applicant seeks an increase in lot coverage from 41.29 percent to 46.05 percent; the maximum permitted lot coverage is 45 percent; and

WHEREAS, in an R4 zoning district, the special permit authorized by ZR § 73-621 is only available to enlarge homes that existed on June 30, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant represents, and the Board accepts, that the building existed in its pre-enlarged state prior to June 30, 1989; 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 ratio, the applicant represents that the proposed reduction in the open space ratio results in an open space ratio that is 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 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, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio 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 April 24, 2013"–(11) sheets and "May 2, 2013"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,079.54 sq. ft. (0.99 FAR), a minimum open space ratio of 53.95, and a maximum lot coverage of 46.05 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, May 7, 2013.

294-12-BZ
CEQR #13-BSA-044K
APPLICANT – Eric Palatnik, P.C., for David Katzive, owner; Thomas Anthony, lessee.
SUBJECT – Application October 11, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Everyday Athlete*). C5-2A/DB special zoning district.
PREMISES AFFECTED – 130 Clinton Street, aka 124 Clinton Street, between Joralemon Street and Aitken Place, Block 264, Lot 17, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 26, 2012, acting on Department of Buildings Application No. 320418776, reads in pertinent part:

> Proposed Physical Culture Establishment requires a special permit from the BSA pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-2A zoning district within the Special Downtown Brooklyn District and the Brooklyn Heights Historic District, the operation of a physical culture establishment ("PCE") in the first story of a 13-story building occupied by residential use on the second through thirteenth stories, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, with continued hearings on March 5, 2013, and April 9, 2013, and then to decision on May 7, 2013; 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, the subject site is located on the southeast corner of the intersection of Joralemon Street and Clinton Street; and

WHEREAS, the site is occupied by a 13-story building; and

WHEREAS, the site has 54 feet of frontage on Joralemon Street, 150.5 feet of frontage on Clinton Street, and a total lot area of 8,020 sq. ft.; and

WHEREAS, the proposed PCE will occupy a total of 1,312.38 sq. ft. of floor area on the first story; and

WHEREAS, the PCE will be operated as Everyday Athlete; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be Monday through Friday, from 6:00 a.m. to 8:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; however, the applicant is requesting the flexibility to remain open until 10:00 p.m. on both weekdays and the weekend; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission, dated July 31, 2012, approving the proposed exterior alterations at the ground floor storefront under its jurisdiction; 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 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 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 and has documented relevant information about the project in the Final Environmental

Assessment Statement, CEQR No.13BSA044K, dated October 1, 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 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 located in a C5-2A zoning district within the Special Downtown Brooklyn District and the Brooklyn Heights Historic District, the operation of a physical culture establishment in the first story of a 13-story building occupied by dwellings on the second through thirteenth stories, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 20, 2013" – Two (2) sheets and *on further condition*:

THAT the term of this grant will expire on May 7, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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 the hours of operation will not exceed Monday through Friday, from 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 10:00 p.m.;

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 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 7, 2013.

298-12-BZ
CEQR #13-BSA-047M
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.
SUBJECT – Application October 17, 2012 – Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university use (*New York University*), contrary to use regulations. M1-5B zoning district.
PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4th Street, Block 545, Lot 15, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated October 15, 2012, acting on Department of Buildings Application No. 121183584, reads, in pertinent part:

Proposed UG3A university use is not permitted;
contrary to ZR 42-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district, the proposed conversion of nine floors of an existing ten-story building to a Use Group 3 college and university use, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in the *City Record*, and then to decision on April 9, 2013; 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, Manhattan, recommends disapproval of this application; and

WHEREAS, New York State Senator Brad Hoylman and New York State Assembly Member Deborah J. Glick recommend disapproval of this application; and

WHEREAS, the Greenwich Village Society for Historic Preservation, the NoHo Neighborhood Association, and

certain community members submitted testimony in opposition to this application (collectively, the "Opposition"), citing the following primary concerns: (1) the proposed variance will set a precedent for similar variances in NoHo, (2) the applicant should be required to submit proof that there are no reasonable alternative sites available for the project; (3) the proposal will negatively impact the essential character of the neighborhood, (4) the proposal was not included in NYU's 2031 plan ("NYU 2031"), which was intended to satisfy the university's requirements for 20 years, (5) the compatibility of the proposed classroom and laboratory space with nearby uses and the potential negative impact of emissions from the site; and (6) the need for four stories of mechanical equipment; and

WHEREAS, the NoHo-Bowery Stakeholders, Inc., provided testimony in support of the proposal with the condition that undergraduate teaching spaces will be limited to no more than 25 percent of the building; and

WHEREAS, this application was brought on behalf of New York University (NYU), a not for profit educational institution; and

WHEREAS, the subject site is an irregularly-shaped through lot with frontage on Broadway and Lafayette Street, with a total lot area of 35,349 sq. ft., located within an M1-5B zoning district; and

WHEREAS, the site is occupied by a ten-story building with 313,188 sq. ft. of floor area (8.86 FAR), with Use Group 6 retail and Use Group 17 shipping on the ground floor and Use Group 6 offices on the second through tenth floors (the "Building"); and

WHEREAS, the applicant states that NYU currently uses the Building as a bookstore on the ground floor; administrative services on the second and fifth through eighth floors; the student health center on the third and fourth floors; financial operations on the ninth floor; and offices for the School of Nursing on the tenth floor; and

WHEREAS, on February 5, 1980, under BSA Cal. No. 1099-79-BZ, the Board granted a variance to permit the construction of three additional stories on an existing seven-story manufacturing building, contrary to the underlying zoning regulations for floor area, sky exposure plane, and rear yard equivalent (the "Existing Variance"); and

WHEREAS, on July 14, 2009, after NYU's purchase of the Building in 2008, the Board issued a letter of substantial compliance stating that certain changes to the configuration of retail space and loading berths on the Building's ground floor were in substantial compliance with the Existing Variance; and

WHEREAS, the applicant proposes to convert the Building to Use Group 3 college and university uses on the second through tenth floors, primarily for scientific research laboratories and teaching laboratories (the "Conversion"); and

WHEREAS, the applicant represents that the Conversion will proceed over time, with the eighth and ninth floors being converted to scientific research facilities immediately, and following this initial introduction of research space, the fifth through seventh and tenth floors would be converted to scientific research facilities, with the second floor being converted to teaching laboratories and support spaces for other uses in the Building; and

WHEREAS, the applicant states that the third and fourth floors will continue to be used as the student health center for the foreseeable future, and although the Student Health Center is permitted as-of-right as Use Group 6 offices, it is more appropriately characterized as a Use Group 3 college and university use because of the NYU functions and populations that it serves; and

WHEREAS, the applicant further states that over time, the second through tenth floors of the Building may be occupied by other academic uses, however, they will not be used for dormitories; and

WHEREAS, the applicant represents that the ground floor will not be affected by the Conversion, and the Conversion will not entail any changes to the envelope of the Building except that certain rooftop mechanical equipment will be installed in connection with the introduction of academic uses in the Building; and

WHEREAS, because Use Group 3 college and university use is not permitted in the underlying M1-5B zoning district, the subject use variance is required; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of NYU, which seeks to add essential scientific research and teaching space in proximity to its existing facilities; and

WHEREAS, specifically, the applicant states that the following are the programmatic needs of NYU: (1) additional scientific research space; (2) additional science teaching laboratories; and (3) locating the new scientific research and teaching laboratory space in or near NYU's Washington Square Core; and

WHEREAS, as to the need for additional scientific research space, the applicant states that NYU's science facilities remain inadequate when compared to those of competing educational institutions; and

WHEREAS, specifically, the applicant states that a campus facilities survey of 284 institutions conducted in 2007 found that NYU has approximately one-third the mean amount of dedicated research laboratory space among institutions with more than 25,000 students, and that this is due in large part to NYU's urban setting and, more particularly, to the difficulty in finding sufficiently large spaces for research facilities in or near the Washington Square Core; and

WHEREAS, the applicant notes that scientific research laboratories are generally occupied by teams of researchers conducting experiments for the purpose of furthering scientific knowledge or developing new products; and

WHEREAS, the applicant represents that the inadequacy of NYU's existing science facilities impacts both faculty and students, as the lack of space significantly constrains the ability of faculty to conduct research and to compete for funding from federal, institutional, and philanthropic sources, and insufficient research space has also had a deleterious impact on faculty recruitment and retention, with a number of faculty candidates choosing to work for schools with more adequate on-campus facilities;

and

WHEREAS, the applicant states that a 2007 study conducted by NYU projected that the science programs will likely grow between 55 and 72 percent over the next ten years and the applicant states that this growth, taken with the inadequacies of NYU's existing laboratory space, translates to a need for approximately 275,000 gross sq. ft. of additional space dedicated to science and scientific research, and one of the major constraints in accommodating this growth is the lack of adequate space available for science use; and

WHEREAS, the applicant submitted a letter from the architect stating that such facilities must be accommodated in buildings with large floor plates, high ceilings, heavy load capacity, and wide column spacing, and industry standards for research and teaching laboratories require sufficient space for eight to 12 principal investigators ("PI"), which is the "critical mass" needed to facilitate collaborative research in a laboratory setting; and

WHEREAS, the architect's letter states that each PI needs approximately 3,000 gross sq. ft. of dedicated research space to operate efficiently, for an optimal floor plate size of approximately 24,000 to 36,000 gross sq. ft., and structural supports and interior partitions should be spaced so as to accommodate laboratory modules, which have a typical width of 22 feet; and

WHEREAS, the architect's letter further states that to support an efficient and collaborative research environment, no two laboratory modules on a given floor should be located more than a one-minute walk apart, or the total length of approximately 12 contiguous 22-foot-wide modules; and

WHEREAS, as to the need for additional science teaching laboratories, the applicant states that NYU is also experiencing a shortfall of teaching laboratories to accommodate the increased student demand for science courses; and

WHEREAS, the applicant notes that a teaching laboratory is a group-learning space in which teams of students replicate experiments for educational purposes under the guidance of a faculty member, and the 2007 Survey found that NYU has approximately two-thirds the mean amount of teaching laboratory space among educational institutions with more than 25,000 students; and

WHEREAS, the applicant represents that teaching laboratories are heavily utilized to accommodate the demand for laboratory sections, and most of the teaching laboratories are decades old and in need of replacement or updating; and

WHEREAS, the applicant states that as a result of the inadequacy of these facilities, NYU is forced to limit student enrollment in its science courses and in other programs geared toward science, technology, engineering, and mathematics careers, which utilize such laboratories as part of their required curricula; and

WHEREAS, the applicant represents that NYU has an additional programmatic need to locate the new scientific research and teaching laboratory space in or near the Washington Square Core, so as to allow efficient functional relationships with existing science and classroom facilities and so as to be physically accessible to the student body; and

WHEREAS, the applicant notes that NYU's major academic facilities are located within the Washington Square Core area, with six science facilities located to the immediate east of Washington Square, between Washington Square East and Broadway, and therefore the new scientific research and teaching laboratories facilities would most efficiently be located not only within or near the Washington Square Core, but near these facilities; and

WHEREAS, the applicant represents that the consolidation of science facilities within this area simplifies access to such facilities for faculty and students who concentrate in the sciences, and allows for the sharing of limited resources; and

WHEREAS, the applicant further represents that the physical proximity of facilities to one another is crucial for promoting integration of disciplines and interaction among faculty and students, and such interchange has become especially valuable as research agendas have grown increasingly cross-disciplinary in character; and

WHEREAS, the applicant represents that co-locating the needed scientific research and teaching laboratories with existing facilities that serve different science disciplines allows for efficient collaborations among such disciplines and, in turn, fosters a rich learning and research community; and

WHEREAS, the applicant states that locating the scientific research and teaching space at the subject site is necessary because the Building is capable of providing approximately 190,000 gross sq. ft. of interconnected space dedicated to science and scientific research, and this amount of space is more than any other NYU Arts and Sciences building within the immediate vicinity of the site, including Warren Weaver Hall at 251 Mercer Street (158,591 gross sq. ft.) and the Center for Genomics and Systems Biology at 12 Waverly Place (75,869 gross sq. ft.); and

WHEREAS, the applicant further states that the Building has uniquely large floor plates of 32,500 gross sq. ft., and few buildings in or near the Washington Square Core, and no others owned by NYU, have such large floor plates which are sufficient for the "critical mass" of eight to 12 PIs needed to facilitate a collaborative research environment and capable of accommodating laboratory program elements that require significant space, such as research benches, as well as needed adjacencies between such program elements; and

WHEREAS, the applicant represents that the Building is ideally suited for the proposed uses for the following additional reasons; (1) the 22-ft. column spacing is ideal for laboratory benches and equipment, as the typical laboratory module has a width of 22 feet; (2) the overall floor plate dimensions are capable of accommodating multiple modules without creating inefficient walking distances between research stations; (3) the 14-ft. floor-to-floor heights are sufficient for accommodating the extensive ductwork and piping requirements of scientific equipment; (4) the large

floor plates and the Building's height allow for the strategic location of sensitive scientific equipment away from sources of electromagnetic fields, such as the subway and elevators; (5) the high floor load capacity, designed for the Building's original factory use, is capable of withstanding heavy laboratory equipment; (6) the steel and concrete construction, designed for the Building's original factory use, is sufficiently stiff to accommodate the maximum vibration requirements of sensitive scientific equipment; and (7) the Building has a robust electrical infrastructure capable of supporting intensive laboratory uses; and

WHEREAS, as to the argument raised by the Opposition that the applicant should be required to provide proof that there are no reasonable alternatives available to them which do not require a zoning variance, the Board notes that ZR § 72-21 does not require an alternative site search and, based upon the above, the Board finds that the applicant has submitted sufficient evidence in support of its need to locate the proposed programs at the subject site; and

WHEREAS, the applicant concludes that the requested use waiver to accommodate the Conversion is required to meet the programmatic needs of NYU; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that NYU, as a non-profit educational institution, may use programmatic needs as a basis for the requested waiver; and

WHEREAS, as noted by the applicant, under well-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 also acknowledges that NYU, as an educational institution, is entitled to deference under the case 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, based upon the above, the Board finds that NYU's programmatic needs cannot be accommodated in a complying building on the site, thus creating 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 NYU is a not-for-profit organization and the proposed development will be in furtherance of its educational 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 represents that the Conversion would introduce a use to the Building that is in keeping with the existing educational uses in the surrounding neighborhood and would be compatible with other uses in the area; and

WHEREAS, the applicant states that there are several college and university buildings in the surrounding area, such as the Hebrew Union College Brookdale Center, located to the southwest of the site at 1 West 4th Street, and Cooper Union facilities, located to the north of the site adjacent to Cooper Square, and NYU's Washington Square Core campus, which contains numerous academic facilities, is located to the immediate west of the site across Broadway, comprising the area generally surrounding Washington Square; and

WHEREAS, the applicant notes that the Washington Square Core contains six science buildings, all located within three blocks of the site, which provide an appropriate setting for the proposed Use Group 3 scientific research and teaching laboratories uses; and

WHEREAS, the applicant represents that the proposed uses in the Building would also be compatible with the office, retail, and residential uses in the surrounding area; and

WHEREAS, the applicant states that the Conversion would not impair the use and development of adjacent property, as it would not entail any new development or enlargement on the site or any changes to the existing Building envelope; and

WHEREAS, the applicant further states that the only change to the exterior of the Building would be the introduction of new rooftop mechanical equipment in connection with the proposed academic uses, which would not require any bulk waivers; and

WHEREAS, the applicant represents that the Conversion would provide a benefit to New York City by supporting NYU's research and educational programs with much needed facilities, and the increased inventory of appropriately located scientific research and teaching laboratories would, in turn, improve the quality of education offered to students, bolster efforts to recruit talented faculty, and ensure NYU's continued role as a vital and stable economic engine in the City; and

WHEREAS, as to the Opposition's concerns that the proposal was not included in the NYU 2031 plan and will set a precedent for similar variances in NoHo, the Board notes that its review of the subject variance application is limited to the specific site in question, and the relationship of the subject site to NYU 2031 is not part of the Board's consideration pursuant to ZR § 72-21; and

WHEREAS, the Board notes that the Building is already owned and operated by NYU as a bookstore, administrative services, the student health center, financial operations, and offices for the School of Nursing, and the applicant's agreement to limit undergraduate classroom use to no more than 25 percent of the gross sq. ft. of the Building will mitigate any impact caused by the additional density and pedestrian traffic that results from the introduction of Use Group 3 college and university useto the site; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated February 4, 2013, approving the proposed conversion of the building; and

WHEREAS, as to the Opposition's concerns regarding

the proposed rooftop mechanical space, the Board notes that the applicant is not requesting any bulk waivers for the proposed mechanical space, and such space is subject to review and approval by LPC; and

WHEREAS, as to the Opposition's concerns about emissions caused by the proposed use of the Building, the Board notes that the applicant submitted an Environmental Assessment Statement ("EAS") which concludes that the proposal does not have the potential for significant adverse impacts on air quality; 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 programmatic needs of NYU; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Building is designed to address NYU's present programmatic needs, which have been clearly established in the record; 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 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. 13BSA047M dated December 14, 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; 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 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 mobile source, stationary source, and chemical spill air quality screening analysis and determined that the proposed project is not anticipated to result in significant 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 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 M1-5B zoning district, the proposed conversion of nine floors of an existing ten-story building to a Use Group 3 college and university use, 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 February 13, 2013"- sixteen (16) sheets; and *on further condition*:

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

THAT any changes to the BSA-approved plans, including the installation of rooftop mechanicals, may be subject to additional review and approval by the Landmarks Preservation Commission;

THAT construction shall proceed 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) 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 9, 2013.

3-13-BZ
CEQR #13-BSA-076R
APPLICANT – Ellen Hay/Wachtel Masyr Missry LLP, for Greenridge 674 Inc., owner; Fitness International LLC DBA LA Fitness, lessees.
SUBJECT – Application January 11, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*LA Fitness*). C4-1 (SRD) zoning district.
PREMISES AFFECTED – 3231-3251 Richmond Avenue, aka 806 Arthur Kill Road, east side Richmond Avenue between Arthur Kill Road, Getz and Gurley Avenues, Block 5533, Lots 47, 58, 62, 123, 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 Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 10, 2013, acting on Department of Buildings Application No. 520118024, reads in pertinent part:

> Proposed physical culture establishment in a C4-1 district is contrary to Section 32-10 and requires a special permit from the Board of Standards and Appeals pursuant to Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-1 zoning district within the Special South Richmond Development District, the operation of a physical culture establishment ("PCE") on the ground floor of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 13, 2013, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2013, and then to decision on May 7, 2013; and

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

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

WHEREAS, the subject site is occupied by a one-story commercial building and has four street frontages: 451.18 feet along Richmond Avenue; 433.22 along Arthur Kill Road; 315.22 along Getz Avenue; and 705 feet along Gurley Avenue; and

WHEREAS, the site has 305,061 sq. ft. of lot area, including 371 parking spaces, and the building has 89,745 sq. ft. of floor area; and

WHEREAS, the proposed PCE will be located on the ground floor and occupy a total of 33,180 sq. ft. of floor area; and

WHEREAS, the applicant states that 221 parking spaces will be allocated for the PCE, which satisfies the parking requirement and parking demand; and

WHEREAS, the PCE will be operated as LA Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

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

WHEREAS, the Board noted at hearing that the site was located near a landfill and requested clarification from the applicant regarding the landfill's potential adverse impacts on the PCE; and

WHEREAS, in response, the applicant provided a letter from its consultant, Langan, which indicated that: (1) the landfill is down-gradient, approximately 1,000 feet away from the proposed PCE and, not an environmental threat to the PCE site; (2) the landfill site classified by the New York State Department of Environmental Conservation as an "Inactive Hazardous Waste Disposal Site"; (3) the landfill is completely capped and a remediation project—to convert the landfill into a City park—is 98 percent complete; and (4) there is a long-term monitoring program in place to ensure that the contained hazardous waste does not leave the landfill; 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 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 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. 13BSA076R, dated March 20, 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 C4-1 zoning district within the Special South Richmond

Development District, the operation of a PCE on the ground floor 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 January 11, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on May 7, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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 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 7, 2013.

4-13-BZ
CEQR #13-BSA-077K
APPLICANT – Francis R. Angelino, Esq., for 1625 Flatbush, LLC, owner; Global Health Clubs, LLC, owner.
SUBJECT – Application January 11, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*). C8-2 zoning district.
PREMISES AFFECTED – 1623 Flatbush Avenue, East 32nd Street and New York Avenue, Block 7578, Lot 49, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 22, 2013, acting on Department of Buildings Application No. 320484383, reads in pertinent part:

> Proposed physical culture establishment is not permitted in a C8-2 zoning district. The use is contrary to Section 32-10 of the New York City Zoning Resolution and requires a special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C8-2 zoning district, the operation of a physical culture establishment ("PCE") in the cellar and ground floor of an existing one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, and then to decision on May 7, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 17, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located at the intersection of Flatbush Avenue and East 32nd Street and is occupied by a one-story commercial building; the site has 98.47 feet of frontage along East 32nd Street, 71.6 feet of frontage along Flatbush Avenue, and 72.34 feet of frontage along New York Avenue; and

WHEREAS, the site has approximately 46,611 sq. ft. of lot area and the building has approximately 13,558 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy a total of 17,802 sq. ft. of floor space in the building, with 7,323 sq. ft. of floor area on the ground floor and 10,479 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as Retro Fitness; 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 5:00 a.m. to 11:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; 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 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 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. 13BSA077K, dated January 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 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 ground floor of an existing 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 19, 2013" – Three (3) sheets and "Received April 2, 2013" – One (1) sheet; and *on further condition*:

THAT the term of this grant will expire on May 7, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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 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 7, 2013.

113-12-BZ

APPLICANT – Mitchell S. Ross, Esq., for St. Paul CongHa-Sang R.C. Church, owners.

SUBJECT – Application April 23, 2012 – Variance (§72-21) to permit a proposed church (*St. Paul's Church*), contrary to front wall height (§§24-521 & 24-51). R2A zoning district.

PREMISES AFFECTED – 32-05 Parsons Boulevard, northeast corner of Parsons Boulevard and 32nd Avenue, Block 4789, Lot 14, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for continued hearing.

138-12-BZ

APPLICANT – Harold Weinberg, for Israel Cohen, owner.

SUBJECT – Application April 27, 2012 – Special Permit (§73-622) for the legalization of an enlargement to a single family residence, contrary to side yard requirement (§23-461). R-5 zoning district.

PREMISES AFFECTED – 2051 East 19th Street, between Avenue U and Avenue T, Block 7324, Lot 64, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

206-12-BZ

APPLICANT – George Guttmann, for Dmitriy Kotlarsky, owner.

SUBJECT – Application July 2, 2012 – Special Permit (§73-621) to legalize the conversion of the garage into

recreation space, contrary to floor area regulations (§23-141). R3-1 zoning district.
PREMISES AFFECTED – 2373 East 70th Street, between Avenue W and Avenue X, Block 8447, Lot 67, 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 4, 2013, at 10 A.M., for decision, hearing closed.

242-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Toldos Yehuda*), contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.
PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, Borough of Brooklyn.
COMMUNITY BOARD #12BK
ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for deferred decision.

284-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Jack Cayre, owner.
SUBJECT – Application September 25, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) requirements. R2X (OP) zoning district.
PREMISES AFFECTED – 2047 East 3rd Street, eastern side of East 3rd Street, between Avenue S and Avenue T, Block 7106, Lot 122, 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 May 21, 2013, at 10 A.M., for decision, hearing closed.

338-12-BZ
APPLICANT – Eric Palatnik, P.C., for 164-20 Northern Boulevard, LLC, owner; Northern Gym, Corp., lessee.
SUBJECT – Application December 13, 2012 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Metro Gym*) located in an existing one-story and cellar commercial building. C2-2/R5B zoning district.
PREMISES AFFECTED – 164-20 Northern Boulevard, west side of the intersection of Northern Boulevard and Sanford Avenue, Block 5337, Lot 17, Borough of Queens.
COMMUNITY BOARD # 7Q
ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for adjourned hearing.

13-13-BZ & 14-13-BZ
APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.
SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, Borough of Brooklyn.
COMMUNITY BOARD #6BK
ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for continued hearing.

63-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Cel-Net Holdings, Corp., owner; The Cliffs at Long Island City, LLC, lessee.
SUBJECT – Application February 11, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Cliffs*). M1-4/R7A (LIC) zoning district.
PREMISES AFFECTED – 11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street, Block 447, Lot 13, Borough of Queens.
COMMUNITY BOARD #2Q
ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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149-13-A
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153-13-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

JUNE 4, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 4, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

608-70-BZII
APPLICANT – Walter T. Gorman, P.E., P.C., for Neptune Avenue Property LLC, owner. Dunkin Donuts Corporate Office, lessee.
SUBJECT – Application January 22, 2013 – Pursuant to ZR §11-412 and ZR §52-332, an Amendment to convert the previously granted (UG16B) Automotive Service Station to a (UG6) Eating and Drinking Establishment (Dunkin' Donuts) contrary to zoning regulations. R6 zoning district.
PREMISES AFFECTED – 351-361 Neptune Avenue, north west corner Brighton 3rd Street, Block 7260, Lot 101, Borough of Brooklyn.
COMMUNITY BOARD #13BK

240-01-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Lionshead 110 Development LLC, owner; Lionshead 110 Development LLC, lessee.
SUBJECT – Application December 11, 2012 – Extension of term of a Special Permit (§73-36) which permitted a physical culture establishment, located in portions of the first floor and second floor levels in an existing mixed use building, which expired on December 17, 2012. C6-4(LM) zoning district.
PREMISES AFFECTED – 110/23 Church Street, southeast corner of intersection of Church Street and Murray Street, Block 126, Lot 27, Borough of Manhattan.
COMMUNITY BOARD #1M

APPEALS CALENDAR

308-12-A
APPLICANT – Francis R. Angelino, Esq., for LIC Acorn Development LLC, owner.
SUBJECT – Application November 8, 2012 – Request for a determination that the owner of record has obtained a vested right under the common law to continue construction and obtain a Certificate of Occupancy. M1-2/R5D zoning district.
PREMISES AFFECTED – 39-27 29th Street, east side 29th Street, between 39th and 40th Avenues, Block 399, Lot 9, Borough of Queens.
COMMUNITY BOARD #1Q

111-13-BZY thru 119-13-BZY
APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., lessee.
SUBJECT – Applications April 24, 2013 – Extension of time (§11-332-b) to complete construction of a major development commenced under the prior zoning district regulations in effect on October 2004. R1-2/NA-2 zoning district.
PREMISES AFFECTED –
5031, 5021 Grosvenor Avenue, Lots 50, 60, 70, 5030 Grosvenor Avenue, Block 5830, Lot 3930, 5310 Grosvenor Avenue, Block 5839, Lot 4018, 5300 Grosvenor Avenue, Block 5839, Lot 4025, 5041 Goodridge Avenue, Block 5830, Lot 3940, 5040 Goodridge Avenue, Block 5829, Lot 3635, 5030 Goodridge Avenue, Block 5829, Lot 3630. Borough of Bronx
COMMUNITY BOARD #8BX

ZONING CALENDAR

236-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.
SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office contrary to side yard requirement, ZR §23-45. R2 zoning district.
PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.
COMMUNITY BOARD #2SI

50-13-BZ
APPLICANT – Lewis E. Garfinkel, for Mindy Rebenwurzel, owner.
SUBJECT – Application January 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); side yard (ZR 23-461); less than the minimum rear yard (ZR 23-47). R2 zoning district.
PREMISES AFFECTED – 1082 East 24th Street, west side of East 24th Street, 100' north of corner of Avenue K and East 24th Street, Block 7605, Lot 79 Brooklyn.
COMMUNITY BOARD #14BK

57-13-BZ
APPLICANT – Eric Palatnik, P.C., for Lyudmila Kofman, owner.
SUBJECT – Application February 2, 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 – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.
COMMUNITY BOARD #15BK

84-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 184 Kent Avenue Fee LLC, owner; SoulCycle Kent Avenue, LLC, lessee.
SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*) within portions of an existing cellar and seven-story mixed-use building. C2-4(R6) zoning district.
PREMISES AFFECTED – 184 Kent Avenue, northwest corner of intersection of Kent Avenue and North 3rd Street, Block 2348, Lot 7501, Borough of Brooklyn.
COMMUNITY BOARD #1BK

85-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for St. Matthew's Roman Catholic Church, owner; Blink Utica Avenue, Inc., lessee.
SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within existing building. C4-3/R6 zoning district.
PREMISES AFFECTED – 250 Utica Avenue, northeast corner of intersection of Utica Avenue and Lincoln Place, Block 1384, Lot 51, Borough of Brooklyn.
COMMUNITY BOARD #8BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, MAY 14, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

326-02-BZ
APPLICANT – Sheldon Lobel, P.C., for 2230 Church Avenue Realty, LLC, owner; 2228 Church Avenue Fitness Group, LLC, lessee.
SUBJECT – Application November 27, 2012 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of physical culture establishment (*Planet Fitness*) which expires on November 5, 2013; Amendment to allow the extension of use to the building's first floor, and change in ownership. C4-4A zoning district.
PREMISES AFFECTED – 2228-2238 Church Avenue, south side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot 36, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application to legalize the extension of the PCE to a portion of the building's first floor, to change the operator, to modify the hours of operation, and for an extension of term, which will expire on November 5, 2013; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

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

WHEREAS, the subject site is located on the south side of Church Avenue east of the corner it forms with Flatbush Avenue, and west of Bedford Avenue, within a C4-4A zoning district; and

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

WHEREAS, on November 5, 2003, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the legalization of an existing PCE in the cellar of a one-story commercial building for a term of ten years, to expire on November 5, 2013; at the time of the grant, the site was located within a C4-2 zoning district, but in 2009, pursuant to the Flatbush Rezoning, the site was rezoned to C4-4A; and

WHEREAS, the applicant now seeks to legalize the extension of the PCE use into a portion of the first floor; and

WHEREAS, specifically, the applicant seeks to legalize the PCE use on 3,898 sq. ft. of floor area on the first floor; the occupancy of 10,157 sq. ft. of floor space in the cellar will remain for a total of 14,055 sq. ft. of floor space; and

WHEREAS, additionally, the applicant seeks to change the operator from Church Avenue Fitness Club to Planet Fitness; 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 applicant also seeks to change its hours of operation from the approved 6:00 a.m. to 11:00 p.m., Monday to Friday, and 8:00 a.m. to 8:00 p.m. Saturday and Sunday to 24 hours of operation, seven days a week; and

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

WHEREAS, at hearing, the Board directed the applicant to revise its sign analysis to reflect the correct amount of signage identified on the proposed elevation drawing; and

WHEREAS, in response, the applicant submitted a revised sign analysis that is consistent with the elevation drawing; and

WHEREAS, based on its review of the record, the Board finds that the proposed legalization, change in operator, change in hours of operation, and ten-year extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated November 5, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the date of this grant, to permit the legalization of interior layout modifications, the change in operator, and the change in the hours of operation; *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 February 27, 2013"–(4) sheets; 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 this grant will be limited to a term of ten years from the date of this grant, to expire on May 14, 2023;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

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. 300130551)

Adopted by the Board of Standards and Appeals, May 14, 2013.

150-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Shun K. and Oi-yee Fung, owners.

SUBJECT – Application January 25, 2013 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to build a new four-story residential building with a retail store and one-car garage, which expired on March 29, 2009; Waiver of the Rules. C6-2G LI (*Special Little Italy*) zoning district.

PREMISES AFFECTED – 129 Elizabeth Street, west side of Elizabeth Street between Broome and Grand Street, Block 470, Lot 17, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to complete construction in accordance with the conditions of a variance; and

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

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

WHEREAS, the site is located on the west side of Elizabeth Street, between Broome Street and Grand Street, within a C6-2G zoning district and the Special Little Italy District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 2005 when, under the subject calendar number, the Board granted a variance for construction of a four-story building, with a retail use and a one-car garage on the ground floor, and residential use on the upper floors, contrary to ZR §§ 23-32 and 109-122; and

WHEREAS, a condition of the grant was that the construction be completed pursuant to ZR § 72-23, which requires substantial completion within four years, by March 29, 2009; and

WHEREAS, the applicant states that construction has been delayed due to a dispute with the adjacent church over the ownership of a portion of the site; the dispute has now been settled and the disputed portion of the site has been conveyed to the church; and

WHEREAS, the applicant states that it and the church are in the process of finalizing updated surveys and deeds with new legal descriptions for each of the affected properties (Lot 16 and Lot 17); and

WHEREAS, the applicant states that once the new metes and bounds of the subject Lot 17 are established, it will file an application at the Board to amend its plans; and

WHEREAS, the applicant now seeks to extend the time to complete construction in accordance with the variance for an additional four years; and

WHEREAS, based upon its review of the record, the Board finds the requested waiver 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, as adopted on March 29, 2005, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for a period of four years from May 14, 2013, to expire on May 14, 2017; *on condition* that all work will substantially conform to the approved plans; and *on further condition*:

THAT substantial construction be completed by May 14, 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) 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. 103299048)

Adopted by the Board of Standards and Appeals, May 14, 2013.

55-06-BZ

APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.

SUBJECT – Application March 7, 2013 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a three-story with cellar, office building (UG 6B), which expired on January 23, 2011; Waiver of the Rules. C1-1(NA-1) zoning district.

PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot 92, 93, 94, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to complete construction in accordance with the conditions of a variance; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

WHEREAS, Community Board 2, Staten Island, recommends approval of the application; and

WHEREAS, the site is located in an R3-2(C1-1) zoning district, within the Special Natural Area District (NA-1), and has a lot area of 17,718 sq. ft.; and

WHEREAS, the applicant notes that the site fronts on Nadine Street, which is a final mapped street that is unopened and not traveled; and

WHEREAS, the applicant also notes that the site is adjacent to and across the street from the mapped but un-built Willowbrook Expressway, which is considered part of the Greenbelt (natural undisturbed woodland) on Staten Island; and

WHEREAS, the site is the subject of several prior municipal actions made by the Board, the City Planning Commission, and other City agencies; and

WHEREAS, most recently, on January 23, 2007, the Board granted (1) a variance for construction of a three-story Use Group 6B office building that does not comply with zoning requirements concerning rear yard, wall height, and maximum number of stories, contrary to ZR §§ 33-26, 33-23 and 33-431; and (2) an application under ZR § 73-44, to permit a decrease in required off-street accessory parking spaces, contrary to ZR § 36-21; and

WHEREAS, a condition of the grant was that the construction be completed pursuant to ZR § 72-23, which requires substantial completion within four years, by January 23, 2011; and

WHEREAS, the applicant states that construction has been delayed due to financing constraints; and

WHEREAS, the applicant now seeks to extend the time to complete construction in accordance with the variance for an additional four years; and

WHEREAS, based upon its review of the record, the Board finds the requested waiver 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, as adopted on January 23, 2007, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for a period of four years from May 14, 2013, to expire on May 14, 2017; *on condition* that all work will substantially conform to the approved plans; and *on further condition*:

THAT substantial construction be completed by May 14, 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) 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."
(DOB Application No. 500822844)

Adopted by the Board of Standards and Appeals, May 14, 2013.

256-82-BZ
APPLICANT – Vito J. Fossella, P.E., for Philip Mancuso, owner.
SUBJECT – Application December 24, 2012 – Extension of Term of a previously granted Special Permit (§73-44) for the reduction in required parking for a veterinary clinic, dental laboratory and general UG6 office use in a two-story building, which expired on November 23, 2012. C2-1/R3-1 zoning district.
PREMISES AFFECTED – 1293 Clove Road, north side of Clove Road, corner formed by the intersection of Glenwood Avenue and Clove Road, Block 605, Lot 8, Borough of Staten Island.
COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for continued hearing.

982-83-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.
SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.
PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192nd Street, Block 5513, Lot 27, 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 June 11, 2013, at 10 A.M., for decision, hearing closed.

103-91-BZ
APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.
SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.
PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.
COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for continued hearing.

102-94-BZ
APPLICANT – C.S. Jefferson Chang, for BL 475 Realty Corp., owner.
SUBJECT – Application January 9, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continuous (UG 6) grocery store which expired on June 20, 2005; Waiver of the Rules. R-5 zoning district.
PREMISES AFFECTED – 475 Castle Hill Avenue, south side of Lacombe Avenue and West of the corner formed by the intersection of Lacombe Avenue and Castle Hill Avenue, Block 3510, Lot 34, Borough of Bronx.
COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for continued hearing.

341-02-BZ
APPLICANT – Sheldon Lobel, P.C., for 231 East 58th Street Associates LLC, owners.
SUBJECT – Application January 25, 2013 – Extension of Term of a previously approved Variance (§72-21) for the continued UG6 retail use on the first floor of a five-story building, which expired on April 8, 2013. R-8B zoning district.
PREMISES AFFECTED – 231 East 58th Street, northwest corner of the intersection of Second Avenue and East 58th Street, Block 1332, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #6M
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 11, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

493-73-A
APPLICANT – Sheldon Lobel, P.C., for 83rd Street Associates LLC, owner.
SUBJECT – Application October 4, 2012 – Extension of Term of an approved appeal to Multiple Dwelling Law Section 310 to permit a superintendent's apartment in the cellar, which expired on March 20, 2004, an amendment to eliminate the term, an extension of time to obtain a Certificate of Occupancy, and a waiver of the Rules. R10A /R8B Zoning District.
PREMISES AFFECTED – 328 West 83rd Street, West 83rd Street, approx. 81'-6" east of Riverside Drive, Block 1245, Lot 40, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application to waive the Board's Rules of Practice and Procedure, eliminate the term of a previously granted variance pursuant to Multiple Dwelling Law ("MDL") § 310, and extend the time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

WHEREAS, the subject site is located on the south side of West 83rd Street, 83 feet east of Riverside Drive and is partially within an R10A zoning district and partially within an R8B zoning district, within the Riverside-West End Historic District Extension I; and

WHEREAS, the site is occupied by a six-story and cellar residential building with a superintendent's apartment in the cellar and dwelling units on the upper floors; and

WHEREAS, on October 10, 1972, under BSA Cal. No. 552-72-A, the Board granted a variance pursuant to MDL § 310 to legalize an existing superintendent's apartment in the cellar of the building; and

WHEREAS, on October 23, 1973, under the subject calendar number, the Board amended the variance to permit the superintendent's apartment in the cellar for a term of five years to expire on October 23, 1978; and

WHEREAS, the grant has been extended several times; and

WHEREAS, most recently, on August 8, 1995, the Board extended the term for ten years, to expire on March

20, 2004; and

WHEREAS, the applicant acknowledges that at some point prior to its purchase of the building, the cellar apartment was enlarged to incorporate an additional bedroom and a living room, as shown on the existing cellar plan submitted with the application; and

WHEREAS, the applicant states that it will return the cellar apartment to compliance with the BSA-approved plans by eliminating the partitions that created the additional rooms; and

WHEREAS, the applicant states that it cannot maintain all of the habitable rooms because they are unable to meet light and air requirements; and

WHEREAS, the applicant states that the necessary work to return the apartment to compliance will be performed within 12 months of the date of this grant; and

WHEREAS, specifically, the applicant proposes to obtain DOB approval of the proposed work within three months; bid the project to contractors and pull permits within another three months; relocate the superintendent's family within two months; perform the work within two months; and obtain DOB sign-off within a final two months; and

WHEREAS, the Board directed the applicant to provide information about the fire safety measures in the cellar; and

WHEREAS, in response, the applicant detailed the fire safety measures, including the smoke detectors and fire alarm system; and

WHEREAS, the applicant also seeks to eliminate the term of the variance as the apartment has been occupied by a superintendent for more than 40 years without adverse impact on the subject building or the surrounding area, which is predominantly developed with similar uses; and

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

WHEREAS, based on its review of the record, the Board finds that a ten-year extension of term and a two-year extension of time to obtain a certificate of occupancy are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated August 8, 1995, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from the date of this grant and extend the time to obtain a certificate of occupancy for two years; *on condition* that the use shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked previously approved by the Board; and *on further condition*:

THAT the term of the grant will expire on May 14, 2023;

THAT the above condition will be noted on the certificate of occupancy;

THAT a certificate of occupancy be obtained within two years of the date of this grant, by May 14, 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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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. 120714520)

Adopted by the Board of Standards and Appeals, May 14, 2013.

265-12-A & 266-12-A
APPLICANT – Jesse Masyr, Watchel Masyr & Missry, LLP, for Related Retail Bruckner LLC.
OWNER OF PREMISES – Ciminello Property Associates.
SUBJECT – Application September 5, 2012 – Appeal challenging Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. M1-2 & R4/C2-1 zoning district.
PREMISES AFFECTED – 980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway, Block 5542, Lot 41, Borough of Bronx.
COMMUNITY BOARD #10BX
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 Montanez 5
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to two Notices of Sign Registration Rejection from the Bronx Borough Commissioner of the Department of Buildings ("DOB"), dated August 6, 2012, denying registration for the signs at the subject premises (the "Final Determinations"), which read, 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. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. The 1977 ES receipt and application contradict the ownership information provided. In addition, the sign has been used exclusively as an accessory business sign to the Home Depot operating on the lot for at least two years, so any claimed non-conforming advertising sign use was terminated and may not be resumed. 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 April 9, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; 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 southeast corner of Brush Avenue and the Bruckner Expressway/Cross Bronx Expressway partially within an M1-2 zoning district and partially within an R4 (C2-1) zoning district; and

WHEREAS, this appeal is brought on behalf of Related Retail Bruckner, LLC (the "Appellant"); and

WHEREAS, the Premises is occupied by a one-story commercial building containing a hardware store ("The Home Depot"), 451 on-grade parking spaces, and, on the north side of the lot, a double-faced pole sign ("the Signs") whose current message is for the Home Depot; and

WHEREAS, the Appellant states that the Signs are rectangular signs, each measuring 14 feet in height by 48 feet in length for a surface area of 672 sq. ft., each; and

WHEREAS, the Appellant states that the Signs are located 25 feet from the Bruckner Expressway; and

WHEREAS, the Appellant states that, on or about October 26, 1977, DOB issued a permit in connection with application ES 147/77 for the construction of a double-faced sign containing the copy "Whitestone Indoor Tennis Courts" ("the Permit"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration of the Signs based on DOB's determination that to the extent a non-conforming advertising sign may have been established at the Premises, the Appellant failed to provide evidence demonstrating that it was not discontinued when the Signs began displaying messages for The Home Depot in July 2009; 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

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 or about June 29, 2011, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted an inventory of outdoor signs under its control and Sign Registration Applications for the Signs, attaching a plot plan and photographs as evidence of establishment of the Signs as non-conforming advertising signs within view of an arterial highway; and

WHEREAS, on March 8, 2012, DOB issued two Notice of Sign Registration Deficiency letters, stating that the Appellant had "fail[ed] to provide proof of legal establishment – 1977 receipt does not state advertising sign (and) [r]ecent photos show accessory sign"; and

WHEREAS, by letter dated May 22, 2012, the Appellant submitted a response to DOB, asserting that the

Signs were lawfully established as advertising signs and not discontinued; and

WHEREAS, DOB determined that the May 22, 2012 arguments lacked merit, and issued the Final Determinations on August 6, 2012; 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. . .

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#; 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 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 § 52-81 *Regulations Applying to Non-Conforming Signs*

General Provisions

A #non-conforming sign# shall be subject to all the provisions of this Chapter relating to #non-conforming uses#, except as modified by the provisions of Sections 52-82 (Non-Conforming Signs other than Advertising Signs) and 52-83 (Non-Conforming Advertising Signs).

A change in the subject matter represented on a #sign# shall not be considered a change of #use#;

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 Determinations should be reversed because: (1) the Signs are non-conforming advertising signs protected by ZR § 42-55(c); (2) the change in message on the Signs to a message relating to the "Home Depot" retail use in 2009 did not constitute a change to accessory signs; and (3) even if the Home Depot signs are accessory signs, such a change was a permitted "change in subject matter" under ZR § 52-81 and did not constitute a discontinuance of the non-conforming advertising sign use; and

Establishment of the Signs

WHEREAS, the Appellant asserts that the Signs are non-conforming advertising signs under ZR § 42-55(c) because: they were established as advertising signs between June 1, 1968, and November 1, 1979; they were within 660 feet of the nearest edge of the right-of-way of an arterial highway and contain a message that is visible from such arterial highway; and their surface area is 1,200 sq. ft. or less, their height is 30 feet or less, and their length is 60 feet or less; and

WHEREAS, the Appellant contends that that the Signs were established as advertising signs by the Permit, which authorized the construction of a "double-faced pole sign" for the "Whitestone Indoor Tennis Club" measuring 14 feet in height by 48 feet in length; the Appellant notes that the Permit was signed off by DOB in 1977; and

WHEREAS, the Appellant states that the Signs were constructed on a separately-owned lot from the business to which they directed attention (the Whitestone Indoor Tennis Club), and that such separate ownership of the lots renders: (a) the lots separate "zoning lots," per ZR § 12-10; and (b) the Signs "advertising signs," per ZR § 12-10; and

WHEREAS, the Appellant contends that DOB misreads subsections (a) and (b) of the ZR § 12-10 definition of "zoning lot," which both, in pertinent part, require that a lot of record have existed "on December 15, 1961, or any applicable subsequent amendment thereto," by looking only to how the lot of record was owned or maintained as of December 15, 1961; and

WHEREAS, the Appellant asserts that because the February 27, 2001 enactment of ZR § 42-55(c) is an *applicable subsequent amendment thereto*, the controlling date for whether the lots in this case satisfy either ZR § 12-10(a) or (b) is not December 15, 1961 (or February 27, 2001), but November 1, 1979, the date by which, according to ZR § 42-55(c), an advertising sign must have been constructed near an arterial highway in order to be eligible for non-conforming use protection; and

WHEREAS, the Appellant asserts that when the Signs were constructed in 1977, the subject zoning lot comprised multiple separately-owned lots of record, and that the Signs were constructed on Lot 151, which was owned by Delma Engineering Corporation, and the Whitestone Indoor Tennis Courts were located directly south of Lot 151 on Lot 149, which was owned by Emmanuel Ciminello; as such, the Appellant states that the lots were separate "zoning lots" and the Signs were "advertising signs" according to ZR § 12-10; and

WHEREAS, the Appellant also asserts that its

recordation of an Exhibit III Zoning Lot Description and Ownership Statement on October 14, 1980 constituted a merger of Lots 151 and 149 and that such merger demonstrates that the lots were separate zoning lots when the Signs were constructed; and

WHEREAS, the Appellant submitted three affidavits to support its claim of establishment, including one from the sign hanger who claims to have hung the sign in 1977; and

WHEREAS, the Appellant contends that the Permit, the separateness of the zoning lots in 1977 and the affidavits are, in the aggregate, sufficient proof under Rule 49 that the Signs existed as advertising signs prior to November 1, 1979, and are therefore protected by ZR § 42-55(c)(2); and

WHEREAS, the Appellant notes even if—as DOB contends—the Permit authorized only the construction of accessory signs, because the Signs were constructed before November 1, 1979 and satisfied the definition of advertising signs, they were established as such and may be maintained as legal non-conforming advertising signs according to ZR § 42-55(c); and

WHEREAS, as to continuous use, the Appellant states that the Signs have been in the same location and have remained the same size since their construction in 1977 and that only the message has changed over the years; and

The Classification of the Home Depot Signs

WHEREAS, the Appellant contends that the change in copy to the "Home Depot" on the Signs did not constitute a change in use, because the Home Depot signs do not satisfy the definition of "accessory use"; and

WHEREAS, in particular, the Appellant asserts that because the copy of the Home Depot "changes from time to time" and because the Home Depot is a national retailer with "at least 20 locations throughout the City," the Signs are not "clearly incidental to, and customarily found in connection with" the principal use of the lot (the Home Depot store); and

WHEREAS, the Appellant further states that the Home Depot retail use could cease to exist and the Home Depot copy could remain on the Signs and still be relevant to Home Depot retailers in the Bronx, throughout the City and in the Tri-State area; the Appellant also notes that the Signs are visible from the arterials but the Home Depot itself is not; and

WHEREAS, finally, the Appellant states that the Signs are not accessory signs because typical Home Depot accessory signs in the City have a smaller surface area, are shorter than 75 feet in height and solely contain the Home Depot logo with no other symbols or representations; and

WHEREAS, accordingly, the Appellant contends that the change to Home Depot messaging on the Signs continued the non-conforming advertising sign use that was established pursuant to ZR § 42-55(c); and

The Interpretation of ZR § 52-81

WHEREAS, the Appellant states that the Signs' current message for the Home Depot is a permitted change in advertising sign copy under ZR §§ 52-81 and 52-83; and

WHEREAS, the Appellant contends that the phrase, "a change in the subject matter represented on a sign shall not be considered a change of use" as it is used in ZR § 52-81, allows any non-conforming advertising sign to interchangeably display advertising, accessory or non-commercial copy without changing the use of such sign; and

WHEREAS, the Appellant asserts that DOB's explanation of the phrase ("the purpose of this last sentence is to clarify that the writing, pictorial representation or emblem on a non-conforming advertising sign may change to different advertising sign copy without triggering [Zoning Resolution] provisions regulating changes in non-conforming sign use") is an import of new language into ZR § 52-81, which is not supported by the text and contrary to case law; and

WHEREAS, the Appellant states that ZR § 52-81 operates as an exception to any provisions of the Zoning Resolution that could be read to prohibit the display of accessory signage on a non-conforming advertising sign; and

WHEREAS, the Appellant states that the non-conforming signage regulations are "completely different" from the signage provisions set forth in ZR §§ 22-30, 32-60 and 42-50; in essence, the Appellant contends that ZR §§ 52-81 and 52-83 stand alone, mean what they say, and are not properly interpreted in the context of all Zoning Resolution provisions regulating signs, including the definitions set forth in ZR § 12-10; and

WHEREAS, the Appellant contends that if the Zoning Resolution sought to differentiate accessory copy from advertising copy, it could have done so, just as it separates the provisions applying to non-conforming accessory signs in ZR § 52-82 from non-conforming advertising signs in ZR § 52-83; and

WHEREAS, the Appellant states that the Signs retain their non-conforming status, because they comply with all provisions of the Zoning Resolution applicable to non-conforming advertising signs; namely, the Signs have remained in the same location and position and not increased their degree of non-conformity with respect to surface area or illumination, per ZR § 52-83, and have merely undergone permitted changes to "subject matter" in accordance with ZR § 52-81; and

WHEREAS, accordingly, the Appellant states that DOB's Final Determinations rejecting the Signs from registration as non-conforming accessory signs, should be reversed; and

DOB'S POSITION

WHEREAS, DOB asserts that it correctly rejected registration of the Signs as non-conforming advertising signs, in that: (1) non-conforming advertising signs were never established pursuant to ZR § 42-55(c); and (2) even if non-conforming advertising signs were established, they were replaced by accessory signs in 2009 and the advertising sign use was discontinued, per ZR § 52-61; and

Establishment of the Signs

WHEREAS, DOB states that the Appellant has not submitted sufficient evidence to demonstrate that the Signs were established as advertising signs; rather, DOB contends

that the evidence supports a finding that a single-faced, accessory sign was constructed in 1977 and existed as of November 1, 1979, as required by ZR § 42-55(c); and

WHEREAS, DOB notes that as of June 28, 1940, advertising signs were prohibited at the site; however, any advertising sign measuring less than 1,200 square feet and within 660 feet and within view of an arterial highway is non-conforming to the extent of its size existing on November 1, 1979; and

WHEREAS, DOB states that acceptable proof that an advertising sign existed on November 1, 1979 includes permits and sign-offs; a permit for an accessory sign may be submitted as evidence of a non-conforming advertising sign on November 1, 1979 provided sufficient proof demonstrates that the sign was used, albeit contrary to the accessory sign permit, to direct attention to a use or commodity on another zoning lot consistent with the Zoning Resolution definition of "advertising sign"; and

WHEREAS, DOB states that the Appellant seeks to register the double-faced sign as a non-conforming advertising sign existing on November 1, 1979 pursuant to ZR § 42-55(c) but fails to meet the standard of proof that is required by Rule 49; and

WHEREAS, DOB notes that Rule 49 identifies the following as acceptable evidence that a non-conforming advertising sign existed to establish its lawful status: "permits, sign-offs of applications after completion, photographs and leases demonstrating the non-conforming use existed prior to the relevant date"; and DOB notes that Rule 49 also states that "affidavits, Department cashier's receipts and permit applications, without other supporting documentation, are not sufficient to establish the non-conforming status of a sign"; and

WHEREAS, DOB contends that the Permit was for a single-faced 14' x 48' illuminated sign displaying the copy: "Whitestone Indoor Tennis Courts" and DOB notes that the Permit was signed-off on December 21, 1977; and

WHEREAS, DOB asserts that the Appellant's reliance on an October 26, 1977 Cashier's Receipt as evidence of the construction of a double-faced advertising sign is misplaced; at most, it demonstrates an intent to erect a double-faced sign, but it does not demonstrate that the sign was for an advertising sign; and

WHEREAS, DOB states that the Permit could not have authorized an advertising sign because advertising signs were prohibited near arterial highways since 1940; and

WHEREAS, DOB contends that the Appellant's remaining evidence of establishment of the Signs, which is three affidavits, is insufficient because the affiants do not state that they observed a double-faced advertising sign on November 1, 1979; and

WHEREAS, DOB states that to the extent the Signs existed on November 1, 1979 that read "Whitestone Indoor Tennis Courts," the Appellant has submitted insufficient information about the zoning lot to support the conclusion that the Signs meet the Zoning Resolution definition of an "advertising sign"; and

WHEREAS, DOB disagrees with the Appellant's assertion that since the Signs were located on Lot 151 and the tennis courts for the Whitestone Indoor Tennis Courts were located on Lot 149 and each lot was separately owned, the two parcels were on separate zoning lots; and

WHEREAS, DOB asserts that the definition of "zoning lot" provides that a zoning lot may or may not coincide with a tax lot; and

WHEREAS, DOB states that to determine the zoning lot in 1979, it is necessary to examine the facts against the text of the "zoning lot" definition; and

WHEREAS, DOB asserts that the Appellant has failed to adequately demonstrate that Lots 149 and 151 were not a single zoning lot under the applicable subsections of the definition; specifically, DOB states that the Appellant has not established: (1) whether Lots 149 and 151 were a single tax lot on December 15, 1961, and therefore a ZR § 12-10(a) zoning lot; (2) whether the Lots were a tract of land in single ownership on December 15, 1961 and developed or used together in a manner necessary to be deemed a ZR § 12-10(b) zoning lot; or (3) whether a permit was filed and obtained to use the Lots together prior to August 17, 1977 and while the property was in single ownership, and therefore a zoning lot under the former ZR § 12-10(c) definition; and

WHEREAS, as to the Appellant's assertion that the Lots were separately owned when the Signs were constructed, DOB states that it is inconclusive evidence of the separateness of the Lots because the December 29, 1976 deed that conveyed the tennis courts parcel from Delma Engineering Corporation to Emanuel Ciminello, Jr. failed to identify the parcels by tax lot number and the historical tax map does not clearly indicate the tax lot boundaries during the relevant years; and

WHEREAS, DOB also contends that the Appellant incorrectly claims that the recording of an Exhibit III Zoning Lot Description and Ownership Statement on October 14, 1980 merged Lots 151 and 149 into one zoning lot, and that such recordation proves that the Signs and the tennis courts were on separate zoning lots prior to that date; and

WHEREAS, DOB states that an Exhibit III Zoning Lot Description and Ownership Statement describing the zoning lot metes and bounds, tax lot number, block number and ownership of the zoning lot must be recorded prior to issuance of any permit for a development or enlargement pursuant to the last paragraph of the Zoning Resolution "zoning lot" definition; however, an Exhibit III does not merge zoning lots; the only way to have merged two zoning lots not under single ownership is by recording an Exhibit IV Zoning Lot Declaration, and Exhibit V Waivers if necessary, signed by the owners and all other parties in interest pursuant to the ZR § 12-10(d) definition of "zoning lot"; and

WHEREAS, in addition, DOB contends that, contrary to the Appellant's assertion, the recording of an Exhibit III without accompanying zoning lot documents required by ZR § 12-10(d) does not show that the parcels were separate

zoning lots before the Exhibit III was recorded; instead, as the sole recorded zoning lot document at the time, the Exhibit III indicates that the sign and tennis courts parcels were *already* located on an existing zoning lot; and

WHEREAS, thus, DOB states that based on evidence in the record, the Appellant has failed to demonstrate that the Signs were established as non-conforming advertising signs in accordance with ZR § 42-55(c); and

The Classification of the Home Depot Signs

WHEREAS, DOB states that even if the Signs were established as non-conforming advertising signs as of November 1, 1979, ZR § 52-61 requires the use of the Signs to terminate because the advertising use was discontinued for a period of two or more years; and

WHEREAS, specifically, DOB states that, according to photographs obtained from "Pictometry" (an online aerial oblique imaging and mapping service), the Signs have been accessory to a Home Depot store for more than two years; and

WHEREAS, DOB asserts that while displaying messages for the Home Depot, the Signs satisfy the ZR § 12-10 definition of "accessory" in that the Signs are: on the same zoning lot as the Home Depot store; clearly incidental to and customarily found in connection with Home Depot stores; and 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; and DOB notes that the existence of multiple Home Depot stores throughout the City does not alter this conclusion; and

WHEREAS, DOB contends that, contrary to the Appellant's assertion, the change in message on the Signs from advertising to accessory is a change of use; and

WHEREAS, DOB states that accessory signs and advertising signs must be recognized as different uses in accordance with the ZR § 12-10 definitions of "advertising signs" and "use," because included in the definition of an advertising sign is that it "is not accessory to a use located on the zoning lot"; and

WHEREAS, DOB contends that whereas an advertising sign is designed, intended and maintained for the purpose of directing attention elsewhere than upon the same zoning lot and is not classified within any Zoning Resolution use group, an accessory sign use is incidental to and customarily found in connection with the principal use and is classified under the Use Group assigned to the principal use; and

WHEREAS, DOB asserts that the Board recognized that accessory signs and advertising signs are different uses in BSA Cal No. 154-11-A (23-10 Queens Plaza South, Queens); and

WHEREAS, DOB states that, in that case, the Board rejected the appellant's claim that the sign could be both advertising and accessory because the ZR §12-10 definition of "advertising sign" is clear that the two classifications of signs, advertising and accessory, are mutually exclusive; and

WHEREAS, DOB notes that advertising signs have been prohibited at the site since June 28, 1940 per 1916 Zoning Resolution § 21-B, and continue to be prohibited per ZR § 42-53 (effective December 15, 1961) and ZR § 42-55 (superseding ZR § 42-53 on February 27, 2001); in contrast, accessory signs are allowed at the premises, but as of February 27, 2001 they cannot exceed 500 square feet of surface area; and

WHEREAS, accordingly, DOB contends that a change from a non-conforming advertising sign to an accessory sign for more than two consecutive years is a discontinuance of the non-conforming advertising sign use and the use is required to terminate under ZR § 52-61; and

The Interpretation of ZR § 52-81

WHEREAS, DOB disagrees with the Appellant that ZR § 52-81 authorizes a non-conforming advertising sign to change to an accessory sign; and

WHEREAS, DOB asserts that ZR § 52-81 allows a non-conforming sign to change its copy, but does not authorize a change from non-conforming advertising sign use to accessory sign use; and

WHEREAS, DOB states that the plain meaning of the term "subject matter" in ZR § 52-81's phrase "a change in subject matter represented on a sign shall not be considered a change of use" is understood to be the sign's writing, pictorial representation or emblem; and

WHEREAS, DOB asserts that, had the drafters intended "subject matter" to refer to the nature of the use as advertising or accessory, the text would have used defined terms: "a change from an accessory sign to an advertising sign, or an advertising sign to an accessory sign, shall not be considered a change in use"; and

WHEREAS, DOB contends that the Appellant's interpretation of ZR § 52-81 as allowing non-conforming advertising signs to be changed to accessory signs without limitation is not consistent with the Zoning Resolution's scheme of regulating both conforming and non-conforming advertising and accessory signs differently based on size, illumination, projection, height, zoning district and distance from an arterial; specifically, DOB states that the Appellant's interpretation directly contradicts the ZR § 12-10 definitions of "accessory use" and "advertising sign"; and

WHEREAS, DOB asserts that ZR § 52-81 does not operate as an exception, but must be read consistently with all other provisions relating to advertising signs and accessory signs; specifically, DOB states that, per ZR § 52-81, non-conforming signs are subject to the provisions of Article V Chapter 2 including the ZR § 52-31 general provisions which state that "a change in use is a change to another use listed in the same or any other Use Group"; and

WHEREAS, DOB asserts that, in this case, the alleged non-conforming advertising sign use—a use not listed in any particular Use Group—is changed to an accessory sign use, which is classified under Use Group 6, (the same Use Group as the principal use of the Home Depot store); therefore, ZR § 52-81 cannot be read to authorize changes between advertising signs and accessory signs as mere "change[s] in subject matter" because such changes are, per ZR § 52-31,

changes in use; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determinations denying the registration of the Signs; and

CONCLUSION

WHEREAS, the Board finds that DOB properly denied the registration of the Signs because: (1) the Appellant has not met its burden of demonstrating that the Signs were established as non-conforming advertising signs prior to November 1, 1979; and (2) even if the Board were to accept that the Signs were established as non-conforming advertising signs, the display of the Home Depot message constituted a change of use, which was not authorized by ZR § 52-81 and resulted in a discontinuance pursuant to ZR § 52-61 after the Home Depot message was displayed for more than two consecutive years; and

WHEREAS, the Board finds that based on the evidence submitted: (1) the Permit authorized an accessory sign; and (2) the Signs were constructed on a single zoning lot and were accessory signs for the principal use on the lot; and

WHEREAS, the Board finds that the Permit authorized the construction of an accessory sign for the Whitestone Indoor Tennis Center; and

WHEREAS, the Board finds that, based on the evidence in the record, the Signs were constructed on the same zoning lot as the Whitestone Indoor Tennis Center; and

WHEREAS, specifically, the Board finds that: (1) Lots 149 and 151 were under the same ownership before October 31, 1973; (2) the permit DOB issued for the Signs was for accessory signs rather than advertising signs; (3) the definition of "advertising sign" was substantially the same when the Permit was issued – it required then, as now, that the sign display a message for a use on a different zoning lot, and, as noted above, an advertising sign has not been permitted as-of-right at the site since 1940; (4) the construction of a sign on one tax lot with message relating to a use on an adjacent lot is an indication that the parcels are being developed together; and (5) the recordation of an Exhibit III without the accompanying Exhibits IV and V suggests that the lot had historically been treated as a single zoning lot; accordingly, the Board finds that Lots 149 and 151 appear to have been a single zoning lot when the Permit was issued and on November 1, 1979; and

WHEREAS, therefore, the Signs were not established as non-conforming advertising signs prior to November 1, 1979, and are not protected under ZR § 42-55(c); and

WHEREAS, although the Board has determined that the Signs constructed at the site before November 1, 1979 were accessory signs, even if it were to accept the Appellant's assertion that the Signs *were* established as non-conforming advertising signs, the Signs have been used as accessory signs since 2009, which constitutes a discontinuance pursuant to ZR § 52-61; and

WHEREAS, the Board finds that the Signs have been accessory signs for the Home Depot because they are, per the ZR § 12-10 definition of "accessory," located on the same zoning lot as the Home Depot, clearly incidental to and customarily found in connection with Home Depot, and operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the Home Depot; and

WHEREAS, the Board disagrees with the Appellant that the Home Depot signs' size, proximity to arterial highways or elaborateness in comparison to other accessory Home Depot signs makes the Signs any less accessory to the Home Depot; the Board rejected such arguments in BSA Cal. No. 154-11-A; likewise, that Home Depot is a national brand with multiple locations throughout the City is not relevant to whether the Signs are properly classified under the Zoning Resolution as "accessory"; and

WHEREAS, the Board agrees with DOB that the change of the Signs from advertising to accessory would constitute a change in use because an accessory sign has the same use group as the principal use and an advertising sign is not classified in a use group; indeed, part of the definition of "advertising sign" is that the sign is "not accessory to a use located on the zoning lot"; this text can only be reasonably interpreted to mean that an advertising sign is a different use than an accessory sign; and

WHEREAS, as to whether, as the Appellant states, ZR § 52-81 permits a non-conforming advertising sign to change to an accessory sign, as a "change in subject matter" on the sign, the Board agrees with DOB: such an interpretation is contrary to the plain meaning of the statute and disregards the definitions of "advertising sign" and "accessory"; and

WHEREAS, in particular, the Board finds that the term "subject matter" in the phrase, "a change in subject matter represented on a sign shall not be considered a change of use" in ZR § 52-81 refers to changes in the sign's writing, pictorial representation or emblem, rather than a change from advertising to accessory (or non-commercial, for that matter); and

WHEREAS, the Board also agrees with DOB that the Appellant's interpretation of ZR § 52-81 as allowing non-conforming advertising signs to be changed to accessory signs without limitation is not consistent with the Zoning Resolution's scheme of regulating advertising signs and accessory signs differently based on size, illumination, projection, height, zoning district and distance from an arterial; and

WHEREAS, the Board finds that ZR § 52-81 does not operate as an exception, but must be read consistently with all other provisions relating to advertising signs and accessory signs; and

WHEREAS, therefore, the Board finds that even if non-conforming advertising signs had been established at the site, they were discontinued when the accessory Home Depot signs were maintained at the site for two consecutive years in 2011; and

WHEREAS, based on the foregoing, the Board finds that DOB properly rejected the Appellant's registration of the Signs.

Therefore it is Resolved that this appeal, challenging

Final Determinations issued on August 6, 2012, is denied.

Adopted by the Board of Standards and Appeals, May 14, 2013.

268-12-A thru 271-12-A

APPLICANT – Eric Palatnik, P.C., for Mr. Frank Naso, owner.

SUBJECT – Application September 6, 2012 – Proposed construction of a single family semi-detached building not fronting a mapped street is contrary to General City Law Section 36. R3-1 zoning district.

PREMISES AFFECTED – 8/10/16/18 Pavillion Hill Terrace, corner of Homer Street and Swan Street, Block 569, Lot 318, 317, 316, 285, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

56-12-BZ

CEQR #12-BSA-089K

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 22, 2012, acting on Department of Buildings Application No. 320419560, reads in pertinent part:

Floor area shall comply with ZR 23-141
Side yards shall comply with ZR 23-461
Rear yard has to comply with ZR 23-47
Lot coverage and minimum required open space shall comply with ZR 23-141; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, 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, 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 October 16, 2012, after due notice by publication in *The City Record*, with continued hearings on February 13, 2013, March 5, 2013, March 19, 2013, and April 16, 2013, and then to decision on May 14, 2013; 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 Norfolk Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 2,873.5 sq. ft., and is occupied by a single-family home with a floor area of 1,742 sq. ft. (0.60 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 1,742 sq. ft. (0.60 FAR) to 2,865 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,436.75 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes an open space ratio of 0.52; the minimum permitted open space ratio is 0.65; and

WHEREAS, the applicant proposes a lot coverage of 48 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant proposes to maintain one existing non-complying side yard measuring 1'-4" and maintain the other existing non-complying side yard measuring 2'-4" in the rear of the building and enlarge it in the front to 3'-9"; side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each are required; and

WHEREAS, the applicant proposes to maintain the existing non-complying rear yard, which has a depth of 26'-¾"; the minimum required rear yard depth is 30 feet; and

WHEREAS, the applicant proposes to increase the building height from 24'-8" to 34'-6"; the maximum permitted height is 35 feet; and

WHEREAS, the applicant proposes to decrease the front yard depth from 23'-1" to 19'-1"; the minimum required front yard depth is 15 feet; 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, 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 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, 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 22, 2013"- (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,865 sq. ft. (1.01 FAR), a maximum lot coverage of 48 percent, a minimum open space ratio of 0.52, one side yard measuring 1'-4", one side yard measuring 2'-4" in the rear of the building and 3'-9" in the front of the building, a rear yard with a minimum depth of 26'-¾", a maximum building height of 34'-6", and a front yard with a minimum depth of 19'-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 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, May 14, 2013.

139-12-BZ
CEQR #12-BSA-128Q
APPLICANT – Gerald J. Caliendo, RA, AIA, PC, for Alvan Bisnoff/Georgetown Realty Corp., owner.
SUBJECT – Application April 30, 2012 – Special Permit (§73-53) to allow the enlargement of an existing non-conforming manufacturing building, contrary to use regulations (§22-00). R5 zoning district.
PREMISES AFFECTED – 34-10 12th Street, southwest corner of 34th Avenue and 12th Street, Block 326, Lot 29, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 30, 2012, acting on Department of Buildings Application No. 420520635, reads in pertinent part:

> Proposed enlargement of a legal, non-conforming manufacturing building: warehouse (UG 16) and factory (UG 17) within an R5 residential zoning district is contrary to 22-00. A special permit is required pursuant to 73-53 ZR. Refer to Board of Standards and Appeals; and

WHEREAS, this is an application made pursuant to ZR §§ 73-53 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a non-conforming mixed-use warehouse (Use Group 16) and factory (Use Group 17) building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on April 9, 2013 after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

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

WHEREAS, the subject site is located on the west side of 12th Street, between 34th Avenue and 35th Avenue, within an R5 zoning district; and

WHEREAS, the site has 140.94 feet of frontage along 12th Street, three feet of frontage along 34th Avenue, and a total lot area of 4,795 sq. ft.; and

WHEREAS, the site is occupied by a one-story warehouse (Use Group 16) and factory (Use Group 17) building, with 4,416 sq. ft. of floor area (0.92 FAR), and a building height of 14 feet; and

WHEREAS, the applicant notes that construction of the existing building was authorized by permit issued prior to the adoption of the Zoning Resolution on December 15, 1961, when the site was located in a Manufacturing Use

District; the Board, under BSA Cal. No. 598-63-BZY, granted an application to vest the permit and the building was completed and a final certificate of occupancy was issued on February 17, 1964; and

WHEREAS, the applicant states that the building is occupied by New Yorker Bagels, a wholesale bakery; and

WHEREAS, the proposed enlargement will add a second story, increase the building height to 27 feet, and increase the floor area to 6,707 sq. ft. (1.39 FAR); and

WHEREAS, the enlargement would result in two new non-compliances in an M1-1 zoning district: (1) FAR, because 1.39 FAR is proposed and, per ZR § 43-12, the maximum permitted commercial or manufacturing FAR is 1.0; and (2) floor area, because 6,707 sq. ft. of floor area is proposed and, per ZR § 43-12, the maximum permitted commercial or manufacturing floor area 4,795 sq. ft.; and

WHEREAS, the applicant notes that neither parking spaces nor a loading berth are required in connection with the proposed enlargement; and

WHEREAS, as to the prerequisites for the subject special permit, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the use of the premises is not subject to termination pursuant to ZR § 52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use where the existing manufacturing floor area is located during the past five years; the subject building has not received an enlargement pursuant to ZR §§ 11-412, 43-121 or 72-21; and that the subject uses are listed in Use Group 16 and Use Group 17, not Use Group 18; and

WHEREAS, the permitted enlargement may be the greater of 45 percent of the floor area occupied by the use on December 17, 1987 or 2,500 sq. ft.; and

WHEREAS, the applicant proposes to enlarge the building by 2,291 sq. ft., in compliance with the limitation; and

WHEREAS, the applicant represents that the enlargement is an entirely enclosed building, and that all activities generated by the enlargement (accessory offices, storage and processing) shall be within the building; and

WHEREAS, the applicant states that the accessory offices in the enlarged portion of the building shall conform to all performance standards applicable in an M1 zoning district located at the boundary of a residence district; and

WHEREAS, the applicant states that no open uses of any kind are proposed within 30 feet of a rear lot line that is located within a residence district; and

WHEREAS, the applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within 30 feet of a rear lot line that coincides with a rear lot line of a zoning lot in a residence district; and

WHEREAS, the applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within eight feet of a side lot line that coincides with a rear lot line of a zoning lot in a residence district; and

WHEREAS, the applicant states that no open uses of any kind are proposed within eight feet of the side lot line that coincides with a rear lot line of a zoning lot in a residence district; and

WHEREAS, the applicant states that no portion of the proposed enlargement is proposed within eight feet of the lot line that coincides with a side lot line of a zoning lot in the subject R5 district; and

WHEREAS, additionally, the proposed plans reflect that the enlargement will provide for a rear yard with a depth of 30 feet and a side yard with a width of eight feet above the first floor; and

WHEREAS, the applicant represents that the enlargement may result in the hiring of one new employee, which will not generate a significant increase in vehicular or pedestrian traffic; and

WHEREAS, as to potential parking impacts, the applicant states there will be adequate parking to accommodate the facility's needs and the proposed enlargement will not introduce any new traffic generators; and

WHEREAS, the applicant also notes that although New Yorker Bagels operates 24 hours per day, seven days per week, Fridays and Saturdays are much slower days with fewer employees; and

WHEREAS, the applicant states that the pickup and delivery schedule is as follows: ingredient deliveries and charitable donation pickups on Sundays and Thursdays between 9:00 a.m. and 2:00 p.m. and trash pickups six days per week at 5:00 a.m., and that these arrangements will not be altered by the proposed enlargements; the applicant also demonstrated that there is extensive signage to remind truck drivers to turn off their engines and headlights, turn down their radios and generally minimize noise; and

WHEREAS, during the hearing process, the Board raised concerns about garbage storage on the sidewalk; and

WHEREAS, in response to such concerns, the applicant represents that garbage will be stored inside the facility rather than on the sidewalk; and

WHEREAS, accordingly, the record indicates and the Board finds that the subject enlargement will not generate significant increases in vehicular or pedestrian traffic, nor cause congestion in the surrounding area, and that there is adequate parking for the vehicles generated by the enlargement; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the applicant states that the immediate area is characterized by numerous manufacturing uses, including the adjacent one-story manufacturing building at Lot 30 and several one- and two-story manufacturing buildings on the neighboring block (Block 325); and

WHEREAS, accordingly, the Board finds that the proposed enlargement 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 notes that the grant of the special permit will facilitate the enlargement of a viable,

locally-owned business with 25 employees on a site where such use is appropriate and legal; and

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

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§ 73-53 and 73-03; and

WHEREAS, the project is classified as an unlisted action pursuant to 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. 12BSA128Q dated March 5, 2012; 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 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 §§ 73-53 and 73-03 to permit, within an R5 zoning district, the proposed enlargement of a non-conforming mixed-use warehouse (Use Group 16) and factory (Use Group 17) building, contrary to ZR § 22-00, *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 13, 2013"– five (5) sheets; and *on further condition*;

THAT the maximum permitted total floor area is 6,707 sq. ft. (1.39 FAR) and the yards will be as reflected on the BSA-approved plans;

THAT, garbage will be stored inside the facility;

THAT all applicable fire safety measure will be complied with;

THAT all egress and staircases will be as 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) only;

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

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

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

Adopted by the Board of Standards and Appeals May 14, 2013.

9-13-BZ
CEQR #13-BSA-082M
APPLICANT – Slater & Beckerman PC, for Broadway Metro Associates LP and Ariel East Condominium, owners; Alamo Drafthouse Cinemas, lessees.
SUBJECT – Application January 18, 2013 – Special Permit (§73-201) to allow a Use Group 8 motion picture theater (*Alamo Drafthouse Cinema*), contrary to use regulations (§32-17). R9A/C1-5 zoning district.
PREMISES AFFECTED – 2626-2628 Broadway, east side of Broadway between West 99th Street and West 100th Streets, Block 1871, Lot 22 and 44, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated December 19, 2012, acting on Department of Buildings ("DOB") Application No. 121328330 reads, in pertinent part:

Proposed Use Group 8 is not permitted in a C1-5 district, contrary to ZR 32-17; and

WHEREAS, this is an application made pursuant to ZR §§ 73-201 and 73-03, to permit, on a site partially within a C1-5 (R9A) zoning district, partially within an R8B zoning district, and partially within a C1-5 (R8B) zoning district, within a Special Enhanced Commercial District, a motion picture theater (Use Group 8), contrary to ZR § 32-17; and

WHEREAS, a public hearing was held on this application on March 19, 2013 after due notice by publication in *The City Record*, with a continued hearing on April 16, 2013, and then to decision on May 14, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and

Commissioner Ottley-Brown; and

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

WHEREAS, the Chair of Community Board 7 appeared at the hearing and provided testimony in support of this application; and

WHEREAS, the subject site is an irregularly shaped zoning lot consisting of Tax Lots 22 and 7502 and located on the block bounded by Broadway, West 99th Street, Amsterdam Avenue, and West 100th Street; the site is occupied by a building formerly used as a motion picture theater (the "Theater Building"), a 34-story residential condominium tower, and community facility uses, including the St. Michael's Protestant Episcopal Church; and

WHEREAS, the site has 104.17 feet of frontage along Broadway, 225 feet of frontage along West 99th Street, 201.84 feet of frontage along Amsterdam Avenue, 101.87 feet of frontage along West 100th Street, and a total lot area 49,047.sq. ft.; and

WHEREAS, within 100 feet of Broadway, the site is zoned C1-5 (R9A); mid-block between West 99th Street and West 100th Street, the site is zoned R8B; and within 100 feet of Amsterdam Avenue, the site is zoned C1-5 (R8B); and

WHEREAS, the Theater Building, known as the Metro Theater, was constructed in the Art Deco style and was designated as an individual landmark by the New York City Landmarks Preservation Commission in 1989; the Metro Theater operated from 1933 until 2007, when a permit was obtained to convert the space to retail use; and

WHEREAS, this application is brought on behalf of Alamo Drafthouse Cinema ("the applicant"); and

WHEREAS, the applicant states that the proposed theater will be located entirely within the C1-5 (R9A) portion of the site, occupy the entire Theater Building (Lot 22) and a portion of the ground floor of the condominium building (Lot 7502), and operate as an Alamo Drafthouse Cinema ("the Alamo"); and

WHEREAS, the applicant states that the Alamo will occupy 10,270 sq. ft. in the cellar, first and second stories, and mezzanine of the Theater Building and 1,769 sq. ft. of floor area at the ground floor of the condominium building, for a total floor area of 12,039 sq. ft.; and

WHEREAS, the Alamo will have five movie screens, a total seating capacity of 378 seats, and an accessory eating and drinking establishment; and

WHEREAS, the grant of a special permit pursuant to ZR § 73-201 requires a finding that a proposed theater has a minimum of four square feet per seat of waiting area either within an enclosed lobby or in an open area that is protected during inclement weather; and

WHEREAS, the applicant states that 1,512 sq. ft. of waiting area is required by the proposed 378 seats, and that 1,566 sq. ft. of waiting area is proposed, with 1,460 sq. ft. of waiting area in the lobby area of the ground floor and 105.97 sq. ft. of waiting area on the second story; and

WHEREAS, ZR § 73-201 states that the waiting area shall not include space occupied by stairs, or located within ten feet of a refreshment stand or an entrance to a public restroom; and

WHEREAS, the plans provided by the applicant indicate that the proposed waiting area is located in an enclosed interior space that includes no space occupied by stairs or within ten feet of a refreshment stand or an entrance to a public restroom; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the applicant states that the Alamo will occupy the former Metro Theater, which existed as motion picture theater in the neighborhood for 74 years; the applicant also notes the predominantly commercial character of this portion of Broadway on the Upper West Side; and

WHEREAS, the applicant represents that the proposed expansion will not increase the bulk or height of the existing building and that there are no changes proposed to the building envelope; and

WHEREAS, the applicant states that the Special Enhanced Commercial Zoning District does not prohibit or place restrictions on the proposed Use Group 8 theater use; however, the applicant notes that, pursuant to ZR §§ 132-21(b), 132-24, and 132-30, Special Enhanced Commercial District 3 imposes transparency requirements on "developments" and "enlarged" buildings on the ground floor level; and

WHEREAS, the applicant represents that because the proposed theater use will not involve "development" or "enlargement" of the site as defined in ZR §12-10, the transparency regulations and maximum street wall width restrictions of the Special Enhanced Commercial District will not apply; and

WHEREAS, at hearing, the Board raised concerns regarding the sufficiency and usability of the proposed waiting areas; and

WHEREAS, in response to such concerns, the applicant submitted revised drawings that clearly indicated that the waiting area requirements were met; and

WHEREAS, accordingly, the Board finds that the proposed expansion 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 applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission, dated April 16, 2013, approving the proposed alterations under its jurisdiction; and

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

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§ 73-201 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 and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA082M, dated January 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; 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 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 §§ 73-201 and 73-03, to permit, on a site partially within a C1-5 (R9A) zoning district, partially within an R8B zoning district, and partially within a C1-5 (R8B) zoning district, within a Special Enhanced Commercial District, a motion picture theater (Use Group 8), contrary to ZR § 32-17, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application marked "Received January 18, 2013"- twelve (12) sheet; and *on further condition*;

THAT all waiting areas will be provided as shown on the BSA-approved plans and not diminished without prior approval from the Board;

THAT all applicable fire safety requirements will be met;

THAT all egress will be as 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) only;

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

THAT construction will be completed pursuant to 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals May 14, 2013.

12-13-BZ
CEQR #13-BSA-084K
APPLICANT – Law Office of Fredrick A. Becker, for Rosette Zeitoune and David Zeitoune, owners.
SUBJECT – Application January 22, 2013 – Special Permit (§73-622) for the enlargement of a single family home, contrary to side yards (§23-461) and rear yard (§23-47) regulations. R5/Ocean Parkway Special zoning district.
PREMISES AFFECTED – 2057 Ocean Parkway, east side of Ocean Parkway between Avenue T and Avenue U, Block 7109, Lot 66, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 14, 2013, acting on Department of Buildings Application No. 320696984 reads, in pertinent part:

The proposed enlargement of the existing one-family residence in an R5 zoning district:

1. Creates non-compliance with respect to the side yard by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
2. Creates non-compliance with respect to the 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 and 73-03, to permit, within an R5 zoning district in the Special Ocean Parkway District, the proposed enlargement 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 April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; 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 east side of Ocean Parkway, between Avenue T and Avenue U; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 3,015 sq. ft. (0.60 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 3,015 sq. ft. (0.60 FAR), to 6,083 sq. ft. (1.22 FAR); the maximum floor area permitted is 6,250 sq. ft. (1.25 FAR); and

WHEREAS, the applicant proposes to increase the width of the non-complying side yard from 1'-3 ¼" to 2'-3" along the north lot line and provide a side yard with a width of 8'-0" along the south lot line; 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 proposes a rear yard with a depth of 20 feet; the minimum required rear yard depth is 30 feet; and

WHEREAS, additionally, the applicant proposes to maintain the existing non-complying front yard depth of 22'-1 ¼"; a front yard with a minimum depth of 30'-0" is required pursuant to the Special Ocean Parkway District regulations; and

WHEREAS, the Board directed the applicant to establish that the front yard depth is a pre-existing non-complying condition in the Special Ocean Parkway District; and

WHEREAS, in response, the applicant provided a 1930 Sanborn map which reflects that the front yard pre-dates the Zoning Resolution and the establishment of the Special Ocean Parkway District on January 20, 1977; 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, within an R5 zoning district in the Special Ocean Parkway District, the proposed enlargement 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 April 29, 2013"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 6,083 sq. ft. (1.22 FAR) a side yard with a minimum width of 2'-3" along the north lot line, a side yard with a minimum width of 8'-0" along the south lot line, and a rear yard with a minimum depth of 20 feet, 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, May 14, 2013.

52-13-BZ
CEQR #13-BSA-087M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for LF Greenwich LLC c/o Centaur Properties LLC., owner; SoulCycle 609 Greenwich Street, LLC, lessee.

SUBJECT – Application January 31, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*) within a portion of an existing building. M1-5 zoning district.

PREMISES AFFECTED – 126 Leroy Street, southeast corner of intersection of Leroy Street and Greenwich Street, Block 601, Lot 47, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated January 29, 2013, acting on Department of Buildings Application No. 121326537-02, reads in pertinent part:

> Proposed physical culture establishment is not permitted as of right in an M1-5 district; contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-5 zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and first floor of an existing nine-story commercial building, contrary to ZR §

42-10; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; 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, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located at the southeast corner of Leroy Street and Greenwich Street; and

WHEREAS, the site has approximately 13,157 sq. ft. of lot area; and

WHEREAS, the proposed PCE will occupy a total of 3,334 sq. ft. of floor area on the first floor and 2,584 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as SoulCycle; 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 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, 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 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 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. 13BSA087M, dated January 29, 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 an M1-5 zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and first floor of an existing nine-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 2, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on May 14, 2023;

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 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 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 14, 2013.

50-12-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.
COMMUNITY BOARD #12Q
ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

199-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.
SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.
PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #4BK
ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

250-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Carla Zeitouny and Raymond Zeitouny, owners.
SUBJECT – Application August 13, 2012 – 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); less than the required rear yard (§23-47) and perimeter wall height (§23-631). R3-2 zoning district.
PREMISES AFFECTED – 2410 Avenue S, south side of Avenue S, between East 24th and Bedford Avenue, Block 7303, Lot 4, 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 June 11, 2013, at 10 A.M., for decision, hearing closed.

293-12-BZ
APPLICANT – Eric Palatnik, P.C., for Mr. and Mrs. Angelo Colantuono, owners.
SUBJECT – Application October 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(a)) regulations. R3X zoning district.
PREMISES AFFECTED – 1245 83rd Street, north side of 83rd Street, between 12th Avenue and 13th Avenue, Block 6302, Lot 60, Borough of Brooklyn.
COMMUNITY BOARD #10BK
ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

324-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Taxiarnis Davanelos, Georgia Davanelos, Andy Mastoros, owners.
SUBJECT – Application December 7, 2012 – Special permit (§73-622) for the enlargement of an existing single family home, contrary to floor area regulations (23-141(b)). R3-1 zoning district.
PREMISES AFFECTED – 45 76th Street, north side of 76th Street between Narrows Avenue and Colonial Road, Block 5937, Lot 69, 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 June 11, 2013, at 10 A.M., for decision, hearing closed.

325-12-BZ
APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Royal Charter Properties, Inc., for New York Presbyterian Hospital, owner.
SUBJECT – Application December 10, 2012 – Variance (§72-21) to permit a new Use Group 4 maternity hospital and ambulatory diagnostic or treatment health care facility (*New York Presbyterian Hospital*), contrary to modification of height and setback, lot coverage, rear yard, floor area and parking. R10/R9/R8 zoning districts.
PREMISES AFFECTED – 1273-1285 York Avenue, west side of York Avenue bounded by East 68th and 69th Streets, Block 1463, Lot 21, 31, Borough of Manhattan.
COMMUNITY BOARD #8M
ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for deferred decision.

54-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Ricky Novick, owner.
SUBJECT – Application January 31, 2013 – Variance (§72-21) for the enlargement of existing single-family residence, contrary to lot coverage and open space (§23-141), minimum required side yards (§113-543), and side yards (§23-461a) regulations. R5/OPSD zoning district.
PREMISES AFFECTED – 1338 East 5th Street, western side of East 5th Street between Avenue L and Avenue M, Block 6540, Lot 23, Borough of Brooklyn.
COMMUNITY BOARD #12BK
ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for continued hearing.

56-13-BZ
APPLICANT – Francis R. Angelino, Esq., for 200 East Tenants Corporation, owner; In-Form Fitness, LLC, lessee.
SUBJECT – Application February 4, 2013 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*InForm Fitness*) within a portion of an existing building. C6-6(MID) C5-2 zoning district.
PREMISES AFFECTED – 201 East 56th Street aka 935 3rd Avenue, East 56th Street, Third Avenue and East 57th Street, Block 1303, Lot 4, Borough of Manhattan
COMMUNITY BOARD # 6M
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 11, 2013, at 10 A.M., for decision, hearing closed.

62-13-BZ
APPLICANT – Sheldon Lobel, P.C., for BXC Gates, LLC, owner.
SUBJECT – Application February 7, 2013 – Special Permit (§73-243) to legalize the existing eating and drinking establishment (*Wendy's*) with an accessory drive-through facility. C1-2/R6 zoning district.
PREMISES AFFECTED – 2703 East Tremont Avenue, property fronts on St. Raymond's Avenue to the northwest, Williamsbridge Road to the northeast, and East Tremont Avenue to the southwest, Block 4076, Lot 12, Borough of Bronx.
COMMUNITY BOARD #10BX
ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for continued hearing.

72-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Western Beef Properties, Inc., owner; Euphora-Citi, LLC, lessee.
SUBJECT – Application February 14, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Euphora Spa*) within the existing building. M1-1/C4-2A zoning district.
PREMISES AFFECTED – 38-15 Northern Boulevard, north side of Northern Boulevard between 38th Street and Steinway Street, Block 665, Lot 5 and 7, 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 June 11, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on January 29, 2013, under Calendar No. 548-69-BZ and printed in Volume 98, Bulletin Nos. 4-5, is hereby corrected to read as follows:

548-69-BZ

APPLICANT – Eric Palatnik, P.C., for BP North America, owner.

SUBJECT – Application March 27, 2012 – Extension of Term for a previously granted variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district

PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107th Street, Block 1694, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

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 5

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 prior grant for an automotive service station, which expired on May 25, 2011; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, with continued hearings on September 25, 2013, October 30, 2012 and January 8, 2013, and then to decision on January 29, 2013; and

WHEREAS, Community Board 3, Queens, recommends approval of this application with the following conditions: (1) the surface mounted refueling caps on the underground gasoline storage tanks be lowered to minimize scraping to the underside of cars and possible tripping hazards; and (2) curb cuts and sidewalk flags at 108th Street be repaired and resurfaced; 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 an irregularly-shaped corner through lot bounded by 107th Street to the west, Astoria Boulevard to the north, and 108th Street to the east, within an R3-2 zoning district; and

WHEREAS, the site is occupied by a one-story automotive service station with an accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 25, 1971 when, under the subject calendar number, the Board granted a variance to permit the construction of an automotive service station with accessory signs restricted to the pumping of gasoline, which omitted automotive service and repair,
for a term of ten years; and

WHEREAS, subsequently, the term was extended and the grant amended by the Board at various times; and

WHEREAS, most recently, on August 12, 2003, the Board granted a ten-year extension of term and an amendment to legalize a change of use from an accessory storage building to an accessory convenience store, to expire on May 25, 2011; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping on the site, replace the slatted fencing, clean the dumpster area, remove the ice box, and relocate the shed so it is not visible; and

WHEREAS, in response, the applicant submitted photographs reflecting that landscaping has been planted on the site, the fence has been repaired, the dumpster area has been cleaned, and the ice box has been removed; and

WHEREAS, as to the Board's request to relocate the shed from the northeast corner of the site, the applicant states that the 10'-0" by 10'-0" shed is currently located in the most concealed position possible and it cannot be placed behind the convenience store, as requested, because there is only 8'-0" separating it from the fencing along the rear lot line; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted a letter from the project manager stating that (1) it is essential that the gas tanks remain elevated in order to prevent water from seeping into the tank manways, and (2) the change in grade at the 108th Street exit is necessary for on-site draining and that it acts as traffic control (like a speed bump) to ensure drivers do not "shoot out" of the site which could be potentially dangerous due to the close proximity of the curb cut to the intersection; and

WHEREAS, the Board accepts the applicant's explanations in response to the conditions proposed by the Community Board, and agrees that the shed on the site is not significantly visible from the street due to the topography on that portion of the site; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds that the requested extension of term is appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on May 25, 1971, as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on May 25, 2021; *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 18, 2013"–(3) sheets, and *on further condition*:

THAT the term of this grant will be for ten years from the expiration of the prior grant, to expire on May 25, 2021;

THAT landscaping will be maintained in accordance

with the BSA-approved plans;

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

THAT signage will comply with C1 district regulations;

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) 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. 420508114)

Adopted by the Board of Standards and Appeals, January 29, 2013.

***The resolution has been revised to correct the DOB Application No. which read**: "*DOB Application No. 401636510"* **now reads:** "*DOB Application No. 420508114"*. **Corrected in Bulletin No. 20, Vol. 98, dated May 22, 2013.**

BULLETIN

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Tuesday, May 21, 2013

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1368 & 1374 East 23rd Street, "West side of East 23rd Street, approximately 180' north of Avenue N, Block 7658, Lot(s) 78&80, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to the enlargement of an 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. R2 district.

158-13-BZ
883 Avenue of the Americas, Southwest corner of the Avenue of the americas and west 32nd Street., Block 807, Lot(s) 1102(DOBNo7502), Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Gof & Body) within a portion of an existing building. C6-6(MID) zoning district. C6-6(MID) 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 11, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 11, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

207-86-BZ
APPLICANT – Kramer Levin Naftalis & Frankel, LLP by Paul Selver, for NYC Industrial Development Agency, owner; Nightingale-Bamford School, lessee.
SUBJECT – Application April 11, 2013 – Amendment of a previously approved Variance (72-21) for an existing Community Use Facility (*The Nightingale-Bamford School*) to enlarge the existing zoning lot (Lot 59) to include two adjacent parcel (Lots 57 and 58) and to alter the buildings located on the zoning lot to create a single combined school building. C1-5 (R-10) and R8B zoning districts.
PREMISES AFFECTED – 20, 28 & 30 East 92nd Street, northern mid-block portion of block bounded by East 91st and East 92nd Street and Madison and Fifth Avenues, Block 1503, Lot 57, 58, 59, Borough of Manhattan.
COMMUNITY BOARD #8M

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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 determination denying a waiver of the requirement that the grade of the fire apparatus road shall not exceed 10 percent as per NYC Fire Code Section FC 503.2.7. R-2 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

268-12-A thru 271-12-A
APPLICANT – Eric Palatnik, P.C., for Mr. Frank Naso, owner.
SUBJECT – Application September 6, 2012 – Proposed construction of a four single family semi -detached building not fronting a mapped street is contrary to General City Law Section 36. R3-1 zoning district.
PREMISES AFFECTED – 8/10/16/18 Pavillion Hill Terrace, corner of Homer Street and Swan Street, Block 569, Lot 318, 317, 316, 285, Borough of Staten Island.
COMMUNITY BOARD #1SI

ZONING CALENDAR

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). Also, an administrative appeal filed pursuant to Section 666(7) of the New York City Charter and Appendix G, Section BC G107 of the New York City Administrative Code, to permit a proposed assisted living facility partially 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

282-12-BZ
APPLICANT – Eric Palatnik, P.C., for Izhak Lati, owner.
SUBJECT – Application September 24, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard requirements (§23-461), and a variance (§72-21), contrary to front yard requirements (§23-45). R5 zoning district.
PREMISES AFFECTED – 1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, Lot 48, Borough of Brooklyn.
COMMUNITY BOARD #15BK

91-13-BZ
APPLICANT – Eric Palatnik, P.C., for ELAD LLC, owner; Spa Castle Premier 57, Inc., lessee.
SUBJECT – Application March 19, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Spa Castle*) to be located on the 7th, 8th and 9th floor of a 57 story mixed use building. C5-3,C5-2.5(MiD) zoning district.
PREMISES AFFECTED – 115 East 57th Street, north side, between Park and Lexington Avenues, Block 1312, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #5M

104-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Gates Avenue Properties, LLC, owner; Blink Gates, Inc., lessee.
SUBJECT – Application April 16, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink*) within a portion of an existing five-story commercial building. C2-4 (R6A) zoning district.
PREMISES AFFECTED – 1002 Gates Avenue, 62' east of intersection of Ralph Avenue and Gates Avenue, Block 1480, Lot 10, Borough of Brooklyn.
COMMUNITY BOARD #3BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, MAY 21, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

718-68-BZ
APPLICANT – Sheldon Lobel, P.C., for Zinc Realty LLC, owner.
SUBJECT – Application May 31, 2011 – Amendment to a previously-granted Special Permit (§73-211) for an automotive service station. The amendment proposes additional fuel dispensing islands and conversion of existing service bays to an accessory convenience store. C2-2/R5 zoning district.
PREMISES AFFECTED – 71-08 Northern Boulevard, South side of Northern Boulevard between 71st and 72nd Street, Block 1244, Lot 1, Borough of Queens.
COMMUNITY BOARD #3Q
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application to amend a special permit which permitted the operation of an automotive service station; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in *The City Record*, and then to decision on May 21, 2013; and

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

WHEREAS, Community Board 3, Queens, recommends disapproval of the application; initially, the Community Board's Land Use Committee recommended a conditional approval if a full service pump be provided, no long-term parking be provide, no alcohol be sold in the convenience store, and the term be limited to five years but, after Hurricane Sandy, the full Community Board voted not to support the proposal finding that the applicant had not been a good neighbor during the storm and had not fairly distributed gas during the shortage; and

WHEREAS, the subject site is located on the southwest corner of Northern Boulevard and 72nd Street, within a C2-2 (R5) zoning district; and

WHEREAS, the site has been under the Board's jurisdiction since 1954, when the Board granted a variance, pursuant to BSA Cal. No. 865-54-BZ, to allow for an automotive service station; and

WHEREAS, on December 17, 1968, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-211 to permit the reconstruction of the automotive service station with accessory uses; and

WHEREAS, the grant was amended on several occasions, most recently on July 16, 1996 to allow for the installation of a metal canopy over three new concrete pump islands; and

WHEREAS, the applicant states that the site is currently occupied by a one-story service station building that has four repair bays and an accessory office area, with a total of 2,521 sq. ft. of floor area; the site is also occupied by three gasoline dispensing pump islands and a metal canopy; and

WHEREAS, the station has three curb cuts along Northern Boulevard, one on 71st Street, and one on 72nd Street, and ten parking spaces available for cars awaiting service; and

WHEREAS, the gasoline sales use operates 24 hours per day, seven days a week; and

WHEREAS, the applicant now seeks to add two gasoline pump islands and convert the existing repair bays to an accessory convenience store; and

WHEREAS, specifically, the applicant seeks to (1) increase the number of pump islands and extend the existing metal canopy; (2) convert the existing repair bays to accessory convenience and retail stores; and (3) construct an enclosure on the southeastern portion of the site for the storage of compressed natural gas fuel dispensing equipment; and

WHEREAS, the applicant proposes to install two additional multi-product fuel dispensers on the northern portion of the site and the existing metal canopy will then be extended to cover both of the new pump islands; and

WHEREAS, further, the existing repair building will be converted to an accessory convenience store with 2,250 sq. ft. of sales area; and

WHEREAS, the applicant states that the service station will have eight parking spaces on the 71st Street side of the site and three spaces on the 72nd Street side of the site; and

WHEREAS, the applicant describes how it satisfies the requirements of ZR § 73-211 as follows: (1) the finding that any facilities for lubrication, minor repairs or washing be completely enclosed does not apply as those uses will be removed with the conversion of the repair space; (2) the site is able to accommodate in excess of five waiting automobiles; (3) there are not any changes in the conditions that affect the Board's prior finding that the curb cuts are located so that vehicular movement into and out of the service station will cause minimum obstruction on the surrounding streets and sidewalks; (4) a stockade fence with a height of 6'-0" will be installed and existing evergreens with a height of 10'-0" will maintained to provide screening along the rear lot line adjacent to the residential zoning district; and (5) each of the frontages has less than 150 sq. ft. of signage; and

WHEREAS, the applicant represents that the site

complies with all prior Board conditions; and

WHEREAS, the applicant does not propose any long-term parking; and

WHEREAS, the Board notes that the approval has not had a term limit historically and does not find a basis to impose a term now; and

WHEREAS, based on its review of the record, the Board finds that the proposed changes do not implicate any of the special permit findings are 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 16, 1996, so that as amended this portion of the resolution shall read: "to permit the noted changes to the site; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received February 8, 2013"–(3) sheets; and *on further condition*:

THAT landscaping and fencing be installed in accordance with BSA-approved plans;

THAT no long-term parking be permitted at the site;

THAT the above conditions and all other conditions from prior resolutions not specifically waived by the Board remain in effect and be noted on the certificate of occupancy;

THAT substantial completion of construction be performed 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) 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. 420341856)

Adopted by the Board of Standards and Appeals, May 21, 2013.

58-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner; Eckford II Realty Corp., lessee.

SUBJECT – Application March 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously-granted Special Permit (§73-36) for a physical culture establishment (*Quick Fitness*), which expired on February 14, 2013. M1-2/R6A zoning district.

PREMISES AFFECTED – 16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment ("PCE"), which expired on February 14, 2013; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in *The City Record*, and then to decision on May 21, 2013; 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 Eckford Street, between Engert Avenue and Newton Street, in an M1-2/R6A zoning district within the MX8 special purpose district; and

WHEREAS, on August 3, 2010, the Board granted a special permit pursuant to ZR § 73-36 to allow the operation of a PCE at the site; a condition of the grant was that a certificate of occupancy be obtained by August 3, 2011; and

WHEREAS, on February 14, 2012, the Board extended the time to obtain a certificate of occupancy to February 14, 2013; and

WHEREAS, the applicant represents that all work is complete but that it awaits DOB sign-off on its fire alarm system; and

WHEREAS, the applicant now requests an additional four months to obtain a certificate of occupancy; and

WHEREAS, based on its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy 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 August 3, 2010, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for six months from the date of this grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and *on further condition*:

THAT a certificate of occupancy be obtained by November 21, 2013;

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. 320134662)

Adopted by the Board of Standards and Appeals, May 21, 2013.

853-53-BZ
APPLICANT – Carl A. Sulfaro, Esq., for Knapp, LLC, owner; Bolla Management Corp., owners.
SUBJECT – Application January 18, 2013 – Amendment (§11-412) to a previously-granted Automotive Service Station (*Mobil*) (UG 16B), with accessory uses, to enlarge the use and convert service bays to an accessory convenience store. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 2402/16 Knapp Street, southwest corner of Avenue X, Block 7429, 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 June 18, 2013, at 10 A.M., for decision, hearing closed.

799-62-BZ
APPLICANT – Sahn Ward Coschignano & Baker, PLLC, for 350 Condominium Association, owners.
SUBJECT – Application March 28, 2013 – Extension of Term permitting the use tenant parking spaces within an accessory garage for transient parking pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which expired on November 9, 2012; Waiver of the Rules. C2-5/R8, R7B zoning district.
PREMISES AFFECTED – 501 First Avenue aka 350 East 30th Street, below-grade parking garage along the west side of First Avenue between East 29th Street and 30th Street, Block 935, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD # 6M
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 11, 2013, at 10 A.M., for decision, hearing closed.

410-68-BZ
APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.
SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of approved variance which permitted the operation of (UG16B) automotive service station (*Citgo*) with accessory uses, which expired on November 26, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.
AFFECTED PREMISES – 85-05 Astoria Boulevard, east corner of 85th Street. Block 1097, Lot 1. Borough of Queens.
COMMUNITY BOARD #3Q
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 11, 2013, at 10 A.M., for decision, hearing closed.

200-00-BZ
APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owners.
SUBJECT – Application April 18, 2013 – Extension of Time to obtain a Certificate of Occupancy of a variance (§72-21) to operate a Physical Culture Establishment (*Squash Fitness Center*) which expired on April 25, 2013. C1-4(R6B) zoning district.
PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, aka 37-16 108th Street, Block 1773, Lot 10, Borough of Queens.
COMMUNITY BOARD #3Q
ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

292-01-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Villa Mosconi Restaurant, owner.
SUBJECT – Application January 17, 2013 – Extension of Term of a previously-granted Variance (§72-21) which permitted the legalization of a new dining room and accessory storage for a UG6 eating and drinking establishment (*Villa Mosconi*), which expired on January 7, 2013. R7-2 zoning district.
PREMISES AFFECTED – 69/71 MacDougal Street, west side of MacDougal Street between Bleecker Street and West Houston Street, Block 526, Lot 33, 34, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

93-08-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Worlds fair Development LLC, owner.
SUBJECT – Application February 5, 2013 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of a six-story transient hotel (UG 5) which expired on January 13, 2013; Amendment to construct a sub-cellar. R6A zoning district.
PREMISES AFFECTED – 112-12/24 Astoria Boulevard, southwest corner of intersection of Astoria Boulevard and 112th Place, Block 1706, Lot 5, 9, 11, Borough of Queens.
COMMUNITY BOARD #3Q
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 4, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

60-13-A
APPLICANT – NYC Department of Buildings.
OWNER OF PREMISES -71 Greene LLC, 75 Greene LLC and 370 Clermont LLC.
SUBJECT – Application February 6, 2013 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy nos. 147007 & 172308 as they were issued in error. R6B zoning district.
PREMISES AFFECTED – 71 & 75 Greene Avenue, aka 370 & 378 Clermont Avenue, northwest corner of Greene and Clermont Avenues, Block 2121, Lots 44, 41, 36, 39, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application from the Department of Buildings ("DOB") seeking to revoke Certificate of Occupancy ("CO") No. 147007 and CO No. 172308; both COs authorize accessory parking for the building located at 75 Greene Avenue, Brooklyn (Block 2121, Lot 41), contrary to the Zoning Resolution ("ZR"); and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, and then to decision on May 21, 2013; 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, a representative of the owner of the subject site testified in support of the application at hearing; and

WHEREAS, the subject site comprises four lots: Lot 41 (75 Greene Avenue), a corner lot located at the northwest intersection of Greene Avenue and Clermont Avenue, with 71.42 feet of frontage along Greene Avenue and 53.58 feet of frontage along Clermont Avenue and a lot area of 3,844 sq. ft.; Lot 44 (71 Greene Avenue), an interior lot with 21.42 feet of frontage along the north side of Greene Avenue between Adelphi Street and Clermont Avenue and a lot area of 1,530 sq. ft.; Lot 39 (378 Clermont Avenue), an interior lot with 41.42 feet of frontage along the west side of Clermont Avenue between Greene Avenue and Lafayette Avenue and a lot area of 3,367 sq. ft.; and Lot 36 (370 Clermont Avenue), an interior lot with 63 feet of frontage along the west side of Clermont Avenue between Greene Avenue and Lafayette Avenue and a lot area of 5,891 sq. ft.; and

WHEREAS, DOB states that Lot 41 is occupied by a seven-story chancery (an office for priests) and currently has three COs associated with it: CO No. 90840, dated January 24, 1939 authorizes an "office building chancery" at "73/79 Greene Avenue, Block 2121, Lot 41"; CO No. 147007, dated January 17, 1956, authorizes a "private parking lot for twelve (12) automobiles (accessory to existing chancery buildings on lot)" at "75 Greene Avenue, northwest corner of Greene Avenue and Clermont Avenue, Block 2121, Lot 41"; and CO No. 172308, dated September 8, 1960, authorizes "parking lot for more than five (5) passenger vehicles (for use of chancery building only)" for "370-374 Clermont Avenue, northwest corner of Greene Avenue, Block 2121 Lot 41"; and

WHEREAS, DOB states that Lot 39 is occupied by a four-story residence and has one CO associated with it: CO No. 95379, dated January 25, 1940; this CO authorizes the residence only and does not indicate the existence of any accessory parking; and

WHEREAS, DOB states that Lots 36 and 44 are paved parking areas that have no COs associated with them; and

WHEREAS, as to the development history of the chancery—which demonstrates the erroneous nature of the accessory parking COs—DOB asserts that the chancery was originally constructed as a five-story building in 1930 under New Building Application No. 11292-29, which resulted in CO No. 62299, dated November 12, 1930; and

WHEREAS, DOB notes that in 1929, Lot 41 was located in a Residence and Class 1½ District; and DOB records do not indicate how the office use would have been permitted in the residence district under the applicable provisions of the 1916 Zoning Resolution; and

WHEREAS, DOB states that on May 3, 1938, under BSA Cal. No. 228-38-BZ, the Board granted a variance pursuant to Section 7(c) of the 1916 Zoning Resolution from use district regulations under Section 3; specifically, the Board varied the use district regulations to permit the two-story

enlargement of the chancery (office) use; and

WHEREAS, DOB states that the enlargement was completed pursuant to the variance and resulted in the issuance of the 1939 CO mentioned above (CO No. 90840); and

WHEREAS, DOB states that of the three COs associated with Lot 41, only one, CO No. 90840, dated January 24, 1939, which reflects the enlargement of the chancery, allowed a use that was permitted (pursuant to the Board's grant); the other two CO No. 147007, dated January 17, 1956, and CO No. 172308, dated September 8, 1960, erroneously authorized parking accessory to the chancery; accordingly, DOB seeks revocation of CO Nos. 147007 and 172308; and

WHEREAS, as to CO No. 147007, DOB states that it was issued in connection with Alteration Application No. 292-54, which authorized the demolition of an existing building and the construction of a parking lot on Lot 44 and the rear of Lots 39 and 36; and

WHEREAS, as to CO No. 172308, DOB states that it was issued in connection with Alteration Application No. 1400-60, which authorized seven parking spaces on Lot 44 and the rear of Lot 39 and fourteen parking spaces on Lot 36; and

WHEREAS, DOB asserts that the expansion of the chancery use contrary to the use regulations of the 1916 Zoning Resolution was (and only could have been) authorized by a variance; and

WHEREAS, similarly, DOB states that the construction of accessory parking for the chancery use was also contrary to the use regulations of the 1916 Zoning Resolution and also required a variance; thus, Alteration Application Nos. 292-54 and 1400-60 should not have been approved; and

WHEREAS, DOB notes that the Board did not approve the construction of the parking by a separate variance or by an amendment to BSA Cal. No. 228-38-BZ, and that these would be the only mechanisms by which accessory parking could have been approved for the chancery, given its non-conformance with the underlying zoning; and

WHEREAS, accordingly, DOB asserts that absent the Board's approval of the accessory parking for the chancery, the alteration permits were approved in error and the resulting COs should never have been issued; and

WHEREAS, the Board agrees with DOB that the parking lots approved under Alteration Application Nos. 292-54 and 1400-60 as accessory to the chancery on Lot 41, but located on portions of Lots 44, 39 and 36, were an unlawful expansion of an existing commercial use authorized by a variance in a residence district, and were contrary to 1916 ZR § 3; and

WHEREAS, the Board confirms that BSA Cal. No. 228-38-BZ was never amended to authorize accessory parking for the chancery; and

WHEREAS, in addition, the Board finds that DOB's approval of Alteration Application Nos. 292-54 and 1400-60 was inconsistent with the Board's condition in BSA Cal. No. 228-38-BZ that the chancery "not be further increased in area"; and

WHEREAS, accordingly, the Board finds that the CO Nos. 147007 and 172308, which resulted from erroneously-approved alteration applications, were issued in error and must be revoked; and

Therefore it is Resolved that the application of the Commissioner of the Department of Buildings seeking the revocation of Certificate of Occupancy Nos. 147007 and 172308, is granted.

Adopted by the Board of Standards and Appeals, May 21, 2013.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application September 5, 2012 – Reopening for a court remand to review the validity of the permit at issue in a prior vested rights application.

PREMISES AFFECTED – 1882 East 12th Street, west side of East 12th Street approx. 75' north of Avenue S, Block 6817, Lot 41, 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 July 23, 2013, at 10 A.M., for decision, hearing closed.

245-12-A & 246-12-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. Application seeking a determination that the owner of the property has acquired a common law vested right to complete construction under the prior R7-2 zoning. 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 July 23, 2013, at 10 A.M., for continued hearing.

256-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, City Outdoor.

OWNER OF PREMISES: 195 Havemeyer Corporation.

SUBJECT – Application August 28, 2012 – Appeal challenging Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. C4-3 zoning district.

PREMISES AFFECTED – 195 Havemeyer Street, southeast corner of Havemeyer and South 4th Street, Block 2447, Lot 3, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

267-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for Robert McGivney, owner.

SUBJECT – Application September 5, 2012 – Appeal from Department of Buildings' determination that the sign is not entitled to continued non-conforming use status as an advertising sign. M1-2 & R6A zoning district.

PREMISES AFFECTED – 691 East 133rd Street, northeast corner of Cypress Avenue and East 133rd Street, Block 2562, Lot 94, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

345-12-A

APPLICANT – Barrry Mallin, Esq./Mallin & Cha, P.C., for 150 Charles Street Holdings LLC c/o Withroff Group, owners.

SUBJECT – Application December 21, 2012 – Appeal challenging DOB's determination that developer is in compliance with §15-41 (Enlargement of Converted Buildings). C6-2 zoning district.

PREMISES AFFECTED – 303 West Tenth Street aka 150 Charles Street, West Tenth, Charles Street, Washington and West Streets, Block 636, Lot 70, 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 July 23, 2013, at 10 A.M., for decision, hearing closed.

79-13-A

APPLICANT – Law Offices of Howard B. Hornstein, for 813 Park Avenue holdings, LLC, owner.

SUBJECT – Application February 27, 2013 – Appeal from Department of Buildings' determination regarding the status of a zoning lot and reliance on the Certificate of Occupancy's recognition of the zoning lot. R10(Pl) zoning district.

PREMISES AFFECTED – 807 Park Avenue, East side of Park Avenue, 77.17' south of intersection with East 75th Street, Block 1409, Lot 72, 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 July 16, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

63-12-BZ

CEQR #12-BSA-095K

APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.

PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27th Street and Avenue N. Block 7663, Lot 6. 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated February 17, 2012, acting on Department of Buildings Application No. 320373449 reads, in pertinent part:

1. Proposed Floor Are Ratio (FAR) exceeds that permitted by ZR Section 24-11.
2. Proposed lot coverage is contrary to ZR

Section 24-11.

3. Proposed minimum required front yards is contrary to ZR Section 24-34.
4. Proposed minimum required side yards are contrary to ZR Section 24-35(a).
5. Proposed maximum height of front wall and required front setback is contrary to ZR Section 24-521.
6. Required parking is not being provided; contrary to ZR Section 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R2 zoning district, the construction of a two-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for floor area ratio, lot coverage, front yards, side yards, height, setback, and parking, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521, and 25-31; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, with continued hearings on January 8, 2013, February 26, 2013, and April 9, 2013, and then to decision on May 21, 2013; 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 14, Brooklyn, recommends approval of the application on condition that the simcha hall use be reserved for use only by the members of the Synagogue; and

WHEREAS, the adjacent property owner on Avenue N provided a letter in support of the application; and

WHEREAS, the applicant submitted a petition signed by 376 community members in support of the application; and

WHEREAS, certain members of the community, represented by counsel, provided written and oral testimony in opposition to the application (the "Opposition"); the Opposition's primary concerns are that (1) the applicant has not reliably described the program and the congregant body; (2) the applicant has not established the need for the waivers; (3) the bulk of the building is not compatible with the surrounding area; (4) no parking is being provided (19-22 parking spaces are required); (5) the environmental analysis is flawed; and (6) any benefit to the community is outweighed by the detriment to the community;

WHEREAS, the Opposition submitted a petition signed by 100 community members opposed to the building proposal and a note saying that more signators were available; and

WHEREAS, this application is being brought on behalf of Congregation Khal Bnei Avrohom Yaakov (the "Synagogue"); and

WHEREAS, the site is located on the northeast corner of East 27th Street and Avenue N in an R2 zoning district with 60 feet of frontage along East 27th Street and 100 feet of frontage along Avenue N; and

WHEREAS, the subject site has a lot area of 6,000 sq. ft. and is currently occupied by a residential building with 3,623 sq. ft. of floor area (0.6 FAR); and

WHEREAS, the applicant initially proposed to construct a new building with the following parameters: a floor area of 9,000 sq. ft. (1.5 FAR) (a maximum of 0.5 FAR is permitted or 1.0 FAR by City Planning special permit under ZR § 74-901); a lot coverage of 75 percent (a maximum lot coverage of 60 percent is permitted); front yards with depths of 10'-0" on East 27th Street and Avenue N (front yards with minimum depths of 15'-0" are required); and no side yards (side yards with minimum widths of 8'-0" and 9'-0" are required); and

WHEREAS, at the Board's direction, the applicant revised the plans to provide side yards along the northern and eastern lot lines; the applicant ultimately reduced the width of the building along Avenue N from 90 feet to 85 feet; and included a side yard with a width of 2'-0" along the northern lot line and a side yard along the eastern lot line with a width of 5'-0"; the applicant reduced the front yard along the southern property line from a depth of 10'-0" to 8'-0"; and

WHEREAS, the addition of the yards resulted in a reduced floor area to 8,500 sq. ft. (1.41 FAR); a reduced lot coverage to 71 percent; and a reduced parking requirement from 22 spaces to 19 spaces; and

WHEREAS, the applicant proposes the following additional non-complying conditions: a perimeter wall height of 29 feet (a maximum wall height of 25 feet is permitted); no setback of the street wall (a front setback within the 1:1 sky exposure plane are required); and no parking spaces (a minimum of 19 parking spaces are required); and

WHEREAS, the proposal provides for the following uses: (1) a simcha hall, restrooms, lobbies, storage, coat rooms, and a pantry at the cellar level; (2) men's sanctuary, men's and women's lobbies, a washing station, a coffee room, and a coat room at the first story; and (3) women's sanctuary, lobbies, conference room, rabbi's office, and children's library at the second story; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate a congregation with a desire to expand and currently consists of approximately 250 adults and 280 children; (2) to provide separate worship and study spaces for male and female congregants; (3) to provide the necessary space for offering weekly classes; (4) to provide a children's library; and (5) to satisfy the religious requirement that members of the congregation be within walking distance of the residences of the congregants; and

WHEREAS, the applicant also seeks to provide community and religious lectures on weekends, expand its educational programming for children, and offer Talmud classes twice daily; and

WHEREAS, the applicant states that for the past five years, it has leased a synagogue building located at 1249 East 18th Street, which accommodates only approximately 110 people; it has approximately 1,600 sq. ft. of floor area; and

WHEREAS, the applicant states that the leased building is located approximately 0.7 miles from the proposed synagogue location; and

WHEREAS, the applicant states that the Synagogue has been unable to establish a permanent synagogue in the past five years, having looked at many sites in its search to find a site of the appropriate size and central location to suit its programmatic needs; the site is centrally located within the neighborhood of the Synagogue, allowing congregants to walk to services, as required for religious observance; and

WHEREAS, the applicant initially determined that it requires approximately 9,000 sq. ft. of floor area and an additional 6,000 sq. ft. in the cellar but, ultimately, through redesign, was able to reduce the number to 8,500 sq. ft. of floor area; and

WHEREAS, as to the need for a floor area waiver, the applicant notes that a conforming development would be limited to 3,000 sq. ft. of floor area, and 6,000 sq. ft. by City Planning Commission special permit, both significantly less floor area than needed to fulfill the programmatic need; and

WHEREAS, specifically, the applicant notes that in a conforming development, the men's sanctuary would only accommodate 52 people and the women's sanctuary would only accommodate 48 people, whereas the proposed men's sanctuary would accommodate 187 people and the women's would accommodate 141 people; (the original proposal would have accommodated 216 people in the men's sanctuary and 153 people in the women's sanctuary); and

WHEREAS, the applicant asserts that a conforming development would eliminate the main women's lobby and children's library on the second floor; and that there would not be sufficient space to accommodate Talmud classes and other lectures; and

WHEREAS, as to the need for waivers to the front and side yards, and lot coverage, the applicant states a conforming development would result in a floor plate of 1,500 sq. ft. (50 feet by 30 feet), as opposed to the 4,250 sq. ft. of floor area proposed, and therefore would be insufficient to satisfy the Synagogue's programmatic needs to accommodate its congregation; and

WHEREAS, the applicant states that the proposed building will accommodate more congregants, which is essential considering the current number of congregants who attend the synagogue on weekends and holidays and the anticipated increase in membership; and

WHEREAS, as to the need for height and setback waivers, the applicant represents that the proposal will provided (1) the double-height ceiling of the main sanctuary which is necessary to create a space for worship and respect and an adequate ceiling height for the second floor women's balcony; and (2) other required uses on the second floor; and

WHEREAS, the applicant states that the parking waiver is necessary because providing the required 19 parking spaces would render the site wholly inadequate to support the proposed building and such parking spaces are not necessary because congregants must live within walking distance of their synagogue and must walk to the synagogue on the Sabbath and on high holidays; and

WHEREAS, the applicant states that 57 percent of the congregation lives within a three-quarter-mile radius of the site, which is less than the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship and waiver the parking requirement, but still a significant portion of the congregation; 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 studying and meeting, and a children's library and other lecture space; and

WHEREAS, the Opposition raised several concerns regarding the applicants stated programmatic need including (1) justification for the floor area increase based on the number of congregants; and (2) the need for the height and setback waiver; and

WHEREAS, the Opposition raised a concern that the request for floor area is not supported by the actual number of congregants who attend the Synagogue; and

WHEREAS, the Opposition questioned the veracity of the applicant's congregant numbers, stating that the applicant conflates the terms "congregants" and "members," which is problematic because the synagogue may have many members but fewer regular congregants; and

WHEREAS, the applicant produced a congregant list for the record which the Opposition contested; and

WHEREAS, the Board notes that the Opposition's concerns about the congregant list are unprecedented in the religious use context; the Board understands that congregant numbers may fluctuate and may not always correspond with the membership lists, but that Board sees no basis to reject the applicant's list because the Opposition has questions about whether a few of the noted people actual attend another synagogue; further, the Board accepts that the congregation is growing and that the Synagogue seeks to accommodate such growth; and

WHEREAS, as to height, the Opposition asserts that there is no basis for the requested height for the first floor (13'-4" in the area below the women's balcony and greater than 27'-0" in the double-height portion) as it is not required by religious law nor does it improve acoustics; and

WHEREAS, the Board notes that it has approved many applications from religious institutions seeking additional height for sanctuary space and accepts the applicant's representation that the height is necessary for its meaningful sacred space and to accommodate the second floor balcony; 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, 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 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, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed use is permitted in the subject R2 zoning district; and

WHEREAS, as to bulk, the applicant represents that the proposed FAR and all other bulk regulations are consistent with the character of the neighborhood; and

WHEREAS, in support of its assertions, the applicant provided a study of existing FAR's of larger buildings in the area, which reflects that there are numerous buildings of similar bulk to that proposed; and

WHEREAS, specifically, the applicant identified 15 homes within 600 feet of the subject site that have 1.25 FAR or greater (the ranges is from 1.25 to 3.17 FAR); and

WHEREAS, the applicant states that there are a number of educational and religious institutions in the area with comparable bulk, including four community facilities in the area with FAR ranging from 1.18 to 8.52; and

WHEREAS, the Board notes that the proposed 1.4 FAR falls within the range of FAR's of the larger buildings; and

WHEREAS, the applicant states that the site is currently occupied by a home that exceeds the maximum permitted floor area, has a noncomplying front yard along East 27th Street, a minimal side yard along its northern lot line, and its garage is built nearly to the eastern lot line; thus, the proposed yards are comparable to the existing and provide more space along the portion of the side lot line occupied by the garage; and

WHEREAS, the applicant notes that the proposed side yard with a width of 2'-0" along the northern lot line allows for a distance of 10'-0" from the adjacent home; and similarly, the proposed side yard with a width of 5'-0" along the eastern lot line allows for a distance of 8'-0" from the adjacent home; and

WHEREAS, at hearing, the Board directed the applicant (1) to analyze alternatives that would provide greater side yards than initially proposed and (2) to provide information about the yard context in the area; and

WHEREAS, in response, the applicant increased the side yards from no side yards in their initial application to widths of two and five feet; the front yard was reduced to eight feet along Avenue N and remained at ten feet along East 27th Street; and

WHEREAS, the applicant submitted a study that identified a significant number of sites in the surrounding area that have front yards with depths of less than eight feet and provide less than ten feet of open area between buildings on adjacent lots; and

WHEREAS, the applicant's study reflects that the three adjacent homes to the east on Avenue N have front yards with depths of less than eight feet and provide less than ten feet of open area between buildings on adjacent lots, a comparable condition to the proposed; and

WHEREAS, the opposition raised concerns regarding the accuracy and reliability of the data used for bulk and yard study; and

WHEREAS, with regard to the Opposition's questions about the reliability of the applicant's bulk and yards analyses, the Board accepts that the applicant relied on publicly available building and land use data and that any inaccurate bulk conditions were not intentional; and

WHEREAS, the Board concludes that even if the sites with disputed data were eliminated from the analysis, the applicant has still established that the Synagogue is compatible with the surrounding context; and

WHEREAS, as noted, during the hearing process, the Board directed the applicant to provide side yards along the northern and eastern lot lines, even though the adjacent neighbor to the east supported the proposal prior to the inclusion of the side yard with a width of 5'-0" on its shared lot line; and

WHEREAS, as to height, the applicant provided a streetscape which reflects that the adjacent row of homes along Avenue N all have heights of 35'-0" as do the homes on East 27th Street; the adjacent home on East 27th Street has a total height of 37'-0"; and

WHEREAS, the applicant represents that the height in excess of 27 feet for portions of the first floor is required in order to promote the metaphysical and physical significance of Judaism in that the ceiling metaphorically reaches to Heaven and gives importance to the space while providing acoustical advantages befitting a place of worship; and

WHEREAS, the applicant asserts that high ceilings have historically been an important element of synagogue architecture; and

WHEREAS, the applicant states that the conforming development would reduce the height of the building and the floor area devoted to sanctuary space; and

WHEREAS, the Board notes that the proposed total height of the building of 35'-0" does not require a waiver and is contemplated by the zoning district regulations; and

WHEREAS, the Board notes that four commissioners visited the site on repeated occasions and personally observed and confirmed that the proposal is compatible with the existing context of the surrounding neighborhood; and

WHEREAS, the applicant states that the parking waiver requested will not result in a material increase in street parking in the surrounding area due to the close proximity to the congregants' homes, which allows congregants to walk to the

site in observance of religious law; and

WHEREAS, further, as noted above, the applicant represents that 57 percent (fewer than the 75 percent minimum threshold), of congregants live within a three-quarter-mile radius of the site, thus do not meet the minimum threshold for the parking waiver, but are still within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the applicant performed a parking study which reflects that during the times of day when attendance is greatest and most area residents are at home, there were 369 vacant spaces on one day and 342 and 325 vacant spaces on two other days when the study was repeated; and

WHEREAS, accordingly, the applicant concludes that there is ample curbside parking to accommodate any demand; and

WHEREAS, the applicant notes that the study was conducted within an approximately one-quarter-mile radius of the subject site, consistent with CEQR Technical Manual methodology; and

WHEREAS, the applicant also notes that the trip generation falls below the CEQR Technical Manual threshold size, but, still, it assessed the trip generation based on occupancy and found it would not exceed threshold levels of vehicular traffic generation, even at its peak attendance level of 350 people during the high holidays; and

WHEREAS, the Opposition raises supplemental concerns about the sufficiency of the applicant's environmental review including that the conclusion that no potential for emissions exists is based on the assumption that the heating flue stacks will be more than 50 feet from the nearest building; and

WHEREAS, in response to the Opposition's assertions about the environmental review being insufficient, the applicant supplemented the record with an Environmental Assessment Statement (EAS) Full Form, including the following narratives: (1) Introduction, Land Use, Zoning, and Public Policy; (2) Urban Design and Visual Resources; (3) Transportation; and (4) Air Quality; and clearly identified the location of the heating flue stacks on the roof and their distance from the lot lines; and

WHEREAS, as to the Opposition's concerns about the environmental review, the Board has carefully considered both parties' environmental analyses, including the areas of traffic/parking, open space, air quality, and construction impacts, and agrees that the applicant has correctly applied the CEQR methodology to conclude that the incremental effect of the proposal versus the no build does not trigger any of the CEQR threshold requirements; and

WHEREAS, the Board notes that the required distance of the heating ducts from adjacent buildings in order to screen the HVAC system is 30 feet, rather than the 50 feet the Opposition alleges and the applicant proposes to locate its rooftop flues 30 feet from its property line, thus, more than 30 feet from adjacent buildings; and

WHEREAS, the applicant submitted responses adequately addressing the concerns raised by the opposition regarding the environmental review; and

WHEREAS, the Opposition asserts that the Board must balance the interests of the community and the Synagogue and deny an application when "the (presumed) beneficial effect may be rebutted with evidence of a significant impact on traffic congestion, property values, municipal services and the like" Cornell Univ. v. Bagnardi, 68 N.Y.2d 583, (1986); and

WHEREAS, the Opposition asserts that the Board cannot grant a variance until it is assured that the proposed use is not contrary to public health, safety, or welfare; and

WHEREAS, the Opposition asserts that in order to appropriately analyze the application, the applicant must define the project fully and accurately including its programmatic needs, the number of people it will service, the hours and days of operation and to analyze each through the application of various strictly defined methodologies prescribed in the CEQR manuals; and

WHEREAS, the Opposition also asserts that the traffic study is flawed and that the impact on parking and traffic will be significant to the surrounding area to the extent of diminishing property values; and

WHEREAS, the applicant responded that the Synagogue will have a beneficial impact on the community surrounding the site and will provide a place of worship for many local residents; the applicant asserts that the Synagogue's beneficial effect has not been rebutted with any "evidence of a significant impact on traffic congestion, property values, municipal service, [or] the like," citing to Cornell; and

WHEREAS, the applicant submitted a petition signed by nearly 400 community members in support of the application; and

WHEREAS, further, in response to the Opposition's concerns about the operation of the Synagogue, the applicant revised its application to note that (1) there will be no onsite catering; (2) the simcha hall will be used primarily for Kiddush ceremonies following Sabbath prayer services; and (3) there will be no simultaneous use of the simcha hall and worship areas anytime there is a near-capacity crowd at the synagogue, but they may be used together when neither is at near capacity; and

WHEREAS, the Board agrees with the applicant that it has submitted (1) a full and complete description of the proposal including programmatic needs, number of people it will serve, and hours and days of operation; and (2) the Opposition has failed to provide any evidence of a significant negative impact caused by the proposal as required by the New York State courts to deny a variance for a religious institution; and

WHEREAS, the Board has reviewed the Opposition's concerns and notes the following: (1) the requirements of ZR § 72-21(a) are met by the demonstration of legitimate programmatic needs and the limitations of the site in meeting those goals; and (2) the case law does not recognize concerns about potential traffic and disruption of residential character of the neighborhood as basis for rejecting a variance request; 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 applicant analyzed a lesser variance scenario with a side yard with a width of 5'-0" along the eastern lot line and a side yard with a width of 5'-0" along the northern lot line and asserts that a lesser variance would compromise the programmatic needs of the Synagogue; and

WHEREAS, specifically, a lesser variance scenario that could only accommodate 175 men, as opposed to the 216 in the initial proposal (187 in the current proposal) and 137 women, as opposed to the 153 in the initial proposal (141 in the current proposal) for the women's sanctuary would be insufficient; and

WHEREAS, the applicant asserts that the addition of the proposed yards is the most possible without further limiting its ability to accommodate its congregation; and

WHEREAS, additionally, the applicant asserts that many of the rooms on the first and second floors, including the rabbi's office, children's library, and conference room would be greatly reduced under the lesser variance scenario; 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. 12BSA095K, dated March 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 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 in an R2 zoning district, the construction of a two-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for floor area ratio, lot coverage, front yards, side yards, height, setback, and parking, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521; *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 May 15, 2013" – Fourteen (14) sheets and "Received May 17, 2013" – One (1) sheet; and *on further condition*:

THAT the building parameters will be: three stories; a maximum floor area of 8,500 sq. ft. (1.41 FAR); front yards with depths of 8'-0" on the southern lot line and 10'-0" on the western lot line; side yards with widths of 2'-0" on the northern lot line and 5'-0" on the eastern lot line; a maximum lot coverage of 71 percent; a maximum building height of 35'-0"; and a maximum street wall height of 29'-0", as illustrated 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) and any classes will be accessory to this use;

THAT the use of the cellar kitchen will be limited to warming;

THAT no commercial catering will take place onsite;

THAT there will be no simultaneous use of the simcha hall and worship areas anytime there is more than half capacity in either space;

THAT the site, during construction and under regular operation, will be maintained safe and free of debris;

THAT garbage will be stored inside the building except when in the designated area for pick-up;

THAT any and all lighting will be directed downward and away from adjacent residences;

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

THAT rooftop mechanicals will comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings and that the flue stacks be located at least 30 feet from adjacent buildings, 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 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, May 21, 2013.

235-12-BZ
CEQR #13-BSA-009K
APPLICANT – Slater & Beckerman, LLP, for NBR LLC, owner.
SUBJECT – Application July 30, 2012 – Special Permit (§73-242) to allow a one-story building to be used as four eating and drinking establishments (Use Group 6), contrary to use regulations (§32-00). C3 zoning district.
PREMISES AFFECTED – 2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north. Block 8839, Lots 33, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 29, 2012, acting on Department of Buildings Application No. 320499322, reads, in pertinent part:

> Store 1 – Proposed Use Group 6 eating and drinking establishment not permitted in C3 district, pursuant to ZR § 32-15
> Store 2 – Proposed Use Group 6 eating and drinking establishment not permitted in C3 district, pursuant to ZR § 32-15
> Store 3 – Proposed Use Group 6 eating and drinking establishment not permitted in C3 district, pursuant to ZR § 32-15
> Store 4 – Proposed Use Group 6 eating and drinking establishment not permitted in C3 district, pursuant to ZR § 32-15
> Obtain New York City Board of Standards and Appeals special permit, pursuant to ZR § 73-242; and

WHEREAS, this is an application under ZR § 73-242, to permit, in a C3 zoning district, the operation of four Use Group 6 eating and drinking establishments occupying a total floor area of 7,907 sq. ft. (0.30 FAR), which requires a special permit pursuant to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in the *City Record*, with continued hearings on January 8, 2013 and February 5, 2013, and then to decision on May 21, 2013; 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 a rectangular zoning lot comprising Tax Lots 33 & 38, with approximately 26,131 sq. ft. of lot area, and frontages along Plumb Beach Channel and three streets: 176.16 feet of frontage along the east side of Knapp Street, 200 feet of frontage along the north side of Harkness Avenue and 175.41 feet of frontage along the west side of Plumb First Street; and

WHEREAS, the applicant states that the site is occupied by a one-story building with 6,696 sq. ft. of floor area (0.26 FAR), and three separate commercial establishments (a delicatessen, a beauty supply store and an eating and drinking establishment); and

WHEREAS, the site has been under the Board's jurisdiction since August 10, 1993; on that date, under BSA Cal. No. 96-92-BZ, the Board granted, for a term of five years, a special permit pursuant to ZR § 73-242 authorizing in a C3 zoning district, the operation of three Use Group 6 eating and drinking establishments with musical entertainment but not dancing and with a capacity of 200 persons or less within an existing one-story building; and

WHEREAS, on December 19, 2000, the Board renewed the special permit for a term of five years retroactive to its expiration on August 10, 1998; accordingly, the renewed special permit expired on August 10, 2003; and

WHEREAS, a new application is required for the instant proposal because the prior grant expired more than nine years ago and because the proposal includes a 1,210 sq. ft. enlargement to accommodate a fourth Use Group 6 eating and drinking establishment at the site; and

WHEREAS, the applicant states that the enlargement will increase the floor area from 6,696 sq. ft. (0.26 FAR) to 7,907 (0.30 FAR) and increase the number of required parking spaces from 34 to 40; and

WHEREAS, the applicant notes that, of the three Use Group 6 eating and drinking establishments authorized under the prior grant, one is currently active and has been operating since 2010; as such, this application seeks legalization of that use; the other two commercial spaces are currently occupied as a delicatessen and an beauty supply and, in connection with this application, are to be converted back to eating and drinking establishments; and

WHEREAS, the applicant represents that, in accordance with ZR § 73-242, the proposal will not impair the essential character or the future use or development of the nearby residential neighborhood; and

WHEREAS, the applicant states that the proposed establishments are consistent with the commercial nature of the surrounding uses, which include a parking lot to the east of

the site (and an ice cream shop to the east of the parking lot), a large multiplex theater and retail stores to the south of the site across Harkness Avenue on Block 8840, an independent pre-kindergarten through 12th Grade educational facility known as the Amity School across Knapp Avenue to the west and the Belt Parkway, a major arterial highway; and

WHEREAS, the applicants notes that there are vacant lots directly north of the Plumb Beach Channel and that the nearest residential uses are located more than 400 feet from the site; and

WHEREAS, the applicant also notes that Knapp Street is a busy, four-lane thoroughfare measuring 100 feet in width, making it an appropriate location for a cluster of restaurants; and

WHEREAS, as to bulk, the applicant states that the proposal complies in all respects with the applicable bulk regulations; and

WHEREAS, the applicant represents that there will be a minimum of (or no) increase in vehicular traffic to and through local streets in nearby residential areas to be generated by the proposal; and

WHEREAS, specifically, the applicant states the existing building is accessed by entrances located on a Plumb First Street, which is essentially a court, serving only the subject site and a parking lot for the theater across the street; Plumb First Street is accessed by Harkness Avenue, a two-lane, two-way street and it is anticipated that the majority of patrons will access Harkness Avenue via Knapp Street, which is accessible from the Belt Parkway service drive; as such, there is minimal traffic generated in the surrounding local streets in residential areas; and

WHEREAS, the Board finds that the proposal will generate a minimum of vehicular traffic to and through local streets in nearby residential areas; and

WHEREAS, at hearing the Board expressed concerns over excessive accessory signage, an unlawful advertising roof sign, the adequacy of the landscaping, the configuration of the accessory parking, and the site's current compliance with the conditions imposed by the Board in BSA Cal. No. 96-92-BZ; and

WHEREAS, in response, the applicant: (1) stated that it will bring all signage at the site into compliance with the applicable zoning regulations; (2) provided a revised landscaping plan that, to the fullest extent feasible, complies with current landscaping requirements; (3) revised the original parking layout and indicated that it will backfill the rear of the site in order to provide the required number of parking spaces; and (4) demonstrated that the site complies with the prior conditions of the grant, including the requirements to provide an adequately paved and drained parking lot, keep the site free of debris and graffiti and store garbage in the designated enclosure until immediately prior to pick-up; 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, the hazards or disadvantages to the community at large of such special permit use at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at Z.R. §73-242; 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. 13BSA009K dated July 30, 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 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 and grants a special permit under ZR §§ 73-03 and 73-242, to permit, in a C3 zoning district, the operation of four Use Group 6 eating and drinking establishments occupying a total floor area of 7,907 sq. ft. (0.30 FAR), which requires a special permit pursuant to ZR § 32-15, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received May 17, 2013"- four (4) sheets; and *on further condition*;

THAT the accessory sign for the existing restaurant shall be limited to 50 sq. ft. in surface area and that DOB shall not issue any permits for work at the site unless and until the restaurant sign is reduced to 50 sq. ft.;

THAT any illuminated accessory sign constructed at the premises shall be at least 150 feet from the boundary of any residence district;

THAT this permit shall be granted for a term of five years from May 21, 2013 to expire on May 21, 2018;

THAT the site shall comply with the conditions set forth in BSA Cal. No. 92-96-BZ;

THAT the above conditions and all other relevant conditions form prior grants be noted on the certificate of

occupancy;

THAT compliance with Local Law 58/87 shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited 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, May 21, 2013.

238-12-BZ

APPLICANT – Harold Weinberg, for Stuart Ditchek, owner.

SUBJECT – Application August 1, 2012 – Special Permit (§73-622) for the enlargement of single family home contrary floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1713 East 23rd Street, between Quentin Road and Avenue R, Block 6806, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 1, 2012, acting on Department of Buildings Application No. 320529512, reads in pertinent part:

1. The proposed enlargement increases the degree of non-compliance with respect to floor area and floor area ratio and is contrary to Section 23-141 and Section 54-31 of the Zoning Resolution;
2. The proposed enlargement creates a new non-compliance with respect to lot coverage and is contrary to Section 23-141;
3. The proposed enlargement [increases] the degree of non-compliance with respect to an existing deficient side yard and is contrary to Section 23-461 and to Section 54-31 of the ZR;
4. The proposed enlargement creates a new non-compliance with respect to the rear yard and is contrary to Section 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 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 ratio ("FAR"), lot coverage, side yards and rear yard contrary to ZR §§ 23-141, 23-46, 23-47, and 54-31; and

WHEREAS, a public hearing was held on this application on February 5, 2012, after due notice by publication in *The City Record*, with continued hearings on March 12, 2013, April 9, 2013, and April 23, 2013, and then to decision on May 21, 2013; 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 East 23rd Street, between Quentin Road and Avenue R, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 2,674.2 sq. ft. (0.67 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 of 2,674.2 sq. ft. (0.67 FAR) to 4,120 sq. ft. (1.03 FAR); the maximum permitted floor area is 2,400 sq. ft. (0.60 FAR); and

WHEREAS, the applicant proposes a lot coverage of 43.7 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant proposes to maintain the existing non-complying side yards, which have widths of 2'-10" and 8'-5"; 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 proposes a rear yard with a depth of 20'-2"; the minimum required rear yard depth is 30 feet; 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, 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 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"), lot coverage, side yards and rear yard contrary to ZR §§ 23-141, 23-46, 23-47, and 54-31; *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"- (5) sheets and "April 17, 2013"-(4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,120 sq. ft. (1.03 FAR), a maximum lot coverage of 43.7 percent, a minimum open space ratio of 73.5 percent, side yards with minimum widths of 2'-10" and 8'-5", and a rear yard with a minimum depth of 20'-2", 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, May 21, 2013.

284-12-BZ
CEQR #13-BSA-039K
APPLICANT – Sheldon Lobel, P.C., for Jack Cayre, owner.
SUBJECT – Application September 25, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) requirements. R2X (OP) zoning district.
PREMISES AFFECTED – 2047 East 3rd Street, eastern side of East 3rd Street, between Avenue S and Avenue T, Block 7106, Lot 122, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 27, 2012, acting on Department of Buildings Application No. 320502238, 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 § 23-631 in that the proposed perimeter wall height exceeds the maximum permitted; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR") and maximum perimeter wall height, contrary to ZR §§ 23-141 and 23-631; and

WHEREAS, a public hearing was held on this application on March 5, 2013, after due notice by publication in *The City Record*, with continued hearings on April 9, 2013 and May 7, 2013, and then to decision on May 21, 2013; 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 East Third Street, between Avenue S and Avenue T, within an R2X zoning district within the Special Ocean Parkway District; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 2,989 sq. ft. (0.60 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 an increase in the floor area from of 2,989 sq. ft. (0.60 FAR) to 6,108 sq. ft. (1.23 FAR); the maximum permitted floor area is 4,250 sq. ft. (0.85 FAR); and

WHEREAS, the applicant proposes a perimeter wall height of 23'-7¼"; 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 is less than the height of the adjacent

building's non-complying perimeter wall facing the street; and

WHEREAS, at hearing, the Board raised a concern over the calculation of the proposed perimeter wall height; and

WHEREAS, in response, the applicant's architect submitted a letter, an eave diagram, and revised plans that, together, adequately explain how the perimeter wall height for the proposed building and the adjacent building were calculated; 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, 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 R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR and maximum perimeter wall height, contrary to ZR §§ 23-141 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 May 15, 2013"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 6,108 sq. ft. (FAR 1.23), and a maximum perimeter wall height of 23'-7¼", 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 DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, including those related to the building's envelope, 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 21, 2013.

315-12-BZ
CEQR #13-BSA-057Q
APPLICANT – Akerman Senterfitt, LLP, for Pali Realty LLC, owner.
SUBJECT – Application November 20, 2012 – Special Permit (§73-50) to allow for a community facility building, contrary to rear yard requirements (§33-29). C4-3 zoning district.
PREMISES AFFECTED – 23-25 31st Street, east side of 31st Street, between 23rd Avenue and 23rd Road, Block 835, Lot 27 & 31, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 22, 2012, acting on Department of Buildings Application No. 420229194, reads in pertinent part:

> [t]he rear lot line of this zoning lot coincides with the residential district boundary. Provide 30 ft. rear yard as per ZR 33-292; and

WHEREAS, this is an application under ZR §§ 73-50 and 73-03, to legalize, on a site in a C4-3 zoning district abutting an R5B zoning district, the construction of an eight-story community facility building with an open area 23 feet above curb level with a minimum depth of 20 feet, contrary to ZR § 33-292; 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 19, 2013 and April 23, 2013, and then to decision on May 21, 2013; 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, Queens, recommends approval of the application on condition that (1) the rear wall with a height of 23 feet be completely finished with stucco; (2) the mechanical equipment on the roof setback at the rear be installed on vibration pads and encased with sound-attenuating materials to reduce noise and vibrations; (3) the entire parapet wall at the rear setback be high enough to conceal rooftop

mechanical equipment; (4) the front of the building and setback area be well-lit when the building is not in operation; and (5) the applicant remedy damages to the adjacent owners on 31st and 32nd streets by agreeing to pay repair costs; and

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

WHEREAS, certain members of the surrounding community provided written and oral testimony in opposition to the application ("the Opposition"); and

WHEREAS, the Opposition's primary concerns are that: (1) no grant should be given until all damage to adjacent properties has been repaired and owners' costs recouped; (2) the insurance claims process has been unsatisfactory; (3) the applicant has not provided evidence of the need for the special permit; and (4) the potential nuisance of light and noise on the adjacent properties; and

WHEREAS, the subject site is an interior zoning lot (comprising Tax Lots 27 and 31) located on the east side of 31st Street between 23rd Avenue and 23rd Road, with 125 feet of frontage on 31st Street, a depth of 90 feet, and a total lot area of 11,250 sq. ft.; and

WHEREAS, the site is located within a C4-3 zoning district that abuts an R5B zoning district to its rear; and

WHEREAS, pursuant to ZR § 33-292, an open area 23 feet above curb level with a minimum depth of 30 feet is required on a zoning lot within a C4-3 district with a rear lot line that abuts the rear lot line of a zoning lot in a residence district; and

WHEREAS, the applicant proposes to legalize a partially-constructed eight-story community facility building that provides an open area along the rear lot line beginning above the roof of the first story (23 feet above curb level), with a depth of 20 feet (the "20-foot yard"), rather than the required 30 feet; and

WHEREAS, the applicant represents that the building complies in all other respects with the applicable provisions of the Zoning Resolution; and

WHEREAS, under ZR § 73-50, the Board may grant a waiver of the rear yard (open area) requirements set forth in ZR § 33-29 in appropriate cases; and

WHEREAS, the applicant states that the instant application is an appropriate case for a waiver of the requirements set forth in ZR § 33-29; and

WHEREAS, the applicant states that the non-complying 20-foot yard is attributable to a design error by the project architect and that the error was discovered after approximately 80 percent of the building was completed; and

WHEREAS, the applicant states that in order to comply with ZR § 33-292 at this stage of construction, the rearmost 10-foot portion of the building at the first seven stories would have to be demolished by hand and reconstructed with a completely redesigned structural system; the applicant represents that such work is infeasible; and

WHEREAS, as to the infeasibility, the applicant represents that the line of columns at the rear of the building begin below ground at the foundation and continue to the roof level, and cannot practically be moved without the construction of new footings and the removal of the parking ramps; and

WHEREAS, additionally, the roof water tanks would have to be relocated to a different portion of the roof and such portion would have to be structurally reinforced to carry the additional loads, at significant design and construction costs; and

WHEREAS, lastly, the removal of 10 feet of building depth would result in a building depth of 45 feet at the fourth through eighth stories, which the applicant asserts is inadequate to provide an efficient floor plate for a modern medical office use; and

WHEREAS, the applicant asserts that the waiver will not have an adverse effect on the surrounding area; and

WHEREAS, the applicant represents that of the seven other zoning lots located on the 31st Street frontage, six extend to the rear lot line; and

WHEREAS, the applicant also notes that prior to the construction of the subject building, Lot 27 was occupied by a one-story commercial building that extended to its rear lot line and Lot 31 was occupied by a three-story residential building that provided an approximately 20-foot rear yard consistent with the proposed; and

WHEREAS, the applicant notes that there is a lack of adequate medical facilities in the neighborhood and states that the proposed facility is desired by the community at large; and

WHEREAS, the applicant notes that the proposed tenants include University Orthopedics of NYC, Metropolitan Gastroenterology and Endoscopy Center of Queens; and

WHEREAS, the applicant notes that if the building were redesigned to comply with ZR § 33-292, the building height would be increased from 158 feet to 182 feet; such increase in height would be as of right and result in longer shadows being cast on neighboring buildings; further, the decreased floor plates would be detrimental to the proposed medical use, which the applicant states requires large floor plates so as to minimize the movement of patients from floor to floor; and

WHEREAS, the applicant submitted a shadow study demonstrating the increased neighborhood impact of a taller building; and

WHEREAS, during the public review and hearing process, the Opposition raised concerns about the impact of the building on the residences directly abutting the site; specifically, the Opposition raised concerns regarding: (1) the visibility, noise and potential contamination from exhaust and intake vents and stair pressurization fans at the rear first story roof; (2) glass blocks within the rear wall at the first story and basement, which would allow light to transfer outside the building; (3) open violations from the Department of Buildings ("DOB"); and (4) damages allegedly sustained by the adjacent properties during the

course of construction of the subject building and related DOB violations; and

WHEREAS, accordingly, the Board directed the applicant to (1) redesign the exhaust and vent system so that it was further from the adjacent residents at the rear; (2) remove the glass blocks in the rear wall and replace with concrete block and stucco that will be opaque; (3) describe the nature of any outstanding violations; and (4) address the Opposition's concerns about property damage; and

WHEREAS, in response, the applicant: (1) relocated exhaust vents from the rear of the building to the front setback; (2) relocated intake vents and stair pressurization fans to be as far as functionally possible from the rear parapet; (3) provided a detailed statement from the project engineer certifying the make, model, size, functionality and necessity of the intake vents and stair pressurization fans; (4) submitted a visibility study indicating that the intake vents and stair pressurization fans will not be visible from the tallest of the residences abutting the rear lot line (23-26 32nd Street); (5) amended the plans to show the replacement of glass blocks with solid masonry; and (6) submitted evidence of a request from the project architect to the Queens DOB Commissioner for permission to perform work in order to remove the conditions that gave rise to the violations; and

WHEREAS, as to the damages allegedly sustained by the adjacent properties during the course of construction at the subject building and related DOB violations, the applicant asserts that such matters are under the purview of the general contractor and its insurance company and that it is prohibited, by contract, from intervening in the insurance negotiations; and

WHEREAS, further, the applicant represents that the violations were all issued in response to the neighbors' complaints and, thus, cannot be resolved absent the neighbors' cooperation, particularly given that a number of the violations are not actually issued to the subject lot, but to the neighbors', and that other violations require access to the neighbors' property; and

WHEREAS, a search of the Buildings Information System reflects that there are three outstanding violations on the site: (1) ECB Violation No. 34959031Y was issued on September 18, 2012 and alleged a failure to safeguard persons and property affected by construction operations, contrary to New York City Building Code § 3301.2; the respondent was found in violation on January 22, 2013, and no certificate of correction has been approved by DOB; (2) ECB Violation No. 34959207Z was issued on January 15, 2013 and alleged a failure to safeguard persons and property affected by construction operations, contrary to BC § 3301.2; the respondent was found in violation on April 30, 2013, and no certificate of correction has been approved by DOB; and (3) DOB Violation No. 073112C0101SA was issued on July 31, 2012 and alleged that the borough commissioner had issued an intent to revoke the permit and approval for Job No. 420229194 and a Stop Work Order, pursuant to New York City Administrative Code § 28-207.2; and

WHEREAS, the Board notes that disputes between neighbors and the resolution of property damage caused by construction are beyond its purview and it cannot get involved in such disputes; however, it strongly encourages the parties to work together to achieve a resolution fairly and expeditiously; and

WHEREAS, the applicant represents that the negotiations between the contractor's insurance company and the neighbors' insurance companies are ongoing; and

WHEREAS, the applicant also notes that, on April 15, 2013, one of the neighbors has commenced an action in New York State Supreme Court, Sesumi v. Pali Realty, LLC et al., Index No. 7428/13, Queens County, for alleged property damages; and

WHEREAS, the Opposition also raised additional concerns regarding light pollution from the building, the sufficiency of the roof drains, the functioning of the electrical and mechanical systems and equipment, the general contractor's means and methods of construction, and the completeness of plans submitted in connection with this application; and

WHEREAS, as to these concerns, the Board finds that the applicant adequately addressed them and that all construction methods and plans are subject to DOB review and approval; and

WHEREAS, the Board notes that the construction activities have given rise to certain damage to property and disputes with adjacent property owners, but that such effects are the result of physical construction work and not the land use and planning effects that the Board considers in determining whether or not the open area required by ZR § 33-292 must be provided; and

WHEREAS, further, the Board notes that the use and building are permitted as of right but for the rear ten feet of building depth above a height of 23 feet; and

WHEREAS, the Board notes that the portion of the new building which appears to have created the most conflict with the adjacent property owners is actually the portion of the building (and its rear wall) within the rear yard *below* 23 feet, which is permitted as-of-right pursuant to ZR § 33-292; and

WHEREAS, the Board finds that the extra ten feet of building depth at the rear above a height of 23 feet has not led to the adjacent property owners' concerns in the short-term and is compatible with the adjacent uses in the long-term, pursuant to ZR §§ 73-03 and 73-50; however, the impact of the physical construction work upon adjacent properties may be considered by the Board in determining the appropriate conditions and safeguards to impose along with the grant of a special permit pursuant to ZR § 73-03; and

WHEREAS, the Board notes that the applicant has satisfied all of the Community Board's requests related to building design and site conditions, in that: (1) the rear wall will be completely finished with stucco; (2) the mechanical equipment on the roof setback at the rear will be installed on

vibration pads and encased with sound-attenuating materials to reduce noise and vibrations; (3) the entire parapet wall at the rear setback is high enough to conceal rooftop mechanical equipment; and (4) the front of the building and setback area will be well-lit when the building is not in operation; and

WHEREAS, as to the Community Board's additional request that the applicant remedy damages to the adjacent owners on 31st and 32nd streets, the Board notes that both parties have testified that there are ongoing negotiations between the property owners' and contractor's insurance companies to resolve the damages; and

WHEREAS, based on the record, the Board finds that the application meets the requirements of ZR § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of ZR § 73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-50 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 §§ 73-50 and 73-03, to permit, on a site in a C4-3 zoning district abutting an R5B zoning district, the construction of an eight-story community facility building with an open area 23 feet above curb level with a minimum depth of 20 feet, contrary to ZR § 33-292, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received April 2, 2013" – sixteen (16) sheets; and *on further condition*;

THAT the vents atop the rear first story roof will be for intake only;

THAT the stair pressurization fans atop the rear first story roof will be operated only in an emergency;

THAT all lighting will be directed away from adjacent residences, as reflected on the plans;

THAT the glass blocks at the rear wall will be replaced by masonry and stucco;

THAT the mechanical equipment on the roof setback at the rear will be installed on vibration pads and encased with sound-attenuating materials to reduce noise and vibrations;

THAT the entire parapet wall at the rear setback will be built to a sufficient height, as reflected on the BSA-approved plans and approved by DOB, to conceal rooftop mechanical equipment;

THAT the front of the building and setback area will be well-lit when the building is not in operation;

THAT the above conditions be noted on the Certificate of Occupancy;

THAT DOB will not issue a Temporary Certificate of Occupancy (or Final Certificate of Occupancy) and the building will not be occupied until all violations on the site have been cured to DOB's satisfaction;

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 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 21, 2013.

8-13-BZ
CEQR #13-BSA-081K
APPLICANT – Lewis E. Garfinkel, for Jerry Rozenberg, owner.
SUBJECT – Application January 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141(a)); and side yard (§23-461) regulations. R2 zoning district.
PREMISES AFFECTED – 2523 Avenue N, corner formed by the intersection of the north side of Avenue N and west of East 28th Street, Block 7661, Lot 1, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 9, 2013, acting on Department of Buildings Application No. 320513850, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio exceeds the permitted 0.50;
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio is less than the required 50 percent;
3. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum [of] 5'-0"; 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 ratio, and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in *The City Record*, and then to decision on May 21, 2013; 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 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a corner lot located at the northwest intersection of East 23th Street and Avenue N, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft. and is occupied by a single-family home with a floor area of 3,354 sq. ft. (0.67 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 an increase in the floor area from of 3,354 sq. ft. (0.67 FAR) to 4,740 sq. ft. (0.95 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the existing open space ratio is 61 percent and the applicant proposes an open space ratio of 38 percent; the minimum permitted open space ratio is 150 percent; and

WHEREAS, the building has one complying side yard with a width of 5'-8" and one non-complying side yard with a width of 18'-7"; the applicant proposes to reduce the complying side yard to 5'-0" (a minimum of 5"-0" is required) and maintain the non-complying side yard at 18'-7" (a minimum of 20'-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, 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 ratio, and side yards, contrary to ZR §§ 23-141 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 March 20, 2013"-(5) sheets and "May 7, 2013"-(7) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,740 sq. ft. (0.95 FAR), a minimum open space ratio of 38 percent, and side yards with minimum widths of 5'-0" and 18'-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) 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, May 21, 2013.

10-13-BZ
CEQR #13-BSA-083M

APPLICANT – Friedman & Gotbaum LLP, by Shelly Friedman, Esq., for Stephen Gaynor School and Cocodrilo Development Corporation, owners.

SUBJECT – Application January 18, 2013 – Variance (§72-21) to permit an enlargement to an existing school (*Stephen Gaynor School*), contrary to lot coverage (§24-11), rear yard (§24-36/33-26), and height and setback (§24-522) regulations. C1-9 & R7-2 zoning districts.

PREMISES AFFECTED – 175 West 89th Street (South Building) and 148 West 90th Street (North Building), between West 89th Street and West 90th Street, 80ft easterly from the corner formed by the intersection of the northerly side of West 89th Street and the easterly side of Amsterdam Avenue, Block 1220, Lots 5 and 7506, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 21, 2012, acting on Department of Buildings Application No. 120406131, reads in pertinent part:

1. ZR 24-11 Proposed bridge connection at the 4th story level in R7-2 district does not qualify as a permitted obstruction pursuant to ZR 24-33 and therefore increases the degree of non-compliance with respect to lot coverage, contrary to ZR 24-11 and ZR 54-31;
2. ZR 24-36 Proposed vertical extension of building portion exceeding 23 ft above curb level and the proposed bridge connection at the 4th story level in R7-2 district does not qualify as permitted obstruction pursuant to ZR 24-33 and therefore increases the degree of rear yard non-compliance, contrary to ZR 24-36 and ZR 54-31;
3. ZR 24-522 Portion of proposed vertical extension of building at the 5th and 6th story levels penetrates the sky exposure plane and increases degree of front setback non-compliance, contrary to ZR 24-522 and ZR 54-31;
4. ZR 33-26 Proposed vertical extension of building portion exceeding 23 ft above curb level in C1-9 district does not qualify as permitted obstruction pursuant to ZR 33-23 and therefore increases degree of rear yard non-compliance, contrary to ZR 33-26 and ZR 54-31; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of an existing school building to accommodate classrooms and an exercise and activity space ("the Enlargement"), and the construction of a bridge ("the Bridge") between the subject building located at 175 West 89th Street ("the South Building") and the building located 148 West 90th Street ("the North Building"), which do not comply with zoning regulations for lot coverage, minimum required rear yard, permitted obstructions in a rear yard, and sky exposure plane, contrary to ZR §§ 24-11, 24-33, 24-36, 24-522, 33-23, 33-26 and 54-31; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in the *City Record*, and then to decision on May 21, 2013; and

WHEREAS, a companion variance application to allow the Bridge construction within the rear yard of the North Building has been filed under BSA Cal. No. 11-13-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 Hinkson, and Commissioner Montanez; and

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

WHEREAS, Councilmember Gail Brewer submitted a letter in support of the application; and

WHEREAS, certain members of the community testified at the hearing in support of the application; and

WHEREAS, this application is brought on behalf of the Stephen Gaynor School (the "School"), a nonprofit educational institution founded in 1962, which serves approximately 300 students with various special needs ranging in age from three to 14; and

WHEREAS, the subject site is an interior lot located on the north side of West 89th Street between Amsterdam Avenue and Columbus Avenue, partially within an R7-2 zoning district and partially within a C1-9 zoning district; and

WHEREAS, the site has 75 feet of frontage along West 89th Street and a lot area of 7,553 sq. ft.; and

WHEREAS, the site is currently occupied by the South Building, a five-story building that was originally constructed in 1892 as a boarding stable and came to be known as the Claremont Stables; the South Building was designated as an individual landmark by the Landmarks Preservation Commission in 1990, and it is also on the National Register of Historic Places; and

WHEREAS, the applicant states that the School purchased the South Building in 2009 and currently utilizes a portion of the first story and the entire second story as its Early Childhood Center; and

WHEREAS, the applicant notes that the campus of the School currently includes seven stories of the 11-story North Building and two stories of the five-story South Building; there is another School-owned building under construction at 171 West 89th Street; each building is a separate tax and zoning lot; and

WHEREAS, the applicant states that the South Building has a height of 79.18 feet, including mechanicals and a total floor area of 34,404 sq. ft., with 9,255 sq. ft. (4.60 FAR) located within the C1-9 portion of the lot and 25,149 sq. ft. (4.54 FAR) located within the R7-2 portion of the lot; and

WHEREAS, the applicant proposes to enlarge the South Building and construct a bridge in the rear yard to connect to the North Building, which would increase the floor area to 38,412 sq. ft. and result in an FAR increase from 4.60 FAR to 5.34 FAR within the C1-9 portion of the lot and 4.54 FAR to 4.99 FAR within the R7-2 portion of the lot; and

WHEREAS, the applicant represents that the South Building has the following existing, non-compliances: (1) the lot coverage within the R7-2 portion of the lot is 95 percent (per ZR § 24-11, the maximum lot coverage is 65 percent); (2) the rear yard is 5.04 feet (per ZR § 24-36, a minimum rear yard depth of 30 feet is required; per ZR § 33-26, a minimum rear yard depth of 20 feet is required); (3) the portion of the building within the R7-2 district does not provide the required 20-foot front setback, exceeds the 60-foot maximum height, and violates the sky exposure plane, contrary to ZR § 24-522;

and (4) the projecting blade sign located above the main entrance exceeds the maximum size permitted by ZR § 22-341; the applicant notes that the degree of non-compliance with respect to (3) and (4) will not change under the application; and

WHEREAS, the applicant states that, contrary to ZR § 54-31, the proposal will increase the degree of non-compliance with respect to: (1) lot coverage, which will increase by one percent; (2) required rear yard within the R7-2 district, which, as a result of the Bridge, will be decreased by an area of approximately 1,372 sq. ft. (the Bridge is not a permitted obstruction, per ZR § 24-33); (3) sky exposure plane, which will be penetrated by the 170.5 sq. ft. portion of the Enlargement that is located at the front of the South Building; and (4) required rear yard within the C1-9 district, which, as a result of the Enlargement, will be decreased by an area of approximately 300 sq. ft. (this portion of the South Building is not a permitted obstruction, per ZR § 33-23); and

WHEREAS, the applicant states that the Enlargement will accommodate three new academic/science classrooms on the fifth story, an expanded cafeteria, and a multifunctional activity space on the sixth story and rooftop; the proposed Bridge will integrate the South Building with the North Building; and

WHEREAS, because neither the Enlargement, nor the Bridge comply with the applicable bulk regulations in the subject zoning districts, the applicant seeks the requested variance; and

WHEREAS, the applicant states that the variance is necessary to meet the School's programmatic needs of: (1) providing sufficient space to carry out its specialized curriculum, which is heavily infused with exercise, art, and photography; and (2) minimizing travel time between the South Building and the North Building in order to maximize instruction and learning times; and

WHEREAS, as to the specialized curriculum of the School, the applicant states that because the School specializes in educating children with special needs and certain learning differences, it emphasizes physical education and the arts to a much greater degree than mainstream schools, because these subjects help the students with both confidence and focus; and

WHEREAS, the applicant states that due to the relationship between physical activity and creating an effective learning environment for the School's students, the proposed activity space on the sixth story—which includes a synthetic floor that accommodates a multitude of activities—is neither recreational nor elective, but rather an important component of the School's highly-specialized educational program; and

WHEREAS, the applicant states that the proposal would allow for the creation of several new spaces to effectively conduct the curriculum; specifically, the Enlargement would result in new seminar rooms, a multi-media arts room, a state-of-the-art digital photography lab, an expanded cafeteria, and physical activity space, as mentioned above; and

WHEREAS, thus, the applicant states that the Enlargement effectively addresses the School's programmatic need to provide sufficient space to carry out its specialized curriculum and create a learning environment that is tailored to the particular needs of its student body; and

WHEREAS, as to the need to minimize travel time between the South Building and the North Building, the applicant represents that, currently, students, faculty and staff who must travel between the buildings must exit the front of their building on either West 89th Street (the subject building) or West 90th Street (the North Building), walk west to Amsterdam Avenue and travel either north or south for an entire block before turning east toward the other front door, a trip that takes approximately 15 minutes; and

WHEREAS, the applicant states that the School has determined that, on average, a student travels between the two buildings seven times per week, for a total weekly travel time of approximately 105 minutes; the applicant notes that this is the equivalent of more than two full class periods; in addition, because the walk takes the students past an active garage, traveling students are required to be accompanied by a faculty member; and

WHEREAS, the applicant states that the travel between the buildings is necessary because the School has a variety of educational specialists throughout the two buildings who provide one-on-one assistance to students; and

WHEREAS, in addition, the applicant states that several classes attended by most students are only offered in one building; for example, Music, Gym and Library are currently offered only in the North Building; and although there are cafeterias in both buildings, there is insufficient space for all students to eat, and Middle School students from the North Building must travel to the South Building for lunch; and

WHEREAS, the applicant also notes that student arrivals and dismissals are located in the North Building, so students taking all or most of their instruction in the subject building would benefit from the construction of the Bridge; and

WHEREAS, accordingly, the applicant states that the Bridge most effectively meets the School's programmatic need to minimize travel time and maximize instruction and learning times; and

WHEREAS, as to the selection of the fourth story for the location of the Bridge, the applicant states that such placement will enable the overlap and access of two similar programs between the Lower School in the North Building and the Middle School in the South Building; in particular, the North Building students will have access to Mixed Media and Digital Arts program and the physical activity space created by the Enlargement; and

WHEREAS, the applicant asserts that there is no as-of-right alternative for the proposed development because the building already exceeds the maximum permitted lot coverage, eclipses the sky exposure plane, and does not provide the required rear yard at all stories above the first story; and

WHEREAS, the applicant represents that the location of the stair and elevator bulkheads prevent the construction of the proposed activity space at the fifth story; and

WHEREAS, the applicant represents that the Bridge

could not be located at the cellar, first, second, third or fifth stories without significantly disrupting existing program or mechanical spaces; and

WHEREAS, specifically, the applicant states that: (1) a connection at the cellar level would interfere with well-established program and support space; (2) a connection at the first story would interfere with a planned performing arts classroom at the South Building; (3) a bridge at the second story would interfere with a portion of the South Building's Early Childhood Center, whose program requires isolation due to the age of the students; (4) a bridge at the third story would interfere with program space in both buildings and create an elevational challenge for mechanical stacks located at the second story play yard at the South Building; and (5) a bridge at the fifth story would adversely affect the proposed classrooms in the South Building and significantly increase travel times for the North Building's third story students; and

WHEREAS, the applicant states that satisfying the School's programmatic needs without the Bridge and the Enlargement would require enlargement of one or both buildings (with new height and setback waiver requests) and the creation of redundant facilities, at significant cost; and

WHEREAS, the applicant notes that the width and height of the Bridge have been minimized to those dimensions necessary to further the School's mission and provide safe egress; 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 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 block on which the building is located within the West Side Urban Renewal Area and as such there has been considerable eclectic community facility development over the past half century; and

WHEREAS, the applicant states that the midblock is largely developed with religious, educational, and cultural institutions; the North Building is shared with Ballet Hispanico, an internationally-renowned dance company, the block to the south (Block 1219) is largely occupied by P.S. 166, and a large NYCHA development is located on the block to the north of the subject block (Block 1221); and

WHEREAS, the applicant represents that both the Enlargement and the Bridge will be minimally visible to the public; the Bridge will only be obliquely visible from West 89th Street and will be visible to—and approximately 80 feet from—only the northernmost windows on the rear elevation of The Sagamore, a residential building located at 189 West 89th Street; and

WHEREAS, the applicant states that approximately 45 percent of the new floor area will be within the rear yards of the South Building and the North Building, which minimizes the impact of the expansion on adjacent properties; and

WHEREAS, finally, the applicant notes that the proposed use is permitted in the subject zoning district and that the general welfare of any community is furthered by the strengthening of educational facilities; and

WHEREAS, the Board notes that on April 30, 2013, the Landmarks Preservation Commission issued a Certificate of Appropriateness with respect to the proposal; 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 South Building and the North 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, 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 617.2; 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. 13BSA083M dated January 17, 2013; 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 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 partially within an R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of an existing school building to accommodate classrooms and an exercise and activity space, and the construction of a bridge between the subject building located at 175 West 89th Street and the building located 148 West 90th Street, which do not comply with zoning regulations for lot coverage, minimum required rear yard, permitted obstructions in a rear yard, and sky exposure plane, contrary to ZR §§ 24-11, 24-33, 24-36, 24-522, 33-23, 33-26 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 1, 2013" – seventeen (17) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the South Building: a total floor area of 38,412 (4.99 FAR in the R7-2 district and 5.34 FAR in the C1-9 district), a maximum building height of 95'-7/8", a maximum street wall height without setback of 72'-0", and 96 percent lot coverage in the R7-2 district and 95 percent lot coverage in the C1-9 district, as illustrated on the BSA-approved plans;

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 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, May 21, 2013.

11-13-BZ
CEQR #13-BSA-083M

APPLICANT – Friedman & Gotbaum LLP, by Shelly Friedman, Esq., for Stephen Gaynor School and Cocodrilo Development Corporation, owners.

SUBJECT – Application January 18, 2013 – Variance (§72-21) to permit an enlargement to an existing school (*Stephen Gaynor School*), contrary to lot coverage (§24-11), rear yard (§24-36/33-26), and height and setback (§24-522) regulations. C1-9 & R7-2 zoning districts.

PREMISES AFFECTED – 175 West 89th Street (South Building) and 148 West 90th Street (North Building), between West 89th Street and West 90th Street, 80ft easterly from the corner formed by the intersection of the northerly side of West 89th Street and the easterly side of Amsterdam Avenue, Block 1220, Lots 5 and 7506, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 21, 2012, acting on Department of Buildings Application No. 121397201, reads in pertinent part:

1. ZR 24-11 24-33 Proposed bridge connection at the 4th story level in R7-2 district does not comply with lot coverage requirements because the proposed bridge does not qualify as a permitted obstruction pursuant to ZR 24-33, contrary to ZR 24-11
2. ZR 24-33 24-36 Proposed bridge connection at the 4th story level in R7-2 district does not comply with rear yard requirements because the proposed bridge does not qualify as a permitted obstruction pursuant to ZR 24-33, contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R7-2 zoning district, the construction of a bridge ("the Bridge") between the subject building located at 148 West 90th Street ("the North Building") and the building located 175 West 89th Street ("the South Building"), which does not comply with zoning regulations for lot coverage, minimum required rear yard, and permitted obstructions in a rear yard, contrary to ZR §§ 24-11, 24-33 and 24-36; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in the *City Record*, and then to decision on May 21, 2013; and

WHEREAS, a companion variance application to allow

enlargement of the South Building and construction of the Bridge within its rear yard has been filed under BSA Cal. No. 10-13-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 Hinkson, and Commissioner Montanez; and

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

WHEREAS, Councilmember Gail Brewer submitted a letter in support of the application; and

WHEREAS, certain members of the community testified at the hearing in support of the application; and

WHEREAS, this application is brought on behalf of Stephen Gaynor School (the "School"), a nonprofit educational institution founded in 1962, which serves approximately 300 students with various special needs ranging in age from three to 14; and

WHEREAS, the subject site is an interior lot located on the south side of West 90th Street between Amsterdam Avenue and Columbus Avenue, within an R7-2 zoning district; and

WHEREAS, the site has 65 feet of frontage along West 90th Street and a lot area of 6,546 sq. ft.; and

WHEREAS, the site, which is Tax Lot 7506, was merged into a single zoning lot with Tax Lot 107 in 2004; Lot 107 has 47.5 feet of frontage along West 89th Street and a total lot area of 4,783; together the lots have a combined lot area of 11,329 sq. ft. and a total floor area of 50,050 sq. ft. (4.42 FAR); and

WHEREAS, the applicant states that the site is currently occupied by the 11-story North Building; the School occupies the first through seventh stories, Ballet Hispanico occupies the eighth through tenth stories, and the 11th story comprises mechanical space shared by both the School and Ballet Hispanico; and

WHEREAS, the applicant notes that Ballet Hispanico also occupies the two-story building on Lot 107; and

WHEREAS, the applicant notes that the campus of the School currently includes seven stories of the 11-story North Building and two stories of the five-story South Building; there is another School-owned building under construction at Lot 7 (171 West 89th Street); each building is a separate tax and zoning lot; and

WHEREAS, the applicant states that the North Building complies in all respects with the zoning resolution; and

WHEREAS, the applicant proposes to create a bridge between the North Building and the South Building ("the Bridge"), which will increase the floor area from 50,050 sq. ft. (4.42 FAR) to 50,263 sq. ft. (4.43 FAR) and create new non-compliances with respect to rear yard, lot coverage, and permitted obstructions, contrary to ZR §§ 24-11, 24-33 and 24-36; specifically, the Bridge will: (1) encroach upon the required 30-foot rear yard for the full depth of the yard, a width of seven feet, and an area of 213 sq. ft.; (2) increase lot coverage from 65 percent, which complies, to 67 percent, which does not comply; and (3) violate ZR § 24-33, because the Bridge is not a permitted obstruction in the required rear yard, which begins above 23 feet; and

WHEREAS, the applicant states that the proposed Bridge will integrate the North Building with the South Building; and

WHEREAS, because the Bridge 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 minimize travel time between the North Building and the South Building in order to maximize instruction and learning times; and

WHEREAS, as to the need to minimize travel time between the North Building and the South Building, the applicant represents that, currently, students, faculty and staff who must travel between the buildings must exit the front of their building on either West 90th Street (the North Building) or West 89th Street (the South Building), walk west to Amsterdam Avenue and travel either north or south for an entire block before turning east toward the other front door, a trip that takes approximately 15 minutes; and

WHEREAS, the applicant states that the School has determined that, on average, a student travels between the two buildings seven times per week, for a total weekly travel time of approximately 105 minutes; the applicant notes that this is the equivalent of more than two full class periods; in addition, because the walk takes the students past an active garage, traveling students are required to be accompanied by a faculty member; and

WHEREAS, the applicant states the travel between the buildings is necessary because the School has a variety of educational specialists throughout the two buildings who provided one-on-one assistance to students; and

WHEREAS, in addition, the applicant states that several classes attended by most students are only offered in one building; for example, Music, Gym and Library are currently offered only in the North Building; and although there are cafeterias in both buildings, there is insufficient space for all students to eat, and Middle School students from the North Building must travel to the South Building for lunch; and

WHEREAS, the applicant also notes that student arrivals and dismissals are located in the North Building, so students taking all or most of their instruction in the subject building would benefit from the construction of the Bridge; and

WHEREAS, accordingly, the applicant states that the Bridge most effectively meets the School's programmatic need to minimize travel time and maximize instruction and learning times; and

WHEREAS, as to the selection of the fourth story for the location of the Bridge, the applicant states that such placement will enable the overlap and access of two similar programs between the Lower School in the North Building and the Middle School in the South Building; in particular, the North Building students will have access to the Mixed Media and Digital Arts program and the physical activity space

created by the Enlargement; and

WHEREAS, the applicant represents that the Bridge could not be located at the cellar, first, second, third or fifth stories without significantly disrupting existing program or mechanical spaces; and

WHEREAS, specifically, the applicant states that: (1) a connection at the cellar level would interfere with well-established program and support space; (2) a connection at the first story would interfere with a planned performing arts classroom at the South Building; (3) a bridge at the second story would interfere with a portion of the South Building's Early Childhood Center, whose program requires isolation due to the age of the students; (4) a bridge at the third story would interfere with program space in both buildings and create an elevational challenge for mechanical stacks located at the second story play yard at the South Building; and (5) a bridge at the fifth story would adversely affect the proposed classrooms in the South Building and significantly increase travel times for the North Building's third story students; and

WHEREAS, the applicant states that satisfying the School's programmatic needs without the Bridge would require enlargement of one or both buildings (with new height and setback waiver requests) and the creation of redundant facilities, at significant cost; and

WHEREAS, the applicant notes that the width and height of the Bridge have been minimized to those dimensions necessary to further the School's mission and provide safe egress; 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 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 block on which the North Building is located within the West Side Urban Renewal Area and as such there has been considerable eclectic community facility development over the past half century; and

WHEREAS, the applicant states that the midblock is largely developed with religious, educational, and cultural institutions; the North Building is shared with Ballet Hispanico, an internationally-renowned dance company, the block to the south (Block 1219) is largely occupied by P.S. 166, and a large NYCHA development is located on the block to the north of the subject block (Block 1221); and

WHEREAS, the applicant represents that the Bridge will be minimally visible to the public; the Bridge will only be obliquely visible from West 89th Street and will be visible to—and approximately 80 feet from—only the northernmost windows on the rear elevation of The Sagamore, a residential building located at 189 West 89th Street; and

WHEREAS, finally, the applicant notes that the proposed use is permitted in the subject zoning district and that the general welfare of any community is furthered by the strengthening of educational facilities; 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, 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 617.2; 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, 13BSA083M dated January 17, 2013; 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 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, the construction of a bridge between the building located at 148 West 90th Street and the building located 175 West 89th Street, which does not comply with zoning regulations for lot coverage, minimum required rear yard, and permitted obstructions in a rear yard, contrary to ZR §§ 24-11, 24-33 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 April 1, 2013" – twenty (20) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the North Building: a floor area of 50,263 sq. ft. (4.43 FAR) and 67 percent lot coverage, as illustrated on the BSA-approved plans;

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 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, May 21, 2013.

53-13-BZ
CEQR #13-BSA-088X

APPLICANT – Sheldon Lobel, P.C., for Walker Memorial Baptist Church, Inc., owner; Grand Concourse Academy Charter School, lessee.

SUBJECT – Application January 31, 2013 – Variance (§72-21) to permit the enlargement of an existing UG 3 school (*Grand Concourse Academy Charter School*), contrary to rear yard regulations (§§24-36 and 24-33(b). R8 zoning district.

PREMISES AFFECTED – 116-118 East 169th Street, corner of Walton Avenue and East 169th Street with approx. 198.7' of frontage along East 169th Street and 145.7' along Walton Avenue, Block 2466, Lots 11, 16, & 17, Borough of Bronx.

COMMUNITY BOARD #4BX

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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated January 23, 2013, acting on Department of Buildings Application No. 220246437, reads in pertinent part:

> Proposed 2-story rear enlargement of existing UG-3 school building in R8 zoning district is not a permitted obstruction in the required rear yard and is contrary to ZR Sections 24-36 and 24-33(b); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, the legalization of an enlargement to an existing three-story school building that does not comply with regulations regarding minimum required rear yard and permitted obstructions in a required rear yard, contrary to ZR §§ 24-36 and 24-33(b); and

WHEREAS, the application is brought on behalf of the Grand Concourse Academy Charter School (the "School"), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in the *City Record*, and then to decision on May 21, 2013; and

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

WHEREAS, Community Board 4, Bronx, recommends approval of this application; and

WHEREAS, the subject site is a corner lot located at the intersection of Walton Avenue and East 169th Street within an R8 zoning district; and

WHEREAS, the site has 145.75 feet of frontage along Walton Avenue, 198.69 feet of frontage along East 169th Street, and a lot area of approximately 25,750 sq. ft.; and

WHEREAS, the site is occupied by a basement and three-story Use Group 3 school and church building with 27,846 sq. ft. of floor area (1.08 FAR), and 30 on-grade parking spaces; and

WHEREAS, the applicant seeks to legalize an enlargement of the school that was filed with the Department of Buildings ("DOB") in 2010 and completed in 2011; the applicant represents that subsequent to the completion of construction, but prior to the issuance of a final certificate of occupancy, DOB audited the application and determined that it did not comply with ZR §§ 24-36 and 24-33(b); and

WHEREAS, the applicant notes that, per ZR § 24-36, a

rear yard with a minimum depth of 30 feet is required; however, per ZR § 24-33(b), any portion of the building used for community facility uses is a permitted obstruction within the required rear yard, provided such building portion does not exceed one story and a maximum height of 23 feet above curb level; and

WHEREAS, the applicant states that the enlargement it seeks to legalize is a double-height space spanning the second and third stories and located 39'-9" above curb level; and

WHEREAS, the applicant notes that the building complies in all other respects with the governing bulk regulations; and

WHEREAS, the applicant states that the programmatic needs of the School, a charter elementary, necessitate the provision of adequate facilities for physical activity and education, and that the enlargement, which is gymnasium with approximately 1,500 sq. ft. of floor area, satisfies those needs; and

WHEREAS, the applicant further states that the enlargement is essential to the School's ability to comply with New York State physical education requirements, and that the space will be used as a multipurpose room to conduct assemblies and graduations; and

WHEREAS, as to the New York State physical education requirements, the applicant states that Education Law § 803 requires elementary-aged students to be provided with instruction in fitness, personal health, hygiene, and safety education, and they must participate in some form of physical education for a minimum of 120 minutes per week; and

WHEREAS, the applicant states that prior to the enlargement, the School lacked sufficient space for physical activities and education; when weather permitted, the students used a portion of the parking lot for recess and physical activity; during times of inclement weather, students were forced to have recess and physical education in the cafeteria, or, when that room was occupied, forego activity altogether; and

WHEREAS, in addition, before the gymnasium was constructed, assemblies and graduations were conducted in borrowed space outside the school; and

WHEREAS, the applicant represents that without such enlargement, the School would lack sufficient space to meets its program needs; and

WHEREAS, further, the applicant represents that an enlargement that is constructed in strict compliance with the applicable zoning provisions is infeasible; and

WHEREAS, in support of its assertions, the applicant analyzed the feasibility of three conforming enlargements: (1) the construction of a double-height gymnasium at the front of the existing building above the third story ("Scenario A"); (2) the construction of a free-standing gymnasium building within the existing parking lot ("Scenario B"); and (3) the construction of a connected gymnasium on the west side of the building within the existing parking lot ("Scenario C"); and

WHEREAS, as to Scenario A, the applicant states that a vertical enlargement would require reinforcement of the existing structural systems, the extension of stairs and elevators, significant interior renovations, and disturbance of classroom activity at the third story, at significant cost; the applicant also notes that the increased height of the building under Scenario A (63'-3" above curb level), is incompatible with the streetscape of East 169th Street; and

WHEREAS, the applicant submitted a letter from a consulting engineer who examined Scenario A and concluded that it would not be possible without significant underpinning and reinforcing and retrofitting of the existing structure, which the engineer considered prohibitively expensive and difficult to accomplish; and

WHEREAS, as to Scenario B, the applicant states that the physical separateness of the new building would result in students having to traverse an active parking lot in order to access the gymnasium, which the applicant asserts is unsafe for students and impractical for teachers; and

WHEREAS, as to Scenario C, the applicant states that a horizontal enlargement along the west side of the building would require the elimination of classroom windows and the reconfiguration of existing program space at the ground floor level; and

WHEREAS, further, under both Scenario A and B, the enlargement would eliminate as many as half of the parking spaces, which is undesirable; and

WHEREAS, the applicant asserts that the alternative scenarios are infeasible and do not satisfy the School's programmatic needs to the same extent as the subject enlargement requiring the waivers; 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 building 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 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 Use Group 3 school and church uses are as-of-right in the subject R8 district, and that the building, including the enlarged portion, is well within the height and floor area requirements; and

WHEREAS, the applicant states that the enlargement is consistent with the character of the surrounding area, which is primarily developed with high-density residential and community facility uses; specifically, the applicant states that the subject block contains several five-story multiple dwellings, a few two-story single-family homes and several religious institutions, including: Walker Memorial Baptist Church, Grand Concourse Seventh-Day Adventist Temple, and Iglesia de Dios Pentecostal; and

WHEREAS, the applicant represents that the placement of the enlargement within the rear yard limits its visibility from East 168th and East 169th streets; and

WHEREAS, the applicant states that the enlarged portion of the building maintains a distance of at least 20 feet (and in some cases up to 35 feet) from the three buildings abutting the rear lot line of the site; moreover, residents of two of those buildings have signed memoranda in support of this application; 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 that the hardship was not self-created and inherent in the unique programmatic needs of the School; and

WHEREAS, the Board agrees that the hardship herein was not created by the owner or a predecessor in title, but is owing to the School's programmatic need to provide space for physical education and activity; and

WHEREAS, the applicant represents that the requested waivers are 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 a Type II action pursuant to 6 NYCRR §§ 617.5; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination, 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 R8 zoning district, the legalization of an enlargement to an existing three-story school building that does not comply with regulations regarding minimum required rear yard and permitted obstructions in a required rear yard, contrary to ZR §§ 24-36 and 24-33(b), *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 10, 2013"- Eight (8) sheets; ", *on further condition*:

THAT the portion of the building within the required rear yard shall not exceed a height of 39'-9" above curb level, as shown on the BSA-approved plans;

THAT the premises shall comply with all applicable fire safety measures, as required;

THAT the approved plans shall 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; and

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.

Adopted by the Board of Standards and Appeals, May 21, 2013.

59-12-BZ/60-12-A

APPLICANT – Mitchell S. Ross, Esq., for Ian Schindler, owner.

SUBJECT – Application March 15, 2012 – Variance (§72-21) to allow the enlargement of an existing home, contrary to front yard (§23-45) regulations.

Proposed construction is also located within a mapped but unbuilt portion of a street, contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue, Block 8103, Lot 25, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for deferred decision.

321-12-BZ

APPLICANT – Dennis D. Dell'Angelo, for Jay Lessler, owner.

SUBJECT – Application December 6, 2012 – 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 (§23-141); perimeter wall height (§23-631) and rear yard (§23-47) regulations R3-1 zoning district.

PREMISES AFFECTED – 22 Girard Street, west side of Girard Street, 149.63' south of Shore Boulevard, Block

8745, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

73-13-BZ
APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub LLC, owner.
SUBJECT – Application February 19, 2013 – Special Permit (§73-49) to allow rooftop parking in a proposed commercial development. M1-1 and C4-4 zoning districts.
PREMISES AFFECTED – 459 E. 149th Street, northwest corner of Brook Avenue and 149th Street, Block 2294, Lot 60, 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 June 18, 2013, at 10 A.M., for decision, hearing closed.

74-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Chelsea W26 LLC, owner; Blink Eighth Avenue, Inc., lessee.
SUBJECT – Application February 20, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Fitness*). C6-2A zoning district.
PREMISES AFFECTED – 308/12 8th Avenue, 252/66 West 26th Street, southeast corner of the intersection of 8th Avenue and West 26th Street, Block 775, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

80-13-BZ
APPLICANT – Goldman Harris LLC., for Everett Realty LLC c/o Mildred Kayden, owner; Elizabeth Arden New York, lessee.
SUBJECT – Application February 27, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Red Door Spa*). C6-4A zoning district.
PREMISES AFFECTED – 200 Park Avenue South, northwest corner of Park Avenue South and East 17th Street, Block 846, Lot 33, 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 June 18, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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102-95-BZVII
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159-13-BZ
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160-13-BZ
1171-1175 East 28th Street, East side of East 28th Street between Avenue K and Avenue L, Block 7628, Lot(s) 16, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to the enlargement of an single home contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47). R2 zoning district. R2 district.

161-13-BZ
8 West 19th Street, South side of W. 19th Street,160 ft.West of intersection of W. 19th st. and 5th avenue., Block 820, Lot(s) 7503, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment within a portion of an existing building. C6-4A zoning district. C6-4A district.

162-13-BZ
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163-13-BZ
133-10 39th Avenue, 39th Avenue, east ot College Pt. Boulevard, Block 4973, Lot(s) 12, Borough of **Queens, Community Board: 7**. SPECIAL PERMIT-73-44: to permit the reduction of the allowed parking spaces contrary to Section36-31 in a C4-2 district the alteration of the 2story 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 district.

164-13-A
307 West 79th Street, Northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot(s) 8, Borough of **Manhattan, Community Board: 7**. DETERMINATION: seeks reversal of NYC decision not to issue a Letter Of No Objection that would have stated that the use of New Class Law of MDL and Single Room Occupancy with permitted occupancy limited to a period of one week or more pursuant C/O No. 5310. district.

165-13-A
2437 Grand Course, East Fordham Road and East 184th Street., Block 3165, Lot(s) 34, Borough of **Bronx, Community Board: 2**. Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status. C4-4 district.

166-13-A
945 Madison Avenue, Southeast intersection of Madison Avenue and East 75th Street., Block 1389, Lot(s) 50, Borough of **Manhattan, Community Board: 8**. DETERMINATION: Construction Code Determination by the Building Dept. regarding the interpretation of Building Code Sections 28-117, 28-102,4,3 and C2-116.0 in order to determine whether a public assembly permit is required for those portions of the art museum at the premises which were build pursuant to the 1938 Building Cede and which have not been altered since being built in 1966. C5-1/R8B district.

167-13-BZ
1614/26 86th Street and Bay 13 Street, Southwest corner of 86th Street and Bay 13 Street, Block 6363, Lot(s) 42, Borough of **Brooklyn, Community Board: 11**. Variance (§72-21) :to permit the enlargement of an existing one-story automobile sales establishment in a use group R5 district contrary to §22-10. R5 zoning district. R5 district.

168-13-BZ
1323 East 26th Street, Block 7662, Lot(s) 39, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(a); side yard (§23-461(a); less than the required rear yard; (§23-47) and perimeter wall height (§23-631. R3-2 zoning district. R-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

JUNE 18, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 18, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

363-04-BZ
APPLICANT – Herrick Feinstein, LLP; by Arthur Huh, for 6002 Fort Hamilton Parkway Partnership, owner; Michael Mendiovic, lessee.
SUBJECT – Application June 5, 2013 –Extension of Time to Complete Construction for a previously granted Variance (72-21) to convert an industrial building to commercial/residential use which expires on July 19, 2013. M1-1 zoning district.
PREMISES AFFECTED – 6002 Fort Hamilton Parkway, West side of Fort Hamilton Parkway, between 60th Street and 61st Street, Block 5715, Lot 27, Borough of Brooklyn.
COMMUNITY BOARD #12BK

APPEALS CALENDAR

135-13-A thru 152-13-A
APPLICANT – Eric Palatnik, PC, for Ovas Building Corp, owner.
SUBJECT – Applications May 10, 2013 – Proposed constructions of 18- two family dwellings not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) zoning district.
PREMISES AFFECTED – 18, 22, 26, 30, 34, 38,42, 46, 50, 54, 58, 45, 39, 35, 31, 27, 23, 19, Serena Court, on Amboy Road, Block 6523, Lot 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 113, 102, 103, 105, 106, 107, 108, Borough of Staten Island.
COMMUNITY BOARD #3SI

ZONING CALENDAR

259-12-BZ
APPLICANT – Davidoff Hutcher & Citron LLP, for 5239 LLC, owner.
SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the development of a single-family house contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district.
PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, Borough of Bronx.
COMMUNITY BOARD #8BX

5-13-BZ
APPLICANT – Goldman Harris LLC, for Queens College Special Projects Fund, Inc., owners.
SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of an education center (Use Group 3A) in connection with an existing community facility contrary to lot coverage, front yard, side yard, side yard setback, and planting strips. R5 zoning district.
PREMISES AFFECTED – 34-47 107th Street, eastern side of 107th Street, midblock between 34th and 37th Avenues, Block 1749, Lot 66, 67, Borough of Queens.
COMMUNITY BOARD #3Q

99-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mehran Equities Ltd., owner; Blink Steinway Street, Inc., lessee.
SUBJECT – Application April 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink*) within an existing cellar and two-story commercial building contrary to Section 32-10. C4-2A zoning district.
PREMISES AFFECTED – 32-27 Steinway Street, 200' south of intersection of Steinway and Broadway, Block 676, Lot 35, Borough of Queens.
COMMUNITY BOARD #1Q

102-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for 28-30 Avenue A LLC, owner; TSI Avenue A LLC dba New York Sports Club, lessee.
SUBJECT – Application April 11, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment/health club (*New York Sports Club*) on the second through fifth floors of a five-story and basement commercial building, contrary to Section §32-31. C2-5 (R7A/R8B) zoning district.
PREMISES AFFECTED – 28-30 Avenue A, East side of Avenue A, 79.5" north of East 2nd Street, Block 398, Lot 2, Borough of Manhattan.
COMMUNITY BOARD #3M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JUNE 4, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

551-37-BZ
APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.
SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of approved variance for the continued operation of an automobile repair shop (*Red's Auto Repair*) which expired on July 15, 2012; Waiver of the Rules. R1-2 zoning district.
PREMISES AFFECTED – 233-02 Northern Boulevard, between 234th and 233rd Street, Block 8166, Lot 20, 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 Montanez 5
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 use of an automobile service station, which expired on July 15, 2012; and

WHEREAS, a public hearing was held on this application on January 15, 2013, after due notice by publication in *The City Record*, with continued hearings on February 12, 2013, March 19, 2013, and April 16, 2013, and then to decision on June 4, 2013; 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 11, Queens, recommends a conditional approval of this application; the conditions are (1) that the term be limited to five years; (2) the plans reflect the shed and gate conditions; (3) the site be better maintained; and (4) the fence be repaired; and

WHEREAS, the site is located on the south side of Northern Boulevard between 234th Street and 233rd Street, within an R1-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 12, 1938 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on May 6, 2003, the Board granted an approval to extend the term for ten years from July 14, 2002 to expire on July 15, 2012; and

WHEREAS, the applicant now requests an additional extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the poor site maintenance, (2) the damaged fence, and (3) excessive signage; and

WHEREAS, in response, the applicant provided photographs reflecting that (1) the site has been cleaned up, (2) the damaged fence at the rear has been repaired, and (3) the excess signage removed; and

WHEREAS, the applicant also revised its plans to reflect the metal shed onsite and the gate condition; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated April 12, 1938, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the prior expiration, to expire on July 15, 2022; *on condition* that all use and operations shall substantially conform drawings filed with this application marked 'Received March 5, 2013'-(3) sheets; and *on further condition*:

THAT the term of the grant will expire on July 15, 2022;

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

THAT signage will comply with C1 district regulations;

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

THAT a new certificate of occupancy will be obtained by November 21, 2013;

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."
(DOB Application No. 530/61)

Adopted by the Board of Standards and Appeals, June 4, 2013.

135-46-BZ
APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.
SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment (§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.
PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8555, Lot 37, 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 Montanez 5
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 use of an automobile repair shop, which expired on July 29, 2012, and an amendment to permit hand-washing of automobiles; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, with continued hearings on January 29, 2013 and May 7, 2013, and then to decision on June 4, 2013; 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 a conditional approval of this application; the conditions are (1) the property be maintained with screened fencing and landscaping on both sides of the residential streets with no curb cuts on East 38th Street and Ryder Street; (2) lighting and signage only face Avenue U and be shielded so as not to interfere with the residential side streets; (3) no parking or storage of trucks and/or vehicles on the property; (4) hours of operation be limited to 9:00 a.m. to 6:00 p.m. for washing and auto repair work; (5) no mechanical equipment or venting for the operation of the hand car wash; and (6) all sewers and chemicals meet State DEC and NYC DEP requirements; and

WHEREAS, the subject site spans the full length of the south side of Avenue U between East 38th Street and Ryder Street, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since July 16, 1946, when under the subject calendar number, it granted a variance for a change of use, to allow the erection of a new building on an existing gasoline service station and parking for more than five (5) motor vehicles, minor repairs, brake testing and wheel alignment; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on February 15, 2005, the Board granted an approval to extend the term for ten years from January 29, 2002 to expire on January 29, 2012; and

WHEREAS, the applicant now requests an additional extension of the term and seeks to modify the grant to allow hand-washing of automobiles on a portion of the site; and

WHEREAS, the applicant notes that a portion of a service bay will be eliminated to accommodate the hand-washing operation and that curb cuts on Ryder Street and 38th Street will be eliminated in connection with the renovation; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the apparent inactivity of the gasoline sales; (2) the presence of storage containers; and (3) the operational details of the hand-washing operation; and

WHEREAS, in response, the applicant explained that gasoline sales would resume once a supplier is found and pumps are reinstalled and that the storage containers were necessary for the cleanup and renovation of the site; and

WHEREAS, as to the operational details of the proposed hand-washing use, the applicant explained that it would be non-automated and would include hand-washing of automobiles with a hose, and hand-detailing and waxing; the applicant also represented that although the wash would be available to patrons Monday through Saturday from 7:00 a.m. to 7:00 p.m., the washing would be clearly incidental the principal use, in that only five to six cars per day are anticipated; and

WHEREAS, based upon the above, 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 July 16, 1946, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the prior expiration, to expire on January 29, 2022, and to allow for the addition of hand-washing of automobiles; *on condition* that all use and operations shall substantially conform drawings filed with this application marked 'Received January 17, 2013'-(3) sheets; and *on further condition*:

THAT the term of the grant will expire on January 29, 2022;

THAT all lighting be directed away from adjacent residential uses;

THAT there will be no parking or storage of vehicles other than those awaiting service;

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

THAT signage will comply with C2-2 district regulations;

THAT the above conditions will be listed on the

certificate of occupancy;

THAT a new certificate of occupancy will be obtained by December 4, 2013;

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."
(DOB Application No. 320429764)

Adopted by the Board of Standards and Appeals, June 4, 2013.

130-88-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application August 13, 2012 – Extension of Term of approved Special Permit (§73-211) for the continued operation of UG 16B gasoline service station (*Gulf*) which expired on January 24, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on October 12, 2003; Waiver of the Rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 1007 Brooklyn Avenue, aka 3602 Snyder Avenue, southeast corner of the intersection formed by Snyder and Brooklyn Avenues, Block 4907, 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 Montanez 5

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 term of a special permit for an automotive repair and accessory convenience store, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, with continued hearings on March 5, 2013, April 16, 2013 and May 7, 2013, and then to decision on June 4, 2013; 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 17, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Brooklyn Avenue and Snyder Avenue, within an R4 (C2-2) zoning district; and

WHEREAS, the site is occupied by a one-story building that includes an automotive repair facility and an accessory convenience store; the site also contains five self-service gasoline dispensers beneath a steel canopy, an attendant's kiosk, two curb cuts along Brooklyn Avenue and two curb cuts along Snyder Avenue; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 24, 1989, when, under the subject calendar number, the Board granted a special permit under ZR § 73-211 to permit the redevelopment of the existing automotive service station; the applicant represents that the development included replacement of fuel tanks and gasoline dispensers and the construction of a new service building; and

WHEREAS, on January 24, 1989, under BSA Cal. No. 131-88-A, the Board granted an appeal that permitted the use of self-service gasoline pumps; and

WHEREAS, on October 12, 1999, under the subject calendar, the Board extended the term of the special permit for ten years, expiring on January 24, 2009; and

WHEREAS, on May 14, 2002, under the subject calendar, the Board granted an extension of time to obtain a certificate of occupancy; pursuant to the grant, the certificate of occupancy was required to be obtained by October 12, 2003; however, a final certificate of occupancy was never obtained; and

WHEREAS, accordingly, the applicant seeks an extension of the term and an extension of time to obtain the certificate of occupancy; and

WHEREAS, as to the time period to obtain the certificate of occupancy, the applicant states that there are open Department of Buildings ("DOB") violations that have delayed the issuance of the certificate of occupancy and that it will take approximately one year to remove the conditions that gave rise to the violations; and

WHEREAS, at hearing, the Board raised concerns regarding: (1) the site's compliance with the applicable sign regulations; (2) the inadequate landscaping; (3) the presence of multiple vacuum stations on the site; and (4) whether street trees were provided; and

WHEREAS, in response, the applicant submitted: (1) a revised sign analysis and photographs demonstrating compliance with the sign regulations; (2) photographs depicting the installation of the planters and the presence of street trees; and (3) a revised statement indicating that three vacuums would be removed and the other one would be relocated and only used by patrons; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolutions, dated January 24, 1989, so that as amended this portion of the resolutions shall read: "to extend the term for ten years to expire January 24, 2019 and to grant an extension of time to obtain a certificate of occupancy to

June 4, 2014, *on condition* that all use and operations shall substantially conform to drawings filed with this application marked "Received February 20, 2013"-(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on January 29, 2019;

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

THAT a certificate of occupancy shall be obtained by June 4, 2014;

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."
(DOB Application No. 579/87)

Adopted by the Board of Standards and Appeals, June 4, 2013.

328-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Park Avenue Building Co., LLP, owner; Town Sports International dba New York Sports Club, lessee.

SUBJECT – Application January 30, 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 January 1, 2013. C5-3/C1-9 zoning district.

PREMISES AFFECTED – 3 Park Avenue, southeast corner of Park Avenue and East 34th Street, Block 889, Lot 9001, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a Physical Culture Establishment ("PCE"), which expired on January 1, 2013; and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, and then to decision on June 4, 2013; 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 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site spans the full length of the east side of Park Avenue between East 33rd Street and East 34th Street, partially within a C5-3 zoning district, partially within a C1-9 zoning district and partially within a C6-1 zoning district; and

WHEREAS, the site is occupied by a 42-story mixed use community facility and commercial building; and

WHEREAS, the PCE is located on the first floor and first floor mezzanine of the building; and

WHEREAS, on March 25, 2003, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 to permit the legalization of the enlargement of an existing physical culture establishment, located on portions of the first floor and mezzanine level of a forty-two story school and commercial building; and

WHEREAS, the term of the original grant expired on January 1, 2013; and

WHEREAS, the applicant now seeks an extension of the term; and

WHEREAS, the operator will continue to be operated as the New York Sports Club; and

WHEREAS, the applicant notes that the hours of operation of the PCE were not established in the original grant; and

WHEREAS, at hearing, the Board directed the applicant to: (1) revise its sign analysis to reflect the correct amount of signage permitted at the site; and (2) add a note to the plans indicating that an egress path with a 4'-0" width would be provided on all floors of the PCE: and

WHEREAS, in response, the applicant submitted a revised sign analysis and an amended plan including the egress path note; and

WHEREAS, based on its review of the record, the Board finds that the proposed ten-year extension of term 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 March 25, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years until January 1, 2023; *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 January 30, 2013"- (2) sheets and "May 20, 2013"—(2) sheets; 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 this grant will be limited to a term of ten years, to expire on January 1, 2023;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

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. 103271950)

Adopted by the Board of Standards and Appeals, June 4, 2013.

93-08-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Worlds fair Development LLC, owner.
SUBJECT – Application February 5, 2013 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of a six-story transient hotel (UG 5) which expired on January 13, 2013; Amendment to construct a sub-cellar. R6A zoning district.
PREMISES AFFECTED – 112-12/24 Astoria Boulevard, southwest corner of intersection of Astoria Boulevard and 112th Place, Block 1706, Lot 5, 9, 11, Borough of Queens.
COMMUNITY BOARD #3Q
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy in accordance with a variance, which expired on January 13, 2013, and an amendment to allow the construction of a sub-cellar level; and

WHEREAS, a public hearing was held on this application on May 21, 2013, after due notice by publication in *The City Record*, and then to decision on June 4, 2013; and

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

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Astoria Boulevard and 112th Place, within an R6A zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 2009 when, under the subject calendar number, the Board granted a variance to permit the construction of a six-story and cellar hotel building, contrary to ZR § 22-00; and

WHEREAS, as of January 13, 2013, substantial construction had not been completed; accordingly, on that date, per ZR § 72-23, the variance lapsed; and

WHEREAS, the applicant represents that additional time is necessary to complete its environmental review and remediation at the site; such measures are required because of a 2008 oil spill; and

WHEREAS, as to the proposed modification to the variance, the applicant seeks to create a sub-cellar below the cellar to accommodate accessory off-street parking for 28 automobiles, as well as an accessory gym and accessory laundry; and

WHEREAS, the applicant states that under the original grant, 14 parking spaces were provided at grade and 17 parking spaces were provided at the cellar level, for a total of 31 parking spaces; in order to provide 31 parking spaces under the proposed amendment, the applicant seeks to locate 3 parking spaces at grade to supplement the 28 parking spaces provided in the sub-cellar; and

WHEREAS, the applicant states that, according to the plans approved in connection with the original grant, it must excavate to the level of the sub-cellar in order to remove underground storage tanks; whereas, the plans for the original grant provided that the soil would be refilled, under the proposed amended plans a sub-cellar would be constructed; and

WHEREAS, the applicant represents that the inclusion of a sub-cellar will remove parking spaces from the street level, thereby reducing traffic and noise and increasing the floor area available for conference rooms and other amenities; and

WHEREAS, the applicant states that the proposed amendment allows it to defray the costs of the environmental remediation, which are significantly higher than was anticipated at the time of the original grant; and

WHEREAS, the applicant notes that neither the total floor area of the building nor the number of guest rooms is being altered by the proposed amendment; and

WHEREAS, based upon 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 January 13, 2009, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for a period of four years from June 4, 2013, to expire on June 4, 2017, and to permit the construction of a sub-cellar; on condition that all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received June 4, 2013- fourteen (14) sheets; and on further condition:

THAT construction will be completed and a certificate of occupancy obtained by June 4, 2017;

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

THAT the number of guest rooms, floor area, FAR, and accessory off-street parking spaces for the proposed building will be in accordance with the terms of the grant;

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."

Adopted by the Board of Standards and Appeals, June 4, 2013.

608-70-BZII

APPLICANT – Walter T. Gorman, P.E., P.C., for Neptune Avenue Property LLC, owner. Dunkin Donuts Corporate Office, lessee.

SUBJECT – Application January 22, 2013 – Amendment (§11-412) to convert the previously granted UG16B automotive service station to a UG6 eating and drinking establishment (*Dunkin' Donuts*). R6 zoning district.

PREMISES AFFECTED – 351-361 Neptune Avenue, north west corner Brighton 3rd Street, Block 7260, Lot 101, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to July 16, 2013, at 10 A.M., for continued hearing.

240-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Lionshead 110 Development LLC, owner; Lionshead 110 Development LLC, lessee.

SUBJECT – Application December 11, 2012 – Extension of term of a Special Permit (§73-36) for a physical culture establishment, which expired on December 17, 2012. C6-4(LM) zoning district**.**

PREMISES AFFECTED – 110/23 Church Street, southeast corner of intersection of Church Street and Murray Street, Block 126, Lot 27, 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 9, 2013, at 10 A.M., for decision, hearing closed.

30-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Trump Park Avenue, LLC, owner; Town Sports International dba New York Sports Club, lessee.

SUBJECT – Application January 28, 2013 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*New York City Sports Club*) which expired on July 23, 2012; Amendment to permit the modification of approved hours and signage; Waiver of the Rules. C5-3, C5-2.5(Mid) zoning district.

PREMISES AFFECTED – 502 Park Avenue, northwest corner of Park Avenue and East 59th Street, Block 1374, Lot 7502(36), 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 18, 2013, at 10 A.M., for decision, hearing closed.

27-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owners.

SUBJECT – Application February 4, 2013 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on April 18, 2011; Amendment to permit the legalization of site layout and operational changes; Waiver of the Rules. C2-4/R6 zoning district.

PREMISES AFFECTED – 91-11 Roosevelt Avenue, north side of Roosevelt Avenue between 91st and 92nd Street, Block 1479, Lot 38, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

197-08-BZ

APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.

PREMISES AFFECTED – 341-349 Troy Avenue, aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, 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 June 18, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

251-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, for 330 Associates LLC c/o George A. Beck, owner; Radiant Outdoor, LLC, lessee.
SUBJECT – Application August 14, 2012 – Appeal from Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. C2-5 Zoning District.
PREMISES AFFECTED – 330 East 59th Street, west of southwest corner of 1st Avenue and East 59th Street, Block 1351, Lot 36, Borough of Manhattan.
COMMUNITY BOARD # 6M
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 Montanez 5
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 July 17, 2012, 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. Unfortunately, we find this documentation inadequate as there was no indication that a permit was issued in connection with [the] permit receipt submitted. 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 March 19, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 7, 2013 and then to decision on June 4, 2013; 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 subject premises ("the Premises") is located on the south side of East 59th Street between First Avenue and Second Avenue, in an R8 (C2-5) zoning district; and

WHEREAS, the Premises is occupied by an eight-story commercial building; on the west wall of the building is an advertising sign ("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 a rectangular advertising with a surface area of 600 sq. ft. and located within 200 feet and within view of an approach to the Ed Koch-Queensborough Bridge, which is an arterial highway pursuant to Appendix H of the Zoning Resolution; and

WHEREAS, DOB states that the Premises has been located within an R8 (C2-5) zoning district since the adoption of the Zoning Resolution on December 15, 1961; and

WHEREAS, on March 6, 1981, DOB issued a permit in connection with application BN 4960/81 "to legalize non-illuminated sign painted on wall as advertising sign, 30' x 20' = 600 sq. ft." (the "1981 Permit"); and

WHEREAS, on June 5, 2000, DOB issued a permit in connection with Application No. 102658713 to "install existing non-conforming non-illuminated advertising wall sign, changeable copy permitted, within 200'-0" and the view of the approach to the 59th Street Bridge" (the "2000 Permit"); included with the permit application is a January 10, 2000 Reconsideration approving the sign as non-conforming ("the Reconsideration"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration 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

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 a date uncertain, 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 a copy of the 1981 Permit as evidence of establishment of the Sign; and

WHEREAS, on March 8, 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, by emails dated March 22, 2012 and March 28, 2012, the Appellant submitted a response to DOB, asserting that the Sign was legally established by the 1981 Permit; and

WHEREAS, DOB determined that March 22, 2012 and March 28, 2012 emails lacked sufficient evidence of the Sign's establishment, and on July 17, 2012, issued the Final Determination denying registration; and

RELEVANT STATUTORY PROVISIONS

1916 Zoning Resolution § 1(q)

A "business sign" is a sign which directs attention to a business or profession conducted upon the premises. An "advertising sign" is a sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises.

1916 Zoning Resolution § 21-B

Additional Advertising Sign Restrictions. No advertising sign shall hereafter be erected, placed or painted, nor shall any existing advertising sign be structurally altered, in any use district within 200 feet of an arterial highway shown as a "principal route", "parkway" or "toll crossing" on the "Master Plan of Arterial Highways and Major Streets," provided such arterial highway has been designated by the City planning Commission as an arterial highway to which the provisions of this section shall apply, or within 200 feet of a public park of one-half acre or more in area, if such advertising sign is within view of such arterial highway or park; and

1916 Zoning Resolution Designation of Arterial Highways to
Which Section 21-B Shall Apply
Principal Routes—
Queensboro Bridge and Approaches

* * *

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

* * *

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 because: (1) the Sign was established as an advertising sign prior to June 28, 1940 and may therefore be maintained as a legal non-conforming advertising sign; and (2) equitable estoppel prevents DOB from taking enforcement action against the Sign; and

WHEREAS, the Appellant contends that that the Sign was established prior to June 28, 1940; in support of this contention, the Appellant has submitted two historical photographs from 1912 and 1942 of the Sign with the message "Wallach's Superior Laundry"; and

WHEREAS, in addition, the Appellant asserts that the 1981 Permit, the 2000 Permit, a 1970 lease, and an affidavit from the managing agent of the net lessee of the building at the Premises indicating that the Sign has been in existence since 1959, confirm the Sign's establishment and status as a non-conforming use; and

WHEREAS, the Appellant states that the 2000 Permit encompasses the "explicit approval" of the legal status of the Sign by the borough commissioner; and

WHEREAS, the Appellant asserts that the Board previously found a reconsideration to be sufficient evidence of establishment in BSA Cal. No. 95-12-A; and

WHEREAS, accordingly, the Appellant states that there is sufficient evidence to support the lawful establishment of the Sign; and

WHEREAS, the Appellant asserts that it has relied on the 2000 Permit and the Reconsideration for several years and made substantial investments relative to the continued operation of the Sign; and

WHEREAS, the Appellant asserts that under established principles of equity, DOB should be estopped from ordering the removal of the Sign; and

WHEREAS, the Appellant asserts that although as a general rule estoppel or laches cannot be used against a municipality enforcing its zoning law, New York courts have ruled that these doctrines are not foreclosed entirely and may be invoked as a rare exception; and

WHEREAS, the Appellant states that two New York State court decisions – Town of Hempstead v. DeMasco, 2007 WL 4471362 (Sup. Ct. 2007), aff'd, 62 A.D.3d 692 (2d Dept. 2009) and Inner Force Econ. Dev. Corp. v. Dep't of Educ. Of the City of New York, 36 Misc.3d 758, 559 (Sup. Ct. 2012) – to support its conclusion that the City should be estopped; and

WHEREAS, the Appellant notes that in DeMasco, the Town sought to enforce its zoning ordinance against a metal salvage business which had existed for many years prior to a zoning change, and the Appellate Division affirmed that the Town was equitably estopped in part because it continued business with the junkyard and "gave an imprimatur to the businesses' continued operation"; and

WHEREAS, the Appellant argues that this appeal is similar to DeMasco, in that DOB "did not prohibit the [Appellant] from continuing to maintain its advertising signage during the period following the issuance of the Permit[s]" and that "by not enforcing against the signage [DOB] implicitly permitted its continued use"; and

WHEREAS, the Appellant notes that Inner Force involved an action against the New York City Department of Education in which a plaintiff filed its Notice of Claim with the Comptroller's Office instead of the Office of the Corporation Counsel, which should have received the claim instead, and the Comptroller's Office acknowledged the receipt of the Notice, informed the plaintiff that it was conducting an investigation and ultimately denied the claim based in part on the improper notice; and

WHEREAS, the Appellant notes that the Inner Force court found estoppel applicable to the conduct of the Comptroller's Office because the Comptroller's response to the plaintiff's erroneous notice wrongfully or negligently induced reliance by the plaintiff to its detriment to believe that its notice of claim was proper and that the proper party had been served; and

WHEREAS, the Appellant contends that this appeal is similar because "DOB clearly understood or should have understood that by not pursuing enforcement action against the maintenance of valuable advertising signage there was every reason for the [Appellant] to continue its operation"; and

WHEREAS, accordingly, the Appellant argues that DOB should be estopped from taking any enforcement action against the Sign and DOB's Final Determination with respect to the Sign should be reversed; and

DOB'S POSITION

WHEREAS, DOB asserts that the Appellant has not submitted sufficient evidence to demonstrate that an advertising sign was established at the Premises in that: (1) the photographic evidence submitted by the Appellant demonstrates establishment of a business (accessory) sign rather than an advertising sign; and (2) the Reconsideration issued in connection with the 2000 Permit cannot be relied upon as evidence of the establishment of a non-conforming advertising sign before June 28, 1940; and

WHEREAS, DOB states that in order to demonstrate the lawful establishment of an advertising sign at the Premises, the Appellant must provide proof of the existence of an advertising sign prior to June 28, 1940, the date that the 1916 Zoning Resolution was amended to prohibit advertising signs within 200 feet of arterial highways; and

WHEREAS, DOB contends that the Appellant's photographs from 1912 and 1940 depict a "business sign" pursuant to 1916 ZR § 1(q); to support this contention, DOB has submitted excerpts from advertisements from 1907, 1909, 1912, 1913-1914 and 1918-1919 showing that the message on the sign, "Wallach's Superior Laundry," was a service offered at 330 East 59th Street, which is the Premises; DOB notes that a "business sign" under the 1916 Zoning Resolution is equivalent to an "accessory" sign under the 1961 Zoning Resolution; and

WHEREAS, consequently, DOB asserts that there is insufficient evidence of the establishment of an advertising sign at the Premises prior to June 28, 1940; and

WHEREAS, DOB also contends that to the extent that DOB issued the 1981 Permit and 2000 Permit, it did so contrary to the Zoning Resolution; and

WHEREAS, as to the Reconsideration, DOB asserts that it was issued in error; specifically, DOB asserts that the evidence reviewed by the borough commissioner and mentioned in the Reconsideration—a 1969 Lease, the 1981 Permit and a photo—demonstrates that he was unaware that the relevant date for the establishment of a non-conforming advertising sign at the Premises is June 28, 1940; and

WHEREAS, DOB notes that the Reconsideration in the instant matter is distinguishable from the reconsideration at issue in BSA Cal. No. 95-12-A; and

WHEREAS, DOB states that in BSA Cal. No. 95-12-A, the appellant argued, and the Board accepted, that a 1999 Reconsideration issued by the Manhattan Borough Commissioner reflected the DOB's acknowledgement that the use of advertising signs at the subject premises had been established prior to November 1, 1979; however, in that case, the Appellant only needed to provide evidence that an advertising sign was erected prior to November 1, 1979 in order to gain non-conforming status under ZR § 42-55, and the 1999 Reconsideration specifically cited to an alleged advertising sign lease dated May 24, 1978 (a year and a half prior to the relevant date the sign needed to be established in order for the sign to obtain non-conforming use status); and

WHEREAS, DOB states that, in contrast, the 2000 Reconsideration does not cite to nor indicate in any way that the borough commissioner reviewed *any* evidence prior to or even within two and a half decades of June 28, 1940, the relevant date that the Sign must have been erected in order for the Sign to have lawful non-conforming status; accordingly, DOB contends that the Reconsideration was erroneous and cannot be the basis for determining lawful establishment of the Sign as non-conforming; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determination denying the registration of the Sign; and

CONCLUSION

WHEREAS, the Board finds that: (1) DOB properly denied the Sign registration because the Appellant has not met its burden of demonstrating that the Sign was established prior to June 28, 1940 as an advertising sign; and (2) DOB is not equitably estopped from correcting its erroneous issuance of the 1981 Permit, the Reconsideration, and the 2000 Permit; and

WHEREAS, the Board finds that there is no basis to conclude that an advertising sign was ever lawfully established at the Premises; and

WHEREAS, the Board agrees with DOB that the 1912 photograph submitted by the Appellant depicts a business (accessory) sign rather than an advertising sign; the Board notes that the Appellant's 1942 photograph is indecipherable; and

WHEREAS, the Board also agrees with DOB that the Reconsideration in this case is distinguishable from the reconsideration at issue in BSA Cal. No. 95-12-A, in that it is clear from the Reconsideration that it did not take into account evidence of establishment from the relevant date; as such, the Board finds that the Reconsideration was erroneous and unreliable and that the 2000 Permit should not have been issued; and

WHEREAS, thus, the Board finds that the Appellant's reliance on the 2000 Permit as evidence of the establishment of an advertising sign is misplaced; and

WHEREAS, as to the balance of the Appellant's evidence, which comprises the affidavit, 1981 Permit and the 1970 Lease, neither individually, nor in the aggregate, do they provide a sufficient basis for the Board to conclude that an advertising sign was established at the Premises prior to June 28, 1940; and

WHEREAS, the Board notes that even if it were to conclude that the Sign was established as a non-conforming advertising sign prior to June 28, 1940, there is insufficient evidence in the record to demonstrate the requisite continuous use set forth in ZR § 52-61; and

WHEREAS, finally, the Board does not find the Appellant's arguments regarding equitable estoppel persuasive; and

WHEREAS, the Board distinguishes the Appellant's case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision that deprived the claimant of a right he might otherwise have had, if the City had not accepted his claim without notifying him of its defective notice; and

WHEREAS, the Board notes that the Appellant, by its own admission, has enjoyed approximately 50 years' worth of revenue from an advertising sign that has never been permitted by the Zoning Resolution at the Premises; 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.

Therefore it is Resolved that this appeal, challenging a Final Determination issued on July 17, 2012, is denied.

Adopted by the Board of Standards and Appeals, June 4, 2013.

256-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, City Outdoor.

OWNER OF PREMISES: 195 Havemeyer Corporation.

SUBJECT – Application August 28, 2012 – Appeal challenging Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. C4-3 zoning district.

PREMISES AFFECTED – 195 Havemeyer Street, southeast corner of Havemeyer and South 4th Street, Block 2447, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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 Montanez 5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Brooklyn Borough Commissioner of the Department of Buildings ("DOB"), dated July 30, 2012, 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. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 21, 2013 and then to decision on June 4, 2013; 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 premises ("the Premises") is located on the southeast corner of the intersection of Havemeyer Street, Borinquen Place and South Fourth Street, in a C4-3 zoning district; and

WHEREAS, the Premises is occupied by a three-story commercial building; two advertising signs are located on the roof of the building, one facing east ("the East Sign") and one facing west ("the West Sign"); DOB accepted the registration application for the West Sign based on a 1940 tax photograph of the sign, but rejected the application for the East Sign; and

WHEREAS, this appeal is brought on behalf of the lessee of the East Sign structure (the "Appellant"); and

WHEREAS, the Appellant states that the East Sign is a rectangular advertising sign with a surface area of 672 sq. ft. and located within 900 feet and within view of the Brooklyn-Queens Expressway (the "BQE"); DOB states that the Sign is located within 200 feet of the BQE; and

WHEREAS, the Premises has been located within a C4-3 zoning district since the adoption of the Zoning Resolution on December 15, 1961; under the 1916 Zoning Resolution, the premises was located within a Business Use district; and

WHEREAS, on April 29, 1915, DOB issued a sign structure maintenance permit (Certificate of Registration No. 1,578) for the Premises (the "1915 Permit"); and

WHEREAS, on December 4, 1917, DOB issued a sign structure maintenance permit (Certificate of Registration No. 2,987) for the Premises (the "1917 Permit"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration of the East 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

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 a date uncertain, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the East Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching a copies of the 1915 Permit and 1917 Permit as evidence of establishment of the East Sign; and

WHEREAS, on March 8, 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, by letter dated May 22, 2012, the Appellant submitted a response to DOB, including historical leases and photographs and asserting that the East Sign was legally established; and

WHEREAS, DOB determined that the May 22, 2012 submission lacked sufficient evidence of the East Sign's establishment, and on July 30, 2012, issued the Final Determination denying registration; and

RELEVANT STATUTORY PROVISIONS

1916 Zoning Resolution § 4(a)

In a business district no building or premises shall be used, and no building shall erected which is arranged, intended or designed to be used, for any of the following specified trades, industries or uses:

(49) business and advertising signs

* * *

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 § 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 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 because: (1) the East Sign was established as an advertising sign prior to June 28, 1940 and may therefore be maintained as a legal non-conforming advertising sign; and (2) equitable estoppel prevents DOB from taking enforcement action against the East Sign; and

WHEREAS, the Appellant contends that the East Sign was established prior to June 28, 1940; in support of this contention, the Appellant has submitted the 1915 Permit and the 1917 Permit and two affidavits as proof of the establishment of the East Sign; and

WHEREAS, in addition, the Appellant asserts that a 1962 photograph, a 10-year lease that commenced in 1965, a two-year lease that commenced in 1975, a six-year lease that commenced in 1977, a 1982 photograph, a six-year lease that commenced in 1983, a six-year lease that commenced in 1989, a six-year lease that commenced in 1995, a four-year lease that commenced in 2001, a one-year lease that commenced in 2005, and a 10-year lease that commenced in 2006, confirm the Sign's continuous use and legal status as a non-conforming use; and

WHEREAS, accordingly, the Appellant states that there is sufficient evidence to support the non-conforming use status of the East Sign; and

WHEREAS, the Appellant asserts that it has relied on DOB's tacit approval of the East Sign for several years and made substantial investments relative to the continued operation of the East Sign; and

WHEREAS, the Appellant asserts that under established principles of equity, DOB should be estopped from ordering the removal of the Sign; and

WHEREAS, the Appellant asserts that although as a general rule estoppel or laches cannot be used against a municipality enforcing its zoning law, New York courts have ruled that these doctrines are not foreclosed entirely and may be invoked as a rare exception; and

WHEREAS, the Appellant states that two New York State court decisions – Town of Hempstead v. DeMasco, 2007 WL 4471362 (Sup. Ct. 2007), aff'd, 62 A.D.3d 692 (2d Dept. 2009) and Inner Force Econ. Dev. Corp. v. Dep't of Educ. Of the City of New York, 36 Misc.3d 758, 559 (Sup. Ct. 2012) – to support its conclusion that the City should be estopped; and

WHEREAS, the Appellant notes that in DeMasco, the Town sought to enforce its zoning ordinance against a metal salvage business which had existed for many years prior to a zoning change, and the Appellate Division affirmed that the Town was equitably estopped in part because it continued business with the junkyard and "gave an imprimatur to the businesses' continued operation"; and

WHEREAS, the Appellant argues that this appeal is similar to DeMasco, in that DOB "did not prohibit the [Appellant] from continuing to maintain its advertising signage during the period following the issuance of the Permit[s]" and that "by not enforcing against the signage [DOB] implicitly permitted its continued use"; and

WHEREAS, the Appellant notes that Inner Force involved an action against the New York City Department of Education in which a plaintiff filed its Notice of Claim with the Comptroller's Office instead of the Office of the Corporation Counsel, which should have received the claim instead, and the Comptroller's Office acknowledged the receipt of the Notice, informed the plaintiff that it was conducting an investigation and ultimately denied the claim based in part on the improper notice; and

WHEREAS, the Appellant notes that the Inner Force court found estoppel applicable to the conduct of the Comptroller's Office because the Comptroller's response to the plaintiff's erroneous notice wrongfully or negligently induced reliance by the plaintiff to its detriment to believe that its notice of claim was proper and that the proper party had been served; and

WHEREAS, the Appellant contends that this appeal is similar because "DOB clearly understood or should have understood that by not pursuing enforcement action against the maintenance of valuable advertising signage there was every reason for the [Appellant] to continue its operation"; and

WHEREAS, accordingly, the Appellant argues that DOB should be estopped from taking any enforcement action against the Sign and DOB's Final Determination with respect to the Sign should be reversed; and

DOB'S POSITION

WHEREAS, DOB asserts that: (1) the Appellant has not submitted sufficient evidence to demonstrate that the East Sign was established as an advertising sign at the Premises prior to June 28, 1940; and (2) even if the Board were to find that the East Sign was established, there is compelling evidence that the East Sign advertising use was discontinued between May 13, 2009 and April 7, 2012, and the use must therefore terminate pursuant to ZR § 52-61; and

WHEREAS, DOB states that in order to demonstrate the lawful establishment of an advertising sign at the Premises, the Appellant must provide proof of the existence of an advertising sign prior to June 28, 1940, the date that the 1916 Zoning Resolution was amended to prohibit advertising signs within Business Use districts; and

WHEREAS, DOB notes that on June 28, 1940, the Premises was not within 200 feet of the BQE, because that arterial highway did not open until 1950; and

WHEREAS, DOB contends that the Appellant's evidence, which consists of the 1915 and 1917 permits and the two affidavits, is not sufficient under Rule 49 to demonstrate that the East Sign established as an advertising sign prior to June 28, 1940; and

WHEREAS, DOB states that Rule 49 indicates that proof that an advertising sign "was erected, but that does not establish that it was advertising, will not be sufficient;" and

WHEREAS, DOB notes that the Appellant does not state the date that the advertising sign was installed, but indicates instead that the East Sign's existence as an advertising sign is documented by the 1915 and 1917 permits; and

WHEREAS, DOB asserts that the only decipherable word on the 1915 Permit is "Havemeyer" and the only decipherable words on the 1917 Permit are "SE corner Havemeyer St & South 4th Street"; and

WHEREAS, DOB contends that because there is proof that the West Sign existed at the Premises prior to June 28, 1940 (as discussed above, DOB accepted the registration application for the West Sign), it is reasonable to conclude that the maintenance permits were issued to maintain the West Sign structure rather than the East Sign structure; and

WHEREAS, DOB also states that two 1940 tax photographs from the Municipal Archives demonstrate that the East Sign was not established; specifically, DOB asserts that in the photographs, the supporting scaffold structure behind the West Sign is visible and no East Sign can be seen in the location where it is installed today; and

WHEREAS, finally, DOB states that the Appellant's two affidavits are submitted without supporting documentation and therefore, per Rule 49, cannot be relied upon to demonstrate that the East Sign has existed continuously since 1940; and

WHEREAS, consequently, DOB asserts that there is insufficient evidence of the establishment of an advertising sign at the Premises prior to June 28, 1940; and

WHEREAS, DOB contends that even if the Board were to find that the East Sign was established, there is uncontroverted evidence that the East Sign was discontinued between May 13, 2009 and April 7, 2012, and the use must therefore terminate, per ZR § 52-61; and

WHEREAS, specifically, DOB has submitted photographs obtained from Pictometry (an online aerial oblique imaging and mapping service), which depict the East Sign with no copy in 2009, 2010 and 2012; and

WHEREAS, to counter these photographs, the Appellant submitted photographs, which DOB describes as "undated photographs of the West Sign, which are not relevant, and undated photographs of the East Sign, which are completely black with no message visible"; and

WHEREAS, DOB also notes that the lease that the Appellant submitted as evidence of the existence of the East Sign from 2009-2012 is ambiguous, in that it does not specify whether it is for the West Sign (which, again, DOB accepted as non-conforming) or the East Sign (which DOB asserts never became non-conforming), or both; and

WHEREAS, further, DOB states that even if the lease did authorize the Appellant to maintain the East Sign at the Premises, there is no evidence to show that the right under the lease was exercised; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determination denying the registration of the East Sign; and

CONCLUSION

WHEREAS, the Board finds that: (1) DOB properly denied the East Sign registration because the Appellant has not met its burden of demonstrating that the East Sign was established prior June 28, 1940 as an advertising sign; and (2) DOB is not equitably estopped from taking enforcement action against the East Sign; and

WHEREAS, the Board finds that there is no basis to conclude that an advertising sign was ever lawfully established at the Premises; and

WHEREAS, the Board agrees with DOB that the 1915 and 1917 permits are not sufficient to establish the non-conforming status of the East Sign prior to the June 28, 1940 amendment to the 1916 Zoning Resolution that prohibited advertising signs in Business Use districts; and

WHEREAS, the Board notes that neither permit on its face indicates that it is for advertising, and neither permit indicates whether it is applicable to the East Sign or the West Sign; and

WHEREAS, the Board agrees with DOB that the 1940 tax photographs showing the West Sign would have also shown the East Sign, and that the absence of the East Sign of such photographs is compelling evidence that it did not exist prior to June 28, 1940; and

WHEREAS, accordingly, the Board finds that the East Sign was not established as an advertising sign prior to June 28, 1940; and

WHEREAS, however, even if the Board had found that the East Sign was established, it agrees with DOB that photographic evidence demonstrates that the East Sign did not display advertising copy from 2009-2012; and

WHEREAS, the Board finds that DOB's photographic evidence of discontinuance is not refuted by the Appellant's evidence of continuity; specifically, the Board agrees with DOB that: (1) the Appellant's lease is ambiguous and, at most, is merely evidence of the existence of a right, rather than evidence of the exercise of that right; and (2) the Appellant's affidavits are of limited evidentiary value because they are unsupported by objective, independently verifiable evidence; and (3) the Appellant's East Sign photographs are of limited evidentiary value because they are undated and of such poor quality that the sign's message cannot be determined; and

WHEREAS, accordingly, the Board agrees with DOB that even if the East Sign were considered established as a non-conforming use, the use was discontinued, per ZR § 52-61; and

WHEREAS, as to the Appellant's arguments regarding equitable estoppel, the Board does not find them persuasive; and

WHEREAS, the Board distinguishes the Appellant's

case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision that deprived the claimant of a right he might otherwise have had, if the City had not accepted his claim without notifying him of its defective notice; and

WHEREAS, the Board notes that the Appellant, by its own admission, has enjoyed approximately 72 years' worth of revenue from an advertising sign that has never been permitted by the Zoning Resolution at the Premises; and

WHEREAS, therefore, the Board finds that DOB's enforcement against the East Sign is warranted, and as such, DOB properly rejected the Appellant's registration of the East Sign.

Therefore it is Resolved that this appeal, challenging a Final Determination issued on July 30, 2012, is denied.

Adopted by the Board of Standards and Appeals, June 4, 2013.

267-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for Robert McGivney, owner.

SUBJECT – Application September 5, 2012 – Appeal from Department of Buildings' determination that the sign is not entitled to continued non-conforming use status as an advertising sign. M1-2 & R6A zoning district.

PREMISES AFFECTED – 691 East 133rd Street, northeast corner of Cypress Avenue and East 133rd Street, Block 2562, Lot 94, 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 Montanez 5

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 August 6, 2012, 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. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. Signs within 200 feet of an arterial may not be replaced or reconstructed as per § 42-55. 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 April 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 21, 2013 and then to decision on June 4, 2013; and

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

WHEREAS, the subject premises ("the Premises") is located on the northeast corner of the intersection of East 133rd Street and Cypress Avenue, in an M1-2/R6A zoning district within a Special Mixed Use District (MX-1) as of March 9, 2005; prior to that date, the Premises was zoned M1-2; and

WHEREAS, the Premises is occupied by a two-story residential building; on the west wall of the building is an advertising sign with a surface area of approximately 288 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 located within 900 feet and within view of the Bruckner Expressway, an arterial highway pursuant to Appendix H of the Zoning Resolution; DOB states that the Sign is located 114 feet from the Bruckner Expressway; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration of the Sign based on DOB's determination that it was not permitted to be reconstructed pursuant to ZR § 52-83; during the appeal process, the issue became whether the Sign was discontinued pursuant to ZR § 52-61; 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

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 a date uncertain, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the East Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching a copy of a 1979 illuminated sign permit and various lease agreements from 1965, 1977, 1985, 1993, 2007 and 2008, as evidence of the Sign's non-conforming use establishment and continuous use; and

WHEREAS, on May 17, 2012, DOB issued a Notice of Sign Registration Deficiency, stating that it was "unable to accept the sign for registration at this time (because the) sign (was) removed/replaced contrary to ZR 42-55"; and

WHEREAS, by letter dated July 28, 2012, the Appellant submitted a response to DOB, indicating that while the Sign had been removed, it was replaced within two years of removal; and

WHEREAS, in response, DOB determined that the Sign was not permitted to be reconstructed, and on July 30, 2012, it issued the Final Determination denying registration; 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 § 32-662

Additional Regulations for Advertising Signs

C6-5 C6-7 C7 C8

In all districts, as indicated, no #advertising sign# shall be located, nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed within 200 feet of an arterial highway or of a #public park# with an area of one half acre or more, if such #advertising sign# is within view of such arterial highway or #public park#.

* * *

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 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 § 52-83
Non-Conforming Advertising Signs
In all Manufacturing Districts, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Sections 32-66 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) or 42-55, any non-conforming advertising sign except a flashing sign may be structurally altered, reconstructed, or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

(a) The creation of a new non-conformity or an increase in the degree of non-conformity of such sign;
(b) An increase in the surface area of the sign; or
(c) An increase in the degree of illumination of such sign; and

* * *

ZR § 123-40
Sign Regulations
In Special Mixed Use Districts, the provisions regulating signs in C6-1 Districts, as set forth in Section 32-60, shall apply for any sign.

* * *

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 because: (1) the Sign was permitted to be reconstructed pursuant to ZR §§ 42-55 and 52-83; (2) DOB is estopped from disavowing its April 3, 2003 letter stating that ZR §§ 42-55 and 52-83 permit the

reconstruction of a non-conforming advertising sign within 200 feet of an arterial highway in a Manufacturing District; and (3) sufficient evidence exists that the Sign was not discontinued pursuant ZR § 52-61; and

WHEREAS, during the registration process and in the instant appeal, the Appellant asserts that ZR §§ 42-55 and 52-83 authorize the reconstruction of the Sign; and

WHEREAS, the Appellant and DOB agree that the Sign was established as a non-conforming advertising sign pursuant to ZR § 42-55(c), in that sufficient evidence was presented to DOB demonstrating that the sign existed and was used for advertising prior to May 31, 1968; and

WHEREAS, the Appellant's assertion is based on an April 3, 2003 opinion letter ("the 2003 Opinion") from a DOB attorney, which in pertinent part provided that:

> an advertising sign other than a flashing sign in a manufacturing district within 200 feet and in view of an arterial highway that is covered by ZR 42-55(c)(1) . . . or . . . ZR 42-55(c)(2) . . . may be structurally altered, reconstructed or replaced pursuant to ZR 52-83. ZR 52-83 is inapplicable to an advertising sign on an arterial highway in a manufacturing zone that is regulated by ZR 42-55 except as provided in ZR 42-55(c); and

WHEREAS, the Appellant contends that the proper interpretation of the interplay between ZR §§ 42-55 and 52-83 is found in the 2003 Opinion's plain, unambiguous language, which DOB never disclaimed or modified until the issuance of the Final Determination; and

WHEREAS, the Appellant asserts that the Final Determination—which stated that "signs within 200 feet of an arterial may not be replaced or reconstructed as per § 42-55"—ignores ZR § 42-55(c)(1), which provides that an advertising sign located within 660 feet of an arterial highway that is erected prior to June 1, 1968 shall have legal non-conforming status pursuant to ZR § 52-83; and

WHEREAS, the Appellant contends that the references to ZR § 52-83 in ZR § 42-55 and to ZR § 42-55 in ZR § 52-83 are to clarify that signs conferred non-conforming use protection pursuant to ZR § 42-55 are entitled to reconstruct pursuant ZR § 52-83, and that an interpretation to the contrary would be illogical; and

WHEREAS, further, the Appellant asserts that ZR § 42-55(a)(2) was intended to prohibit the reconstruction of illegal advertising signs, not limit the reconstruction of signs deemed non-conforming pursuant to ZR § 42-55(c); and

WHEREAS, the Appellant states that it reasonably relied in good faith on the 2003 Opinion when it removed the Sign to perform façade repairs; and

WHEREAS, the Appellant contends that DOB's rejection of the Sign from registration notwithstanding its 2003 Opinion constitutes an unexplained and arbitrary failure to conform to agency precedent, contrary to Matter of Charles A. Field Delivery Serv., Inc., 66 N.Y.2d 516, 520, 488 N.E.2d 1223, 1227 (1985) and Richardson v. Comm'r of New York City Dep't of Soc. Servs., 88 N.Y.2d 35, 39, 665 N.E.2d 1059 (1996); and

WHEREAS, accordingly, the Appellant contends that its reconstruction of the Sign was authorized by the plain text of the Zoning Resolution and sanctioned by DOB in its 2003 Opinion; and

WHEREAS, the Appellant asserts that the Sign was removed on August 17, 2009 and replaced on August 12, 2011; and

WHEREAS, in support of this assertion, the Appellant has submitted four documents: (1) an undated work order from Lamar Outdoor Advertising ("Lamar"), which indicates that the work to be done is "please arrange to have the following 30 sheet removed 740120-Bruckner Blvd EL 5 F N of E 133rd St Address: 691 E 133rd St/Bron" and that the work was completed on August 17, 2009; (2) an August 25, 2009 Survey that includes photographs of the Premises without the Sign and indicates on the photographs and on the lot diagram where the "remnants of a sign" were located; (3) an August 5, 2011 work order from Lamar to Josie Rodriguez, which indicates that the work to be done at the Premises is "retro fit one wall mounted 30 sheet steel panel" and that the work was completed on August 12, 2011; and (4) an August 12, 2011 invoice from the Metropolitan Sign & Rigging Corp., which indicates a request for payment to Lamar for "retrofit one wall mounted 30 sheet steel panel"; and

WHEREAS, the Appellant states that the two documents indicating removal and two documents indicating reconstruction are sufficient evidence that the Sign was not discontinued for a period of two or more years; as such, the Appellant states that use of the Sign for advertising was never discontinued per ZR § 52-61; and

WHEREAS, accordingly, the Appellant asserts that the Board should reverse DOB's Final Determination that the Sign was not permitted to be reconstructed, and find that the Sign may remain pursuant to ZR § 52-11; and

DOB'S POSITION

WHEREAS, DOB asserts that: (1) the Sign was permitted to be reconstructed pursuant to ZR § 52-83; and (2) photographic evidence demonstrates that the Sign was discontinued for a period of more than two consecutive years, and the use must therefore terminate pursuant to ZR § 52-61; and

WHEREAS, DOB states that the Sign was permitted to be reconstructed pursuant to ZR § 52-83, because at the time of reconstruction it was within a zoning district that allowed reconstruction of non-conforming advertising signs; and

WHEREAS, DOB notes that, as a threshold matter, it accepted the Sign as having been established as a non-conforming advertising sign pursuant to ZR § 42-55(c); and

WHEREAS, DOB states that because the Premises is within an M1-2/R6A zoning district within a Special Mixed Use District (MX-1), per ZR § 123-40, the sign regulations applicable in C6-1 district are applicable; therefore, per ZR § 52-83, the Sign was permitted to be reconstructed; and

WHEREAS, DOB states that despite language in the 2003 Opinion suggesting otherwise, no advertising sign may be structurally altered, relocated or reconstructed if that sign

is located in a district regulated by ZR §§ 42-55 or 32-662 and is within 200 feet of an arterial highway; and

WHEREAS, DOB contends that although ZR § 52-83 generally allows a non-conforming advertising sign to be altered, reconstructed, or replaced, this allowance is limited by an exception clause, which states, "except as otherwise provided in Sections 32-66 or 42-55"; and

WHEREAS, therefore, DOB states that where a non-conforming advertising sign is in a district covered by ZR § 52-83 and either ZR § 32-662 or ZR § 42-55, the exception clause in ZR § 52-83 is applicable because it is the more restrictive requirement1; and

WHEREAS, DOB states that although the Sign was permitted to be reconstructed pursuant to ZR §§ 52-83 and 123-40, photographic evidence demonstrates that the Sign was discontinued for a period of more than two consecutive years, and the use must therefore terminate pursuant to ZR § 52-61; and

WHEREAS, DOB asserts that, contrary to the Appellant's statements, the Sign was removed at least as early as July 5, 2009 and not replaced until at least August 12, 2011, which DOB accepted as the date that the Appellant restored the Sign to the wall of the building at the Premises; and

WHEREAS, in support of this assertion, DOB has submitted the following photographic evidence from Pictometry (an online aerial oblique imaging and mapping service) to demonstrate that the Sign was absent from the building for more than two consecutive years: (1) four photographs from July 5, 2009, each from a different angle, showing the absence of the Sign and the Sign structure; (2) four photographs from July 15, 2009, each from a different angle, showing the absence of the Sign and the Sign structure; (3) an April 4, 2010 photograph showing the absence of the Sign and the Sign structure; (4) four photographs from April 5, 2010 each from a different angle, showing the absence of the Sign and the Sign structure; and (5) four photographs from February 27, 2012 each from a different angle, showing the Sign and the Sign structure in place (which DOB submitted as a contrast to the several photographs showing the absence of the Sign and the Sign structure); and

WHEREAS, at hearing, the Board requested additional information regarding the credibility of the dated aerial images created by Pictometry; and

WHEREAS, in response, DOB states that the Pictometry International Corporation is a provider of geo-referenced, oblique aerial imagery founded in 2000; that Pictometry is a subscription-only database that maintains a fleet of 72 aircraft which have captured over 210 million data-rich aerial images; that Pictometry's patented imagery capturing system is designed to produce orthogonal and oblique aerial images that reveal the front and sides of buildings from up to 12 different angles; and

WHEREAS, DOB notes that Pictometry provides aerial imagery for federal, state and local governments, including the United States Department of Homeland Security, the Connecticut Department of Information Technology, and county assessors nationwide; Pictometry also provides aerial imagery for public safety, insurance, and utility professionals; and

WHEREAS, in addition, DOB notes that Pictometry images have been used as DOB exhibits in at least three other appeal cases before the Board regarding the registration of advertising signs; and

WHEREAS, DOB states that the Pictometry images are compelling evidence that the Sign was discontinued from at least July 5, 2009 to August 12, 2011 and must therefore terminate, pursuant to ZR § 52-61; and

WHEREAS, accordingly, DOB asserts that it properly denied the registration of the Sign as a non-conforming advertising sign; and

CONCLUSION

WHEREAS, the Board finds that DOB properly denied the registration of the Sign as non-conforming advertising sign because the Appellant failed to rebut DOB's evidence that the Sign was removed and not replaced within two years; and

WHEREAS, the Board notes that the Sign's establishment pursuant to ZR § 42-55 and the Appellant's right to reconstruct the Sign pursuant to ZR § 52-83 are not in dispute; and

WHEREAS, however, the Board finds that, based on the evidence in the record, the Sign was removed and not replaced within two years of removal; and

WHEREAS, the Board finds DOB's photographic evidence showing that the Sign did not exist at the Premises as of July 5, 2009 compelling; and

WHEREAS, the Board notes that DOB sufficiently demonstrated the credibility of the dated aerial images provided by Pictometry; and

WHEREAS, the Board finds the Appellant's evidence showing that the Sign was removed on August 17, 2009 insufficient in light of DOB's photographic evidence to the contrary; and

WHEREAS, the Board notes that DOB did not dispute the Appellant's assertion or supporting evidence that the Sign was restored to the Premises on August 12, 2011; and

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1 DOB asserts that, per ZR § 11-22, the provision that results in the elimination of the non-conforming sign (ZR § 52-83) rather than its continued existence (ZR § 42-55(c)) is the "more restrictive" and, therefore, controlling provision. In relevant part, ZR § 11-22 provides that:

> whenever any provision of this Resolution and any other provision of law, whether set forth in this Resolution or in any other law, ordinance or resolution of any kind, impose overlapping or contradictory regulations over the use of land, or over the use or bulk of buildings or other structures, or contain any restrictions covering any of the same subject matter, the provision which is more restrictive or imposes higher standards or requirements shall govern.

WHEREAS, the Board also notes that the Appellant provided no additional evidence or arguments to dispute DOB's assertion with supporting evidence that the Sign was removed no later than July 5, 2009 and restored no sooner than August 12, 2011; and

WHEREAS, accordingly, the Board finds that the Sign did not exist at the Premises for at least two years and 36 days; thus, the non-conforming advertising sign use must terminate pursuant to ZR § 52-61; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's registration of the Sign as a non-conforming advertising sign.

Therefore it is Resolved that this appeal, challenging a Final Determination issued on August 6, 2012, is denied.

Adopted by the Board of Standards and Appeals, June 4, 2013.

89-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.
COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for continued hearing.

92-07-A thru 94-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.
COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for continued hearing.

95-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.
COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for continued hearing.

308-12-A
APPLICANT – Francis R. Angelino, Esq., for LIC Acorn Development LLC, owner.
SUBJECT – Application November 8, 2012 – Request that the owner has a common law vested right to continue construction and obtain a Certificate of Occupancy under the prior M1-3 zoning district. M1-2/R5D zoning district.
PREMISES AFFECTED – 39-27 29th Street, east side 29th Street, between 39th and 40th Avenues, Block 399, Lot 9, Borough of Queens.
COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

346-12-A
APPLICANT – Eric Palatnik, P.C., for Woodpoint Gardens, LLC, owners.
SUBJECT – Application December 12, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior R6 zoning district regulations. R6B zoning district.
PREMISES AFFECTED – 179-181 Woodpoint Road, between Jackson Street and Skillman Avenue, Block 2884, Lot 4, Borough of Brooklyn
COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for adjourned hearing.

111-13-BZY thru 119-13-BZY
APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., lessee.
SUBJECT – Applications April 24, 2013 – Extension of time (§11-332b) to complete construction of a major development commenced under the prior Special Natural Area zoning district regulations in effect on October 2004. R1-2/NA-2 zoning district.
PREMISES AFFECTED –
5031, 5021 Grosvenor Avenue, Lots 50, 60, 70, 5030 Grosvenor Avenue, Block 5830, Lot 3930, 5310 Grosvenor Avenue, Block 5839, Lot 4018, 5300 Grosvenor Avenue,

Block 5839, Lot 4025, 5041 Goodridge Avenue, Block 5830, Lot 3940, 5040 Goodridge Avenue, Block 5829, Lot 3635, 5030 Goodridge Avenue, Block 5829, Lot 3630. 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 July 9, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

138-12-BZ

CEQR #12-BSA-127K

APPLICANT – Harold Weinberg, for Israel Cohen, owner.

SUBJECT – Application April 27, 2012 – Special Permit (§73-622) for the legalization of an enlargement to a single family residence, contrary to side yard requirement (§23-461). R-5 zoning district.

PREMISES AFFECTED – 2051 East 19th Street, between Avenue U and Avenue T, Block 7324, Lot 64, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 26, 2012, acting on Department of Buildings Application No. 300938822 reads, in pertinent part:

> [t]he existing one-family residence in an R5 zoning district has a deficient north side yard and is contrary to Section 23-461 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed legalization of an enlargement of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR § 23-461; and

WHEREAS, a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 7, 2013 and then to decision on June 4, 2013; 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, a member of the surrounding community appeared and provided testimony in opposition to the application, primarily on the basis that he considered the enlargement to be excessive; and

WHEREAS, the subject site is located on the east side of East 19th Street, between Avenue T and Avenue U; and

WHEREAS, the subject site has a total lot area of 3,269.5 sq. ft., and is occupied by a single-family home with a complying floor area of approximately 3,206.2 sq. ft. (0.98 FAR); the maximum permitted floor area is 4,087 (1.25 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 proposes to legalize a 1999 enlargement that resulted in the north side yard width being 2'-0" instead of the required 5'-0"; the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each;

WHEREAS, the applicant notes that a permit was obtained from DOB for the 1999 enlargement and that the plans complied with the Zoning Resolution; however, the contractor deviated from the plans, resulting in the deficient side yard; and

WHEREAS, the applicant also notes that the south side yard has an existing non-complying width of 7'-8" and that this width was maintained in the 1999 enlargement; and

WHEREAS, the applicant represents that the building complies in all other respects with the applicable provisions of the Zoning Resolution; 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 R5 zoning

district, the proposed legalization of an enlargement of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR § 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 May 23, 2013"-(9) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,206.2 sq. ft. (0.98 FAR), a north side yard with a minimum width of 2'-0" and a south side yard with a minimum width of 7'-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) 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, June 4, 2013.

206-12-BZ
CEQR #12-BSA-150K
APPLICANT – George Guttmann, for Dmitriy Kotlarsky, owner.
SUBJECT – Application July 2, 2012 – Special Permit (§73-621) to legalize the conversion of the garage into recreation space, contrary to floor area regulations (§23-141). R3-1 zoning district.
PREMISES AFFECTED – 2373 East 70th Street, between Avenue W and Avenue X, Block 8447, Lot 67, Borough of Brooklyn.
COMMUNITY BOARD #18BK
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, June 4, 2013.

74-13-BZ
CEQR #13-BSA-100M
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Chelsea W26 LLC, owner; Blink Eighth Avenue, Inc., lessee.
SUBJECT – Application February 20, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Fitness*). C6-2A zoning district.
PREMISES AFFECTED – 308/12 8th Avenue, 252/66 West 26th Street, southeast corner of the intersection of 8th Avenue and West 26th Street, Block 775, Lot 7502, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 7, 2013, acting on Department of Buildings Application No. 120655237, reads in pertinent part:

> Proposed Physical Culture Establishment within C6-2A zoning district not permitted as-of-right as per Section ZR 32-10 and a special permit from the Board of Standards and Appeals is required; 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, the operation of a physical culture establishment ("PCE") in certain portions of the cellar and first story of a 12-story mixed commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 21, 2013, after due notice by publication in *The City Record*, and then to decision on June 4, 2013; 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 located on the southeast corner of the intersection of Eighth Avenue and West 26th Street; and

WHEREAS, a 12-story new building is under construction at the site; upon completion, the building will be occupied by residential and commercial uses; and

WHEREAS, the site has 123 feet of frontage along Eighth Avenue, 83.5 feet of frontage along West 26th Street, and a total lot area of 32,111 sq. ft.; and

WHEREAS, the proposed PCE will occupy a total of 400 sq. ft. of floor area on the first story and 14,635 sq. ft. of

floor space in the cellar; and

WHEREAS, the PCE will be operated as Blink; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed 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, 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 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 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 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. 13BSA100M, dated February 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 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, the operation of a physical culture establishment ("PCE") in certain portions of the cellar and first story of a 12-story building mixed commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 9, 2013" – Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on June 4, 2023;

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 all massages must be performed by New York State licensed massage therapists;

THAT the hours of operation will not exceed 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.;

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

Adopted by the Board of Standards and Appeals, June 4, 2013.

35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for adjourned hearing.

16-12-BZ
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 – Laid over to July 23, 2013, 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
ACTION OF THE BOARD – Laid over to September 10, 2013, at 10 A.M., for deferred decision.

195-12-BZ
APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.
SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.
PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.
COMMUNITY BOARD #10Q
ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

236-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.
SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.
PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.
COMMUNITY BOARD #2SI
ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

13-13-BZ & 14-13-BZ
APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.
SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, Borough of Brooklyn.
COMMUNITY BOARD #6BK
ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

50-13-BZ
APPLICANT – Lewis E. Garfinkel, for Mindy Rebenwurzel, owner.
SUBJECT – Application January 29, 2013 – 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 rear yard (§23-47) regulations. R2 zoning district.
PREMISES AFFECTED – 1082 East 24th Street, west side of East 24th Street, 100' north of corner of Avenue K and East 24th Street, Block 7605, Lot 79 Brooklyn.
COMMUNITY BOARD #14BK
ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

57-13-BZ
APPLICANT – Eric Palatnik, P.C., for Lyudmila Kofman, owner.
SUBJECT – Application February 2, 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 rear yard (§23-47) regulations. R3-1 zoning district.
PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

62-13-BZ
APPLICANT – Sheldon Lobel, P.C., for BXC Gates, LLC, owner.
SUBJECT – Application February 7, 2013 – Special Permit (§73-243) to legalize the existing eating and drinking establishment (*Wendy's*) with an accessory drive-through facility. C1-2/R6 zoning district.
PREMISES AFFECTED – 2703 East Tremont Avenue,

property fronts on St. Raymond's Avenue to the northwest, Williamsbridge Road to the northeast, and East Tremont Avenue to the southwest, Block 4076, Lot 12, Borough of Bronx.

COMMUNITY BOARD #10BX

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 9, 2013, at 10 A.M., for decision, hearing closed.

63-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Cel-Net Holdings, Corp., owner; The Cliffs at Long Island City, LLC, lessee.

SUBJECT – Application February 11, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Cliffs*). M1-4/R7A (LIC) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street, Block 447, Lot 13, 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 June 18, 2013, at 10 A.M., for decision, hearing closed.

84-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 184 Kent Avenue Fee LLC, owner; SoulCycle Kent Avenue, LLC, lessee.

SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*SoulCycle*) within portions of an existing cellar and seven-story mixed-use building. C2-4/R6 zoning district.

PREMISES AFFECTED – 184 Kent Avenue, northwest corner of intersection of Kent Avenue and North 3rd Street, Block 2348, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

85-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for St. Matthew's Roman Catholic Church, owner; Blink Utica Avenue, Inc., lessee.

SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within existing building. C4-3/R6 zoning district.

PREMISES AFFECTED – 250 Utica Avenue, northeast corner of intersection of Utica Avenue and Lincoln Place, Block 1384, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #8BK

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 9, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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227 Clinton Street, East Side of Clinton Street, 100 feet north of the corner formed by the intersection of Congress Street and Clinton Street, Block 297, Lot(s) 5, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-621) to permit the legalization of an enlargement of a two-family residence in an R-6 zoning district which; would allow the floor area on the property to exceed the floor area permitted under the district regulations by no more than 10%; contrary to §23-145. R6 (LH-1) zoning district. R6,LH-1 district.

170-13-BZ
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171-13-BZ
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172-13-A
175 Ocean Avenue, East side of Ocean Aveniue 40' North of Breezy Point Boulevard, Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 41**. GCL35 WAIVER Partialy in the Beof a Mapped Street: the proposed reconstruction of a storm destroyed single family dwellling partiall in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law.Prposed installation of the disposal system partly in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. R4 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 9, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 9, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

102-95-BZ
APPLICANT – Law Office of Fredrick A. Becker, for 50 West Realty Company LP, owner; Renegades Associates/dba Splash Bar, lessee.
SUBJECT – Application April 22, 2013 – Extension of Term of a previously granted Special Permit (ZR73-244) for the continued operation of a UG12 Easting/Drinking Establishment (*Splash*) which expired on March 5, 2013 and an Amendment to modify the interior of the establishment. C6-4A zoning district.
PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street between 5th Avenue and 6th Avenue, Block 818, Lot 78, Borough of Manhattan.
COMMUNITY BOARD #5M

45-08-BZ
APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.
SUBJECT – Application June 10, 2013 – Extension the Time to Complete Construction of a previously granted Variance (§72-21) to construct a new four (4) story, eight-one (81) unit age restricted residential facility which expired on May 19, 2013. M1-1 (Area M), SRD & SGMD zoning district.
PREMISES AFFECTED – 55 Androvette Street, North side of Androvette Street at the corner of Manley Street, Block 7407, Lot 1, 80, 82 (tentative 1), Borough of Staten Island.
COMMUNITY BOARD #3SI

APPEALS CALENDAR

29-12-A
APPLICANT – Vincent Brancato, owner
SUBJECT – Application February 8, 2012 – Appeal seeking to overturn DOB Commissioner's padlock order of closure (and underlying OATH report and recommendation) with respect to property, which has applicant contends has a "grandfathered" legal pre-existing (pre-zoning) commercial/industrial use which pre-dated the applicable zoning and should be allowed to continue. R3-2 zoning district.
PREMISES AFFECTED – 159-17 159th Street, Meyer Avenue, east of 159th Street, west of Long Island Railroad, Block 12178, Lot 82, Borough of Queens.
COMMUNITY BOARD #12Q

75-13-A
APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by llya Braz, owner.
SUBJECT – Application February 20, 2013 – Application is filed pursuant to §310(2) of the MDL, to request a variance from the court requirements set forth in MDL Section 26(7) to allow the conversion of an existing commercial building at the subject premises to a transient hotel.
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

172-13-A
APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Margaret & Robert Turner, lessees.
SUBJECT – Application June 11, 2013 – Proposed reconstruction of a storm destroyed single family dwelling and installation of the disposal system partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. R4 zoning district.
PREMISES AFFECTED – 175 Ocean Avenue, East side of Ocean Avenue, 40' North of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.
COMMUNITY BOARD #14Q

ZONING CALENDAR

81-13-BZ
APPLICANT – Nasir J. Khanzada, for Aqeel Klan, owner.
SUBJECT – Application February 28, 2013 – Re-Instatement (§11-411) of a previously approved variance which permitted an automotive service station (UG16B), with accessory uses in a residential district which expired on November 6, 1992; Amendment (§11-413) to permit the change use from automotive service station (UG 16B) to automotive repair (UG 16B) with accessory automotive sales; Waiver of the Rules. R2 zoning district.
PREMISES AFFECTED – 264-12 Hillside Avenue, 265th Street. Block 8794, Lot 22. Borough of Queens.
COMMUNITY BOARD #13Q

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 regulations, ZR 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

96-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Urban Health Plan, Inc., owner.
SUBJECT – Application April 2, 2013 – Variance (§72-21) to permit construction of ambulatory diagnostic treatment health facility (UG4) that does not provide required rear yard pursuant to ZR 23-47. R7-1 and C1-4 zoning districts.
PREMISES AFFECTED – 1054 Simpson Street, 121.83 feet north of intersection of Westchester Avenue, Block 2727, Lot 4, Borough of Bronx.
COMMUNITY BOARD #2BX

108-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for EOP-Retail, owner; Equinox 1095 6th Avenue, Inc, lessee.
SUBJECT – Application April 19, 2013 – Special Permit (§73-36) to permit the operation of a physical Culture Establishment (PCE) (*Equinox*). C5-3, C6-6, C6-7 & C5-2 (Mid)(T) zoning district.
PREMISES AFFECTED – 100/28 West 42nd Street aka 101/31 West 41st Street, West side of 6th Avenue between West 41st Street and West 42nd Street, Block 00994, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JUNE 11, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

799-62-BZ
APPLICANT – Sahn Ward Coschignano & Baker, PLLC, for 350 Condominium Association, owners.
SUBJECT – Application March 28, 2013 – Extension of Term permitting the use tenant parking spaces within an accessory garage for transient parking pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which expired on November 9, 2012; Waiver of the Rules. C2-5/R8, R7B zoning district.
PREMISES AFFECTED – 501 First Avenue aka 350 East 30th Street, below-grade parking garage along the west side of First Avenue between East 29th Street and 30th Street, Block 935, Lot 7501, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on November 9, 2012; and

WHEREAS, a public hearing was held on this application on May 21, 2013, after due notice by publication in *The City Record*, and then to decision on June 11, 2013; and

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

WHEREAS, Community Board 6, Manhattan, does not object to this application; and

WHEREAS, the subject site spans the west side of First Avenue between East 29th Street and East 30th Street, partially within an R8 (C2-5) zoning district and partially within an R7B zoning district; and

WHEREAS, the site is occupied by a six-story residential building;

WHEREAS, portions of the cellar are occupied by a 68-space accessory parking garage; and

WHEREAS, on December 11, 1962, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law ("MDL") to permit unused and surplus parking spaces to be used for transient parking for a term of 15 years; and

WHEREAS, the grant was renewed and amended at various times in subsequent years; and

WHEREAS, most recently, on November 9, 2004, the Board granted a ten-year extension of term, to expire on November 9, 2012; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on December 11, 1962, so that, as amended, this portion of the resolution shall read: "to permit an extension of term for an additional ten years from the expiration of the prior grant, to expire on November 9, 2022; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT this term will expire on November 9, 2022;

THAT a sign stating that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days' notice to the owner be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 121476376)

Adopted by the Board of Standards and Appeals, June 11, 2013.

410-68-BZ
APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.
SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of approved variance which permitted the operation of (UG16B) automotive service station (*Citgo*) with accessory uses, which expired on November 26, 2008; Extension of Time to obtain a Certificate of Occupancy

which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.
AFFECTED PREMISES – 85-05 Astoria Boulevard, east corner of 85th Street. Block 1097, Lot 1. Borough of Queens.
COMMUNITY BOARD #3Q
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 5
Negative:.....0

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of an automobile repair shop, which expired on November 26, 2008, and an extension of time to obtain a certificate of occupancy, which expired on January 11, 2008; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in *The City Record*, with continued hearings on February 26, 2013, March 19, 2013, April 23, 2013 and May 21, 2013, and then to decision on June 11, 2013; 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, Queens, recommends approval of this application, on condition that the applicant: (1) ceases servicing automobiles on the sidewalk and the curb facing 85th Street; (2) ceases all activity relating to the sale of used automobiles; (3) documents any proposed changes to landscaping and provides landscaping at locations where it has been neglected; (4) provides adequate 24-hour lighting for the gasoline canopies, islands, and pump dispensers; (5) prohibits access to the public toilet except by keyed locking device; (6) stores motor oil, waste, and debris in a safe location and free from potential safety hazards to the general public and employees; and (7) addresses all outstanding ECB violations; and

WHEREAS, the subject site spans the full length of the east side of 85th Street between 24th Avenue and Astoria Boulevard, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 24, 1953, when under BSA Cal. No. 676-53-BZ, it granted a variance to permit the construction and operation of a gasoline service station, automobile wash, lubritorium, motor vehicle repair, storage and sale of accessories, and office; the variance also permitted a curb cut nearer to a residence use district than was permitted under the 1916 Zoning Resolution; and

WHEREAS, on November 26, 1968, under the subject calendar number, the Board granted an application to permit the existing automotive service station

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times, including a 1968 amendment that permitted the construction of a one-story enlargement to the existing building; and

WHEREAS, most recently, on January 11, 2005, the Board authorized: (1) the conversion of a portion of the service station to an accessory convenience store; (2) the construction of two additional service bays, a service attendant's area, and a customer waiting area; (3) an extension to the existing canopy; (4) the relocation of the pump island; and (5) the addition of one new fuel dispenser; the Board's grant required that a new certificate of occupancy be obtained within one year of the grant; and

WHEREAS, by resolution dated April 11, 2006, the time to complete construction and obtain a certificate of occupancy was extended and was required to be obtained by January 11, 2008; however, to date, a certificate of occupancy has not yet been obtained; in addition, the term of the special permit for the service station expired on November 26, 2008; and

WHEREAS, accordingly, the applicant now requests an additional extension of the term and seeks an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) excessive signage; (2) the presence of graffiti; (3) the existence of a shed at the rear of the building; (4) the inadequate landscaping; and (5) the community board's concerns regarding the sale of motor vehicles at the site, the keyed access of the public toilet and the safe storage and disposal of motor oil waste and debris; and

WHEREAS, in response, the applicant submitted photographs depicting the removal of the excessive signage, the graffiti and the shed, and the installation of landscaping in accordance with the Board's direction; in addition, the applicant submitted an affidavit from the operator of the service station, which indicates that no motor vehicle sales will take place at the site, that the public toilet will remain locked at all times, and that motor oil waste and debris will be stored in a safe location and be inaccessible to the public; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and an 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 November 26, 1968, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the prior expiration, to expire on November 26, 2018; *on condition* that all use and operations shall substantially conform drawings filed with this application marked 'Received November 27, 2012'-(5) sheets and 'May 2, 2013'-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on November

26, 2018;

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

THAT motor vehicle sales will not take place at the site;

THAT signage will comply with C1 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 11, 2014;

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."

(DOB Application No. 401856997)

Adopted by the Board of Standards and Appeals, June 11, 2013.

982-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192nd Street, Block 5513, Lot 27, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to obtain a certificate of occupancy for Use Group 6 stores and offices, which expired on July 19, 2012; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, with continued hearings on January 8, 2013, February 5, 2013, March 12, 2013, April 9, 2013, and May 14, 2013, and then to decision on June 11, 2013; 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, Queens, recommends approval of the application; and

WHEREAS, a representative of the Auburndale Improvement Association, Inc. provided oral and written testimony regarding the application and the conditions at the site; the representative indicated that while his organization did not oppose the application, it was concerned about: (1) the site's non-compliance with the landscaping requirements of the prior grants; (2) unlawful parking in the alley off of 192nd Street; and (3) gates to the accessory parking lot being left unlocked overnight; and

WHEREAS, the subject site is located at the southwest intersection of Northern Boulevard and 192nd Street, partially within an R3-2 zoning district and partially within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 6, 1984, when under the subject calendar number, it granted a special permit pursuant to ZR § 11-413 to permit the conversion of an existing, one-story Use Group 16 automobile sales and service establishment into Use Group 6 stores and offices for a term of 15 years, to expire on March 6, 1998; and

WHEREAS, on December 7, 1999, the Board extended the term of the grant for ten years, to expire on March 6, 2009; and

WHEREAS, on May 25, 2004, the Board authorized, among other things, the reapportionment of tenant space, construction of walls to increase the number of stores from three to four, and the construction of a canopy; and

WHEREAS, most recently, on July 19, 2011, the Board authorized the increase in the number of stores from four to five, extended the term of the grant for ten years, to expire on March 6, 2019, and extended the time to obtain a new certificate of occupancy until July 19, 2012; however, to date, a certificate of occupancy has not yet been obtained; and

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

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the curb cut along Northern Boulevard; (2) the parking of trucks in the accessory parking lot; (3) the insufficient landscaping; (4) the presence of excess flags and flagpoles where plantings should be; (5) deliveries and the presence of trucks after hours; and (6) general site maintenance and cleanliness; and

WHEREAS, in response, the applicant submitted photographs depicting: (1) the removal of the curb cut; (2) the installation of height bars on the gate to the parking lot (to prevent the entrance of trucks); (3) the installation of evergreen shrubs; (4) the removal of the flagpoles; and (5) the site being properly maintained; in addition, the applicant submitted a letter from the tenant confirming that deliveries will be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday; and finally, the applicant asserts that trees will be planted in accordance with the submitted plans upon the Board's granting of the application; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and an 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 *reopens* and *amends* the resolution, dated March 6, 1984, so that as amended the resolution will state that a new certificate of occupancy will be obtained by June 11, 2014; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked 'Received March 22, 2013'-(2) sheets and 'May 2, 2013'-(1) sheet; and *on further condition*:

THAT deliveries and garbage pickup will only occur between 8:00 a.m. and 5:00 p.m., Monday through Friday;

THAT signage will comply with C1 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 11, 2014;

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."

(DOB Application No. 401856997)

Adopted by the Board of Standards and Appeals, June 11, 2013.

341-02-BZ

APPLICANT – Sheldon Lobel, P.C., for 231 East 58th Street Associates LLC, owners.

SUBJECT – Application January 25, 2013 – Extension of Term of a previously approved Variance (§72-21) for the continued UG6 retail use on the first floor of a five-story building, which expired on April 8, 2013. R-8B zoning district.

PREMISES AFFECTED – 231 East 58th Street, northwest corner of the intersection of Second Avenue and East 58th Street, Block 1332, Lot 16, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for a variance to allow Use Group 6 retail stores on the first story of an existing five-story mixed residential and commercial building, which expired on April 8, 2013; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 14, 2013, and then to decision on June 11, 2013; 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 6, Manhattan, recommends approval of this application, on condition that the Board maintains its prior prohibition on eating and drinking establishments and limits the term of the renewal to five years; 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, and was reinstated under the subject calendar number on April 8, 2003; the 2003 grant was for a term of ten years, to expire on April 8, 2013; and

WHEREAS, the applicant seeks a ten-year extension of the term for the Use Group 6 retail stores; the also applicant seeks clarification from the Board that a Use Group 6 eating and drinking establishment is permitted under the prior grants; and

WHEREAS, the applicant asserts that because the prior grants, which authorize "a retail store, Use Group 6," did not contain a condition prohibiting a Use Group 6 eating and drinking establishment, no such condition exists; and

WHEREAS, the Board finds that under the original grant (BSA Cal. No. 633-66-BZ) the Board specifically authorized "a retail store" only, and that under the 2003 reinstatement (under the subject calendar) the Board did not eliminate or waive the restriction; thus, it deliberately limited the kind of Use Group 6 use allowed under the variance; and

WHEREAS, notwithstanding, the "retail store" language of the grant, the applicant asserts that an eating and drinking establishment is appropriate and seeks to expand the potential Use Group 6 uses; and

WHEREAS, at the Board's request, the applicant submitted an area study of all buildings within a 400-foot radius to identify the pattern of uses; the study reflects that there are 23 active eating and drinking establishments in the area; and

WHEREAS, based on the study and on its own observations, the Board notes that there are a significant number of eating and drinking establishments in the area; and

WHEREAS, however, the Board notes that eating and drinking establishments have different impacts on the surrounding neighborhood, particularly on the conforming residential uses, than do retail stores; and

WHEREAS, further, the applicant has not shown sufficient need to justify the inclusion of eating and drinking establishments in the grant; indeed, the Board notes that stores are currently operating at the site; and

WHEREAS, accordingly, the Board finds that the retention of the restriction is proper, absent evidence from the applicant that the restriction prevents the owner from realizing a reasonable return; and

WHEREAS, the Board notes that the applicant did not submit any evidence that the retail stores were failing to provide a reasonable return; and

WHEREAS, based upon its review of the record, the Board declines to expand the permitted Use Group 6 use to include eating and drinking establishments; nevertheless, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated April 8, 2003, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years, to expire on April 8, 2023; *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 25, 2013'- (3) sheets; and *on further condition*:

THAT the term of this grant will expire on April 8, 2023;

THAT the only commercial uses permitted will be Use Group 6 retail stores;

THAT eating and drinking establishments will not be permitted;

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

THAT the conditions above and the conditions from the prior resolutions 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, June 11, 2013.

256-82-BZ
APPLICANT – Vito J. Fossella, P.E., for Philip Mancuso, owner.
SUBJECT – Application December 24, 2012 – Extension of Term of a previously granted Special Permit (§73-44) for the continued operation of a veterinary clinic and general UG6 office use in an existing two (2) story building with a reduction of the required parking which expired on November 23, 2012. C2-1/R3-1 zoning district.
PREMISES AFFECTED – 1293 Clove Road, north side of Clove Road, corner formed by the intersection of Glenwood Avenue and Clove Road, Block 605, Lot 8, 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 July 9, 2013, at 10 A.M., for decision, hearing closed.

207-86-BZ
APPLICANT – Kramer Levin Naftalis & Frankel, LLP by Paul Selver, for NYC Industrial Development Agency, owner; Nightingale-Bamford School, lessee.
SUBJECT – Application April 11, 2013 – Amendment of a previously approved variance (§72-21) for a community facility use (*The Nightingale-Bamford School*) to enlarge the zoning lot to permit the school's expansion. C1-5 (R-10) and R8B zoning districts.
PREMISES AFFECTED – 20, 28 & 30 East 92nd Street, northern mid-block portion of block bounded by East 91st and East 92nd Street and Madison and Fifth Avenues, Block 1503, Lot 57, 58, 59, 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 July 16, 2013, at 10 A.M., for decision, hearing closed.

103-91-BZ
APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.
SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.
PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, 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 9, 2013, at 10 A.M., for decision, hearing closed.

102-94-BZ
APPLICANT – C.S. Jefferson Chang, for BL 475 Realty Corp., owner.
SUBJECT – Application January 9, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continuous (UG 6) grocery store which expired on June 20, 2005; Waiver of the Rules. R-5 zoning district.
PREMISES AFFECTED – 475 Castle Hill Avenue, south side of Lacombe Avenue and West of the corner formed by the intersection of Lacombe Avenue and Castle Hill Avenue, Block 3510, Lot 34, Borough of Bronx.
COMMUNITY BOARD #9BX
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 9, 2013, 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
ACTION OF THE BOARD – Laid over to September 24, 2013, at 10 A.M., for continued hearing.

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 Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Laid over to August 20, 2013, at 10 A.M., for continued hearing.

268-12-A thru 271-12-A
APPLICANT – Eric Palatnik, P.C., for Mr. Frank Naso, owner.
SUBJECT – Application September 6, 2012 – Proposed construction of a single family semi-detached building not fronting a mapped street, contrary to General City Law Section 36. R3-1 zoning district.
PREMISES AFFECTED – 8/10/16/18 Pavillion Hill Terrace, corner of Homer Street and Swan Street, Block 569, Lot 318, 317, 316, 285, Borough of Staten Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

135-11-BZ/136-11-A
APPLICANT – Eric Palatnik, P.C., for Block 3162 Land LLC, owner.
SUBJECT – Application September 7, 2011 – Variance (§72-21) to allow for the construction of a commercial use (UG6), contrary to use regulations (§22-00).
Proposed construction is also located within a mapped but not built portion of a street (Clove Road and Sheridan Avenue), contrary to General City Law Section 35. R3-2 zoning district.
PREMISES AFFECTED – 2080 Clove Road, southwest corner of Clove Road and Giles Place, Block 3162, Lot 22, Borough of Staten Island.
COMMUNITY BOARD #2SI
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
Adopted by the Board of Standards and Appeals, June 11, 2013.

250-12-BZ
CEQR #13-BSA-018K
APPLICANT – Law Office of Fredrick A. Becker, for Carla Zeitouny and Raymond Zeitouny, owners.
SUBJECT – Application August 13, 2012 – 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); less than the required rear yard (§23-47) and perimeter wall height (§23-631). R3-2 zoning district.
PREMISES AFFECTED – 2410 Avenue S, south side of

Avenue S, between East 24th and Bedford Avenue, Block 7303, Lot 4, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 1, 2012, acting on Department of Buildings Application No. 320468061, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed building exceeds the maximum permitted floor area ratio of .50;
2. Proposed plans are contrary to ZR 23-141(b) in that the proposed open space is less than the minimum required open space of 65%;
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage is more than the minimum required lot coverage of 35%;
4. Proposed plans are contrary to ZR 23-461(a) in that the proposed side yard straight-line extension is less than the 5 foot minimum side yard permitted;
5. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet;
6. Proposed plans are contrary to ZR 23-631(b) in that the proposed perimeter wall height is more than the maximum required wall height of 21 feet; and

WHEREAS, this is an application under ZR §§ 73-622 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 ratio ("FAR"), open space, lot coverage, side yards, rear yard, and maximum permitted 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 February 26, 2013, after due notice by publication in *The City Record*, with continued hearings on March 19, 2013, April 16, 2013, and May 14, 2013 and then to decision on June 11, 2013; 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 south side of Avenue S, between East 24th Street and Bedford Avenue, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 7,500 sq. ft. and is occupied by a single-family home with a floor area of 2,529 sq. ft. (0.34 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 of 2,529 sq. ft. (0.34 FAR) to 7,526 sq. ft. (1.01 FAR); the maximum permitted floor area is 3,750 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes an open space of 40.4 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant proposes a lot coverage of 59.6 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard, which has width of 3'-8½" and reduce the complying side yard width from 30'-8½" to 9'-3½"; 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 proposes to increase the depth of the non-complying rear yard from 12'-8" to 17'-0"; the minimum required rear yard depth is 30 feet; and

WHEREAS, the applicant proposes to increase the perimeter wall height from 10'-6" to 23'-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 (23'-0") is less than the height of both adjacent buildings' non-complying perimeter walls facing the street (23'-9" and 23'-2"), and the applicant submitted a survey in support of this representation; and

WHEREAS, at hearing, the Board requested additional evidence confirming the lawfulness of the existing condition of the building; and

WHEREAS, in response, the applicant submitted historic Sanborn maps, as well as an explanation of the history of development, which the Board found satisfactory; 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, 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 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 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 maximum permitted 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 August 13, 2012"- (8) sheets, "January 22, 2013"-(1) sheet, and "March 13, 2013"-(4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 7,526 sq. ft. (1.01 FAR), a minimum open space ratio of 40.4 percent, a maximum lot coverage of 59.6 percent, side yards with minimum widths of 3'-8½" and 9'-3½", a rear yard with a minimum depth of 17'-0", and a maximum perimeter wall height of 23'-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, June 11, 2013.

324-12-BZ
CEQR #13-BSA-064K
APPLICANT – Sheldon Lobel, P.C., for Taxiarnis Davanelos, Georgia Davanelos, Andy Mastoros, owners.
SUBJECT – Application December 7, 2012 – Special permit (§73-622) for the enlargement of an existing single family home, contrary to floor area regulations (§23-141(b)). R3-1 zoning district.
PREMISES AFFECTED – 45 76th Street, north side of 76th Street between Narrows Avenue and Colonial Road, Block 5937, Lot 69, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decisions of the Brooklyn Borough Commissioner, dated November 23, 2012, February 6, 2013, and March 18, 2013, acting on Department of Buildings Application No. 320386346, read in pertinent part:

> Proposed floor area contrary to maximum permitted under ZR Section 23-141(b) and requires a special permit from BSA; and
> Proposed side yard non-compliance is not permitted pursuant to ZR Section 23-461 and requires a special permit from BSA; and
> Proposed perimeter wall height is non-compliant and is not permitted pursuant to ZR Section 23-631(b) and requires a special permit from BSA; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district within the Special Bay Ridge District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, side yards and perimeter wall height, contrary to ZR §§ 23-141, 23-461, and 23-631; and

WHEREAS, a public hearing was held on this application on March 12, 2013 after due notice by publication in *The City Record*, with continued hearings on April 16, 2013 and May 14, 2013, and then to decision on June 11, 2013; 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 disapproval of this application, citing concerns about configuration of the roofline and total height and the size of the rear enlargement, which it finds objectionable and not in keeping with the character of the block; and

WHEREAS, Councilmember Vincent J. Gentile, provided testimony in opposition to the application, citing

the same concerns as the Community Board; and

WHEREAS, the district manager for Community Board 10, a representative of the Bay Ridge Conservancy and certain members of the surrounding community provided testimony in opposition to the application, citing the same concerns as the Community Board; and

WHEREAS, a member of the community provided testimony in support of the application; and

WHEREAS, the subject site is located on the north side of 76th Street, between Narrows Avenue and Colonial Road, within an R3-1 zoning district within the Special Bay Ridge District; and

WHEREAS, the subject site has a total lot area of 2,379.2 sq. ft. and is occupied by a single-family home with a floor area of 1,271.62 sq. ft. (0.53 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 1,271.62 sq. ft. (0.53 FAR) to 1,926.76 sq. ft. (0.81 FAR); the maximum permitted floor area is 1,427.52 sq. ft. (0.60 FAR); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yards, which have widths of 3'-9½" and 3'-6"; 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 proposes to maintain the existing perimeter wall height of 22'- 3½" and increase the building height from 28'- 3/4" to 35'-0"; the maximum permitted perimeter wall height is 21'-0" and the maximum permitted building height is 35'-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'-3½", is existing and is less than the height of the adjacent building's non-complying perimeter wall facing the street, which is 22'-3¾"; the applicant submitted a survey in support of this representation; and

WHEREAS, the applicant also notes that it is providing a rear yard depth of more than 38 feet, which is eight feet more than the minimum required depth of 30 feet and nearly twice the depth (20 feet) permitted by the special permit under ZR § 73-622 and routinely approved by the Board; 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 response to the community's concerns that the enlargement is out of character with the neighborhood, the applicant asserts that the requested waivers are modest and the proposed building is compatible with the character of the neighborhood; and

WHEREAS, specifically, the applicant notes that: (1) the floor area is consistent with the neighborhood character; (2) the side yard dimensions are existing non-compliances that are being maintained; and (3) the perimeter wall height is an existing non-compliance that is being maintained and matches the adjacent building's perimeter wall height; and

WHEREAS, as to floor area, the applicant submitted an area study of the 172 buildings within 600 feet of the site; based on the study, 127 buildings have an FAR in excess of the maximum permitted in the district (0.60 FAR), and 59 buildings have an FAR in excess of the FAR proposed under the subject application (0.81 FAR); and

WHEREAS, the Board notes that during the hearing process, the applicant amended the proposal to create a more harmonious curbside appearance with the immediately adjacent homes; specifically, the attic was set back three feet from the street wall, additional plantings were included, and the entranceway was modified; in addition, the applicant submitted a streetscape plan that demonstrates that the proposal is compatible with the surrounding neighborhood; and

WHEREAS, the Board has reviewed the applicant's area study and has visited the site and concludes that the revised proposal is well within the parameters permitted under the special permit and that the height and rear enlargement which seem to be of greatest concern to the community are actually within the as-of-right building envelope and do not require any waiver from the Board, except for the extension of the existing, non-complying yard and perimeter wall conditions; and

WHEREAS, additionally, the Board notes that of the three required waivers only the floor area increase is not associated with an existing, non-complying condition; and

WHEREAS, the Board has noted that the special permit is available in the subject community district and it contemplates greater degrees of waiver; and

WHEREAS, during the hearing process, the Board acknowledged that although the special permit may not be popular among certain members of the community, it is established in the Zoning Resolution subject to the Board making the required findings; 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 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 R3-1 zoning district within the Special Bay Ridge District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, side yards and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 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 May 28, 2013"-(10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,926.76 sq. ft. (0.81 FAR), side yards with minimum widths of 3'-9½" and 3'-6", a rear yard with a minimum depth of 38'-3 1/8", and a maximum perimeter wall height of 22'-3½", 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, June 11, 2013.

325-12-BZ
CEQR #13-BSA-065M

APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Royal Charter Properties, Inc., for New York Presbyterian Hospital, owner.

SUBJECT – Application December 10, 2012 – Variance (§72-21) to permit a new Use Group 4 maternity hospital and ambulatory diagnostic or treatment health care facility (*New York Presbyterian Hospital*), contrary to modification of height and setback, lot coverage, rear yard, floor area and parking. R10/R9/R8 zoning districts.

PREMISES AFFECTED – 1273-1285 York Avenue, west side of York Avenue bounded by East 68th and 69th Streets, Block 1463, Lot 21, 31, 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 Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings' Executive Zoning Specialist, dated November 29, 2012, acting on Department of Buildings Application No. 121325137, reads in pertinent part:

1. Proposed Floor Area Ratio (FAR) exceeds that permitted by ZR section 24-11.
2. Proposed Lot Coverage for corner lot portion exceeds maximum permitted; contrary to ZR section 24-11.
3. Proposed Lot Coverage for interior and through lot portions exceed maximum permitted; contrary to ZR 24-11.
4. Required Rear Yard for interior lot portion beyond 100' of corner is not provided; contrary to ZR section 24-36.
5. Required Rear Yard equivalent for through lot portion beyond 100' of corner is not provided; contrary to ZR 24-382.
6. Proposed height of front wall, front setback and sky exposure plane for both narrow and wide street exceed maximum permitted; contrary to ZR section 24-522(a).
7. Required rear setback is not provided; contrary to ZR 24-522(a).
8. Proposed accessory off-street parking spaces for ambulatory care facility portion exceeds maximum permitted; contrary to ZR section 13-133; and

WHEREAS, this is an application under ZR § 72-21, to permit, within R8, R9, and R10 zoning districts, the construction of a 15-story ambulatory care center and maternity hospital for New York Presbyterian Hospital-Weill Cornell Medical Center (the "NYPH") that does not comply with zoning regulations for floor area ratio, lot coverage, front

setback, rear setback, rear yard, and rear yard equivalent, and parking, contrary to ZR §§ 24-11, 24-36, 24-382, 24-522, and 13-133; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in the *City Record*, with a continued hearing on March 5, 2013, and then to decision on June 11, 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, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the application is brought on behalf of NYPH, a non-profit educational institution and hospital; and

WHEREAS, the subject L-shaped lot is located on the west side of York Avenue between East 68th and East 69th Streets; and

WHEREAS, the site has a lot area of 42,677 sq. ft. with 275 feet of frontage on East 69th Street, 200.83 feet of full-block frontage on York Avenue, and 150 feet of frontage on East 68th Street; and

WHEREAS, the site is within three zoning districts: an R10 for the first 100 feet of depth along York Avenue (20,083 sq. ft. of lot area); an R9 for 50 feet of the remaining frontage along East 68th Street (5,021 sq. ft. of lot area); and an R8 for the remaining 175 feet of frontage along East 69th Street (17,573.5 square feet of lot area); and

WHEREAS, the site is currently occupied by two 12-story apartment buildings, constructed prior to 1961, with ambulatory care facilities on the first and second, which will be demolished; and

WHEREAS, on December 1, 1969, under BSA Cal. No. 414-59-BZ, the Board granted a zoning variance and a Multiple Dwelling Law waiver to allow transient parking in the cellar and first floor accessory garage to a multiple dwelling located at 1285 York Avenue; because the building is proposed to be demolished as part of the subject application, the prior grant is rendered moot; and

WHEREAS, the site is directly across York Avenue from the NYPH-Weill Cornell Campus superblock that spans from East 68th Street to East 71st Street on the east side of York Avenue to the FDR Drive (the "Main Campus"); the Main Campus is home to NYPH's 850-bed inpatient hospital, emergency room, outpatient services, diagnostic and treatment services, support services, (collectively, the "Main Hospital") administration and central plant; and to Weill Cornell Medical College's (WCMC) medical education and research programs; and

WHEREAS, the applicant proposes to construct: a 15-story ambulatory care center ("ACC") and maternity hospital ("MH"), (collectively the "Building"); the Building will have a total floor area of 568,801 sq. ft. (13.33 FAR) with 344,412 sq. ft. devoted to the ACC and 224,389 sq. ft. devoted to the MH; and

WHEREAS, the Building will contain (1) parking for 224 vehicles at the cellar and sub-cellar; (2) staff and ambulette drop-off between East 69th Street and East 68th Street, a loading dock on East 69th Street, a multi-purpose conference center, accessory food services and main lobby on York Avenue at the first floor and second floors; (3) radiation oncology and infusion services on the third floor for cancer treatment; (4) interventional radiology and diagnostic imaging services on the fourth floor; (5) ambulatory surgery on the fifth floor; (6) central sterile processing, pre-admission testing and staff support on the sixth floor; (7) endoscopy services on the seventh floor; (8) specialty clinics for digestive diseases on the eighth floor; (9) mechanical on the ninth and ninth mezzanine floors; (10) support for the maternity hospital and mechanical on the tenth floor; (11) labor and delivery on the 11th floor; (12) neonatal intensive care on the 12th floor; (13) post-partum/ante-partum flex beds and maternal fetal medicine on the 13th floor; and (14) post-partum beds on the 14th and 15th floors; and

WHEREAS, the applicant states that the construction of the Building will result in a total floor area of 568,801 sq. ft. (13.33 FAR); the maximum permitted FAR for a community facility across the site is 8.56; the R10 and R9 districts permit up to 10 FAR of community facility use and up to 12 FAR for residential use that employs an Inclusionary Housing floor area bonus in the R10, while the R8 district permits up to 6.5 FAR for community facility use; applying the 10 FAR in the R9 and R10 and a 6.5 FAR in the R8, the site would have an adjusted maximum FAR of 8.56 and a total allowable of 365,319.4 sq. ft. for community facility use; and

WHEREAS, the proposed construction will create the following additional non-compliances on the site: front setbacks in districts where front yards are not required and rear yard setback as it reaches a height of 341.46 feet without setback (in all three zoning districts, for the portion of the building fronting East 68th and 69th Streets, the building may rise to a height of 85 feet above curb level, but then must set back 20 feet and follow a rise to run sky exposure plane of 2.7:1; on the York Avenue frontage, the building must set back 15 feet and follow a sky exposure plane of 5.6:1; and at the rear yard line located 30 feet from the rear lot line on the East 69th Street interior lot, the building may rise to 125 feet, but then must set back 20 feet); and

WHEREAS, the proposal does not include a rear yard or equivalent (a 30-ft. rear yard is required along the southern rear lot line of the East 69th Street portion of the Site and a rear yard equivalent is required for the 50-ft.-wide through-lot portion that runs from East 68th to East 69th Street) (either a 60 foot deep open area at the center of the through lot or a total of 60 feet of open area distributed along the front lot lines of both East 68th and East 69th Streets is required); and

WHEREAS, further, the proposal reflects full lot coverage (in all three districts the maximum lot coverage is 65 percent for interior and through lots with an adjusted maximum area of lot coverage of 14,686.43 sq. ft.) and 75 percent for corner lots (allowing a total at the corner of 15,062.25 sq. ft. of lot coverage); and

WHEREAS, finally, the applicant proposes a non-

complying 224 parking spaces (186 parking spaces are the maximum permitted accessory parking for community facility use); and

WHEREAS, the applicant states that the waivers are required so that it may construct a building that accommodates NYPH's programmatic need to locate the ACC and the MH on the same site in close proximity to other NYPH buildings and the subject site was the only available site suitable for the Building; and

WHEREAS, co-locating the two facilities allows for greater efficiency as it eliminates the need for certain services to be duplicated; and

WHEREAS, the applicant articulated the following primary programmatic needs: (1) a sufficient number of up-to-date operating and procedure rooms, private inpatient rooms, observation units for post-procedure patients, and attendant spaces to satisfy increased patient volumes and current medical standards for its ambulatory care and maternity services; (2) hospital floor plates that are highly flexible and repetitive; (3) relocation of its existing ambulatory surgical and interventional services from the Main Campus to the site; (4) moving selected services to an ambulatory care setting in the proposed Building, to provide state-of-the-art technology, enhance the ambulatory patient care experience, increase operational efficiencies, and improve outcomes and timely access for outpatients; (5) in addition, by relocating the ambulatory care services from the Main Campus, inpatients will be better accommodated in the Main Hospital; and (6) to add private rooms for post-natal recovery; and

WHEREAS, the applicant describes in detail additional programmatic objectives, which include: (1) improving the patient environment and movement through the facility; (2) providing efficient surgical suites that include all operating/procedure rooms adjacent to patient preparatory and recovery areas and support services, separate from public circulation areas and all on a single floor; (3) modern operating rooms measuring between 600-650 sq. ft. that include imaging functions to allow caregivers to access real time information during complex procedures; (4) ideally situated preparation and recovery rooms on the same floor as associated operating rooms to help minimize the patient's exposure to pre-and post-operative infection caused by travel in corridors and elevators and to maximize staff efficiency; (5) promoting efficient circulation patterns to improve access to the patient and equipment by staff and also minimize the risk of infection by separating patient traffic from staff and service traffic; (6) sufficient mechanical space to allow for redundant systems to permit essential backup in case of failure; (7) 20-ft. floor-to-floor heights to allow for the necessary supporting steel, the installation of essential equipment and mechanical systems and to allow for new technological improvements in the ceiling; and (8) providing onsite parking for outpatients, staff, and visitors; and

WHEREAS, the applicant states that its floor design allows for functional and efficient care, minimizes the need for duplicative staff, and reduces travel distances for patients and staff; one method to achieve its goal of efficient floor design is providing the central clean core workspace that allows staff easy access to essential equipment and case carts, while a perimeter race track corridor is intended for the movement of patients and staff only and for quick removal of soiled material from the procedure rooms; and

WHEREAS, the applicant states that locating the mechanical room in the middle of the building reduces the run of pipes, ductwork and chases and the size of the equipment necessary as opposed to if the mechanicals were all on an upper or lower floor; and

WHEREAS, as far as the services in the new ACC, the applicant states that NYPH will focus on the outpatient treatment procedures of (1) infusion and radiation oncology (12 infusion rooms or patient cancer therapies located on the same floor as the radiation oncology area); (2) interventional imaging and diagnostic imaging; (3) ambulatory surgery; (4) endoscopy (12 procedure rooms and 36 prep/recovery rooms); (5) gastroenterology (including 32 exam rooms and 20 physician offices); (6) central sterile processing; (7) preadmission testing (12 exam rooms and an additional ten for multidisciplinary clinic visits); and (8) perioperative and other support services; and

WHEREAS, the applicant states that the existing operating rooms on the Main Campus, which service both ambulatory and inpatient surgeries, are at or nearly at capacity, limiting further growth of outpatient procedure areas as well as state-of-the-art inpatient surgery; and

WHEREAS, the applicant states that dedicated outpatient facilities in the ACC will (1) provide additional capacity to meet the demand for ambulatory surgery, (2) create a more patient-centric and operationally efficient setting for ambulatory procedures in state-of-the-art operating rooms of dimensions adequate to support the latest technologies, and (3) decompress the operating rooms in the Main Campus, resulting in more capacity for inpatient surgery; and

WHEREAS, additionally, the new facilities will allow the development of adequate preparatory and recovery area capacity in the ACC, free up prep/recovery area capacity at the Main Hospital and thereby increase productivity of the operating rooms and operational efficiencies there; and

WHEREAS, the applicant states that following a detailed analysis of patient loads on the operating rooms in the Main Hospital, it was determined that the proposed ambulatory surgery suite in the ACC should include 12 operating rooms and 36 preparation and recovery rooms which will accommodate the growing amount of outpatient surgery volumes; and

WHEREAS, the applicant states that after accounting for equipment requirements and the movement of patients and staff, a typical operating room measures 24 feet wide by 27 feet long; the operating rooms surround a double-loaded clean corridor containing clean surgical supplies and equipment, and staff support space in a sterile environment as required by code; in addition, flexibility zones to

accommodate changing technological and procedural requirements should also be provided; and

WHEREAS, the applicant states that a typical prep/recovery room measures 11 feet wide by 13 feet long, which is sized to accommodate both the patient and visitors during their stay and it is more efficient to aggregate prep/recovery rooms in multiples of six to optimize staffing ratios and cross coverage while minimizing the distance most patients will have to travel to the operating room; and

WHEREAS, the applicant states that based on industry standards for similar programs, the space requirements for the ambulatory surgery department is 37,200 departmental gross sq. ft., and 48,360 building gross sq. ft., including a 1.3 multiplier for building envelope and essential mechanical systems; and

WHEREAS, as far as the services in the new MH, the applicant states that NYPH will focus on (1) improving the labor and delivery facilities to include 18 all-private labor, delivery and recovery rooms; (2) the neonatal intensive care unit will include 65 bassinets; and (3) obstetric beds and maternal fetal medicine will include 81 obstetric beds, including 15 antepartum and 6 postpartum/flex beds and 60 postpartum beds and all private room configuration is industry standard and supports family-centered care for patients, allowing the newborn to "room-in" with the family; and

WHEREAS, in addition to the programmatic needs, the applicant states that the building design is constrained by the following unique conditions of the site: (1) the L-shaped lot and (2) subsurface conditions; and

WHEREAS, the applicant states that the L-shaped lot containing only 42,677.5 sq. ft. of lot area in total, is not large enough to allow for the ideal 50,000 sq. ft. floor plates; the applicant submitted an analysis demonstrating the impact of the L-configuration on the ideal in the interventional and diagnostic imaging, ambulatory surgery, endoscopy and GI floors, with shortfalls in floor area on these procedural floors ranging between 2,400 and 4,400 sq. ft.; and

WHEREAS, the applicant asserts that in total, between 2,400 to 4,400 sq. ft. of desired program space had to be either relocated or eliminated from the procedural floors to accommodate the L-shaped lot; modifications to the ideal had to be made to accommodate the proposal including (1) elimination of zones of flexibility, (2) relocation of certain support functions, including staff locker rooms and perioperative administrative functions, which had to be moved off of the procedural floors onto a separate support floor, and (3) loss of efficiency due to less direct relationships among prep/recovery rooms and procedure rooms; and

WHEREAS, the applicant asserts that the ideal depth of a typical procedural floor with an operating suite is 115 feet deep by 200 feet long; to achieve a 12-operating-room suite as is desirable, a minimum 200 feet long by 115 feet deep floor plate is needed; and

WHEREAS, the applicant represents that based on industry standards for an operating suite, an average of 3,100 sq. ft. per operating room or 37,200 sq. ft. for 12 operating rooms was determined to be ideal; this figure excludes public areas and elevator/stair cores that account for an additional approximately 30 percent (11,160 sq. ft.), totaling at least 48,360 sq. ft. per floor; and

WHEREAS, as noted, a floor plate of 50,000 sq. ft. is an ideal generic module for a procedural floor and this typical module meets the space needs of each of the surgical, endoscopy and interventional radiology clinical floors, allowing for adjustments to the module that are specific to each specialty and permitting all related support services to be co-located on each procedural floor; and

WHEREAS, the applicant asserts that applying the model to the ideal stacking plan, each procedural floor would be vertically stacked along common mechanical, electrical and plumbing chases, ducts, and pre-operative clean and post-operative soiled service elevators and, accordingly, a 50,000 sq. ft., 200 feet deep by 250 feet wide simple rectangular floor plate, would accommodate all of the programmatic needs; and

WHEREAS, the applicant asserts that the program is packed tightly into the 42,677 square feet L-shaped lot; on procedural floors this has resulted in the loss of flexibility and some program spaces; and

WHEREAS, further, the applicant asserts that the relationships between departments and services, and the industry standards that drive the dimensional and functional requirements in each department, allow little or no room for setbacks that would reduce the floor plates below these essential minimums; the requested modifications of the rear yard, lot coverage, setback and floor area regulations result in large part from the site's L-shaped configuration that reduces the floor plates below acceptable standards, thus creating practical difficulties and unnecessary hardship in strictly complying with the applicable bulk regulations; and

WHEREAS, as to the subsurface conditions, the applicant states that construction is constrained due to: (1) the presence within FEMA flood plain zone C, with groundwater levels ranging from El. 1 to El. 14; (2) the subsurface soil consists of layers of sand fill and natural sand to El. 4 to El.14 along the eastern boundaries of the site; and (3) bedrock was encountered within about 3 feet below the level of the cellar slabs of the existing buildings on the site (El. 21 and El. 27), except at two points along the eastern boundary of the site where bedrock depth was detected at approximately 18 to 25 feet below the existing cellar slabs; and

WHEREAS, the applicant states that as a result of these conditions, its engineer determined that in order to accommodate construction of the cellar and sub-cellar down to El. 0.0, approximately 27 feet of rock will need to be excavated, in addition to deeper excavation at footing locations; additionally, the applicant asserts that the site is uniquely burdened by the adjacent Memorial Sloan-Kettering ("MSK") building, the cellar of which is located at a depth of El. -26, which requires that any foundations that are located adjacent to and within 20 feet of the MSK

building on the western edges of the site must be extended below El. -26, with column loads supported on caisson piles with rock sockets, whereas columns located beyond 20 feet of the property line can be supported on footings bearing on rock sub-grade; and

WHEREAS, further, the applicant asserts that dewatering will be required during construction and to address the presence of groundwater on the exterior foundation walls and beneath the sub-cellar slabs, pressure slabs with a sub-slab waterproofing system or an under-drained slab will be required; foundation walls must also be waterproofed; and

WHEREAS, the applicant represents that there are significant premium costs that lead to almost $19 million for excavation and foundations at the site taking into account the need for dewatering, caissons, and related below-grade conditions; and

WHEREAS, the applicant represents that the sub-surface conditions preclude the ability of constructing any level below a single sub-cellar; and

WHEREAS, the applicant represents that hospitals generally have multiple sub-cellars and such a design would allow NYPH to reduce the degree of waivers by locating additional program space below grade, however the cost associated with additional sub-cellar levels are in the range of $15 million to $27 million per level; and

WHEREAS, the applicant states that the requested modifications of the rear yard, lot coverage, setback, and floor area regulations result in part from the soil, bedrock and groundwater conditions found at the site that strictly limit below-grade construction, thus creating practical difficulties and unnecessary hardship in strictly complying with the applicable bulk regulations; and

WHEREAS, the applicant studied as-of–right alternatives which considered a complying development scheme that proposed to locate three procedural floors (infusion and radiation oncology, interventional and diagnostic imaging, and endoscopy) in sub-cellars three through five but, even if the cost to remove bedrock and provide the structure necessary to withstand water pressure on slabs and foundations at 100 feet below curb level were not prohibitive, sub-grade procedural floors are undesirable for quality of care reasons; and

WHEREAS, the applicant states that due to the specific programmatic requirements of the NYPH, and in particular the needs of the MH, it is not possible to develop the project in conformance with the 8.56 adjusted maximum FAR and in order to accommodate the ACC in above grade floors that provide the necessary adjacencies between procedural floors and support services, allow access to daylight for an enhanced patient experience, and avoid costly excavation for multiple sub-cellars; and

WHEREAS, the applicant states that neither the option to provide significant sub-grade space, due to its cost and failure to provide desirable space, nor the option to construct an as-of-right building without multiple cellar levels would serve NYPH's programmatic needs; in the latter alternative, the MH could not be accommodated at all as approximately 8.07 FAR or 344,412 above grade sq. ft. would be required to be devoted to the ACC, including lobbies and building-wide general services, which would leave only .49 FAR for the MH; and

WHEREAS, consequently, the applicant states that in order to facilitate development of the 5.26 FAR, 224,389 sq. ft. MH, a variance to allow 13.33 FAR, or an increase over the allowable of 4.77 FAR is requested; and

WHEREAS, as to lot coverage, the applicant states that due to the requirements of the procedural floors in the ACC, a departmental gross floor area of approximately 33,000 sq. ft. is necessary; applying a 1.3 multiplier to the departmental gross to allow for vertical and horizontal circulation, mechanical and building envelope, a building gross floor area equal to approximately the area of the site is the minimum workable floor plate for the proposal; thus, in order to facilitate the development, a variance to allow 100 percent lot coverage is requested; and

WHEREAS, as to required setbacks and rear yards, the applicant states that due to the programmatic requirements of NYPH, and in particular the requirements of the procedural floors in the ACC, a building gross floor area equal to approximately the area of the site is the minimum workable floor plate for the proposal; thus, in order to facilitate development of the Building, variances to allow penetrations of the front and rear setback requirements are requested; and

WHEREAS, the applicant asserts that the requested parking excess of 38 spaces is required to help satisfy the demand; and

WHEREAS, the Board acknowledges that NYPH, 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 site, when considered in conjunction with the programmatic needs of NYPH, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since NYPH 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 proposed building would be in keeping with the character of the surrounding neighborhood, which is defined by numerous medical and other institutional uses; and

WHEREAS, the applicant states that the area bounded by the East River, First Avenue, East 71st Street, and East 65th Street is almost entirely institutional in character, home to medical, educational and research institutions of world-class quality and renown and located on large superblock campuses; and

WHEREAS, as to the FAR context, the applicant notes that nearby there is a 40-story 16.94 FAR residential tower located at 400 East 70th Street on the corner of First Avenue and East 70th Street, and the 15-story 11.4 FAR WCMC Weill Greenberg building; and

WHEREAS, the applicant cites to other buildings in the vicinity including the Belfer Biomedical Research Building located to the north on East 69th Street, approved pursuant to a Board approval (BSA Cal. No. 170-08-BZ), with 12.71 FAR and six sub-cellars, in the R8 zoning district, and the adjacent MSK Zuckerman Research Center, which was the subject of a zoning map amendment that changed the zoning district from R8 to R9 and a City Planning special permit to modify height and setback requirements as well as a variance (BSA Cal No. 130-01 BZ) to facilitate construction of an 11.24 FAR, 23-story building; and

WHEREAS, the applicant provided a diagram of the building massing in the area that reflects that the proposed height at 341.46 feet above site average mean curb level to the top of the parapet and at elevation 375 feet above Manhattan Datum, is within the range of height and massing of the buildings surrounding it; and

WHEREAS, specifically, the MSK Zuckerman Research Center located to the immediate south and west of the site and sharing property lines with it, rises to elevation 443.09 feet above Manhattan Datum; the Belfer Research Building across from the site on East 69th Street rises to elevation 335.50; the Weill Greenberg Center rises along York Avenue to elevation 267.66; the Main Campus buildings at the east side of York Avenue, rise to 26 stories and elevation 395.50; the Helmsley Medical Building rises on York Avenue at 70th Street to 39 floors and elevation 423.91; and the Payson House across the street rises to elevation 332; and

WHEREAS, the applicant states that with respect to the East 68th Street, East 69th Street, and York Avenue street walls, the as-of-right building would set back 12 feet from York Avenue and 15 feet from East 68th and 69th Streets, disrupting the street wall continuity established on both sides of the streets and on York Avenue to comply with the alternate setback requirements of ZR § 24-53; and

WHEREAS, in contrast, the applicant asserts that the Building will conform well to the neighborhood institutional context of street walls that rise without setback and to buildings of similar massing and height as the proposed street wall condition, which rises to the full height of the building without setback, is more similar in character to the existing conditions in the area: the Memorial Hospital building to the south on York Avenue rises to 19 stories and approximately 275 feet without setback; the MSK Zuckerman Research Center rises without setback on East 68th and 69th Streets to 443 feet; the Belfer Research Building rises without setback on East 69th Street to approximately 335 feet; and Weill Greenberg Center rises without setback at the corner of East 70th Street and York Avenue to 267 feet; and

WHEREAS, the applicant notes that the area's residential zoning does not reflect the actual built conditions of so many educational and health-related institutions and, consequently, the vast majority of institutional buildings developed on these sites have relied on discretionary approvals from the Board or the City Planning Commission ("CPC") in order to meet their programmatic needs; such approvals have in included relief for lot coverage, rear yard, height and setback and floor area regulations; and

WHEREAS, in addition to NYPH's Main Campus that spans from the east side of York Avenue to East 68th and East 71st Streets, Weill Cornell Medical School, the Hospital for Special Surgery, Memorial Sloan Kettering and Rockefeller University occupy nearly every lot with institutional buildings; and

WHEREAS, specifically, the applicant notes that the superblock east of York Avenue and bounded by East 68th Street to the south and East 71st Street to the north includes the main hospital campus for NYPH and a portion of the WCMC; at 1320 York Avenue at 70th Street, the Helmsley Medical Tower provides guest facilities for patients and their families, apartments for staff, and offices; east of the Helmsley Medical Tower and the NYPH Annex building is the Hospital for Special Surgery; west of the Helmsley Medical Tower across York Avenue is the Stich Radiation Oncology Center; the WCMC Weill Greenberg Center at 1305 York Avenue at East 70th Street; to the north of the site on East 69th Street, WCMC is constructing the Belfer Research Building; Memorial Hospital is located directly south of the site across East 68th Street; Memorial Hospital and other buildings that are part of the MSK Cancer Center occupy the entire block bounded by East 67th and 68th Streets and York and First Avenues; and at 415-417 East 68th Street is MSK's Zuckerman Research Center; and

WHEREAS, the applicant asserts that it is critical that institutions need to be in close proximity to each other to enable collaborative efforts leading to development of cutting-edge medical technologies, education, clinical support, and patient care and that such collaboration and advancement also demands that these institutions be able to enlarge and adapt their facilities to continue to meet changing technological and care models, even in the face of limited availability of development sites within these geographical boundaries; and

WHEREAS, with respect to lot coverage and rear yard

requirements, in the R10 portion of the lot, a residential building designed according to the Quality Housing regulations would be permitted to occupy 100 percent of the corner lot; the adjacent seven-story wing of the Zuckerman Research Center on East 68th Street contains an auditorium and laboratories located along the rear of the building and set back 30 feet from the rear property line and no residential uses, community facility uses containing sleeping rooms, or hospital bedrooms are located in this portion of the Zuckerman Research Center; and

WHEREAS, accordingly, the applicant asserts that the proposal will be consistent with rear yard conditions on the block and will not deprive residential uses or community facilities with sleeping accommodations of required light and air; and

WHEREAS, further, the only property immediately adjacent to the site is the Zuckerman Research Center to the west and south; all other properties are located across East 68th Street, East 69th Street, or York Avenue; and

WHEREAS, the applicant notes that the proposed height is permitted as-of-right, and asserts that the proposed increase in FAR to 13.33 would have no effect on the use and development of the Research Center and the 38 car increase in the number of permitted parking spaces on the site would be irrelevant to the use and development of the Research Center; and

WHEREAS, the applicant concludes that the building envelope conforms to the size and massing of the other buildings within this institutional geographical area, NYPH's proposal will develop the site with an institutional project that makes the best use of the Site's constraints, will supply its patients and the NYPH community with essential maternity hospital, ambulatory care services, and translational medicine environment, and will facilitate improvement of outdated facilities on the Main Campus; 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 NYPH 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, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow NYPH 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. 13BSA065M, dated June 10, 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, and air quality impacts; and

WHEREAS, DEP reviewed and accepted the April 2013 Remedial Action Work Plan and site-specific 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 May 2013 air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts based on the conditions below; and

WHEREAS, the noise monitoring results in the EAS determined that window-wall noise attenuation and an alternate means of ventilation (central air conditioning) should be provided in the proposed building in order to achieve an interior noise level of 50 dBA or lower in the ACC and 45 dBA or lower in the MH; 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 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 R8, R9, and R10 zoning districts, the construction of a 15-story ambulatory care center and maternity hospital for New York Presbyterian Hospital-Weill Cornell Medical Center that does not comply with zoning

regulations for floor area ratio, lot coverage, front setback, rear setback, rear yard, rear yard equivalent, and parking, contrary to ZR §§ 24-11, 24-36, 24-382, 24-522, and 13-133, *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 5, 2013" – twenty-six (26) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building will be in accordance with the approved plans and be limited to 568,801 sq. ft. of floor area (13.33 FAR); a maximum height of 341.46 feet; and 224 parking space, as reflected on the BSA-approved plans;

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

THAT the sound attenuation measures in the proposed building will be maintained as reflected on the BSA-approved plans;

THAT the boiler exhaust stack be located 10 feet above the proposed rooftop on the northeast area of the building;

THAT the boilers utilize low NOx burners of 30 ppm or less;

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 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 11, 2013.

56-13-BZ
CEQR #13-BSA-091M

APPLICANT – Francis R. Angelino, Esq., for 200 East Tenants Corporation, owner; In-Form Fitness, LLC, lessee.
SUBJECT – Application February 4, 2013 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*InForm Fitness*) within a portion of an existing building. C6-6(MID) C5-2 zoning district.
PREMISES AFFECTED – 201 East 56th Street aka 935 3rd Avenue, East 56th Street, Third Avenue and East 57th Street, Block 1303, Lot 4, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 23, 2013, acting on Department of Buildings Application No. 120956439, reads in pertinent part:

> Proposed change of use to Physical Culture Establishment is not permitted as-of-right in C6-6, C5-2, C1-9 zoning district . . . contrary to Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C6-6 zoning district, partially within a C5-2 zoning district, and partially within a C1-9 zoning district, the legalization of an existing physical culture establishment ("PCE") in a portion of the second story of a 19-story mixed commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 14, 2013, after due notice by publication in *The City Record*, and then to decision on June 11, 2013; and

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

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

WHEREAS, the subject site spans the full length of the east side of Third Avenue between East 56th Street and East 57th Street, partially within a C6-6 zoning district, partially within a C5-2 zoning district, and partially within a C1-9 zoning district; and

WHEREAS, the site has 200.83 feet of frontage along Third Avenue, 160 feet of frontage along East 56th Street, 135 feet of frontage along East 57th Street, and a total lot area of approximately 29,675 sq. ft.; and

WHEREAS, the site is occupied by a 19-story mixed commercial and residential building; and

WHEREAS, the PCE occupies 3,585 sq. ft. of floor area (FAR 0.12) on the second story; and

WHEREAS, the PCE is operated as InForm Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant states that the PCE has been in operation since August 1999; and

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, from 1:00 p.m. to 5:00 p.m.; 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA091M, dated January 28, 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 partially within a C6-6 zoning district, partially within a C5-2 zoning district, and partially within a C1-9 zoning district, the legalization of an existing physical culture establishment ("PCE") in a portion of the second story of a 19-story mixed commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 30, 2013" – One (1) sheet and "Received June 6, 2013" – Two (2) sheets and *on further condition*:

THAT the term of this grant will expire on June 11, 2023;

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 all massages must be performed by New York State licensed massage therapists;

THAT the hours of operation will not exceed Monday through Friday, from 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, from 1:00 p.m. to 5:00 p.m.;

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

Adopted by the Board of Standards and Appeals, June 11, 2013.

72-13-BZ
CEQR #13-BSA-098Q
APPLICANT – Sheldon Lobel, P.C., for Western Beef Properties, Inc., owner; Euphora-Citi, LLC, lessee.
SUBJECT – Application February 14, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Euphora Spa*) within the existing building. M1-1/C4-2A zoning district.
PREMISES AFFECTED – 38-15 Northern Boulevard, north side of Northern Boulevard between 38th Street and Steinway Street, Block 665, Lot 5 and 7, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 15, 2013, acting on Department of Buildings Application No. 420781773, reads in pertinent part:

> Physical Culture Establishment use is not permitted in an M1-1 zoning district per ZR Sec. 42-10 and therefore requires a ZR Sec. 73-36 special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within an M1-1 zoning district and partially within a C4-2A zoning district, the legalization of an existing physical culture establishment ("PCE") on a portion of the ground floor and mezzanine levels of a one-story commercial and manufacturing building, contrary to ZR §§ 32-10 and 42-10; and

WHEREAS, a public hearing was held on this application on May 14, 2013, after due notice by publication in *The City Record*, and then to decision on June 11, 2013; and

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

WHEREAS, Community Board 1, Queens, recommended disapproval of the application because the mezzanine is inaccessible to persons with certain physical disabilities; and

WHEREAS, the subject site is a zoning lot that comprises Tax Lots 5 and 7; Lot 5 has 75.37 feet of frontage along Northern Boulevard and 75 feet of frontage along 38th Street; Lot 7 has 63.08 feet of frontage along Northern Boulevard, 57.33 feet of frontage along Steinway Street, and 39.73 feet of frontage along 38th Street; and

WHEREAS, the site has a total lot area of 22,500 sq. ft.; Lot 5 is occupied by a one-story commercial and manufacturing building with 10,825 sq. ft. of floor area (0.48 FAR); Lot 7 is an open parking lot for the subject site and the adjacent supermarket; and

WHEREAS, the PCE occupies approximately 2,475 sq. ft. of floor area on the ground floor and 3,245 sq. ft. on the mezzanine, for a total PCE floor area of approximately 5,720 sq. ft. (0.25 FAR); the applicant notes that a portion of the ground floor is also used as an automotive laundry and maintenance facility; and

WHEREAS, the PCE is operated as Euphora Health Medi-Spa and Salon ("Euphora"); the applicant states that Euphora has been in operation since June 2010; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant notes that the Board previously granted a special permit for the operation of a PCE at the site on July 16, 1996, under BSA Cal. No. 108-95-BZ; the term of that grant was for ten years and expired on July 16, 2006; and

WHEREAS, the hours of operation for the PCE are Tuesday through Saturday, from 9:00 a.m. to 8:00 p.m., and closed Sunday and Monday; 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 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 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. 13BSA098Q, dated February 13, 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 partially within an M1-1 zoning district and partially within a C4-2A zoning district, the legalization of an existing physical culture establishment ("PCE") on a portion of the ground floor and mezzanine levels of a one-story commercial and manufacturing 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 May 31, 2013" – Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on June 11, 2023;

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 hours of operation will not exceed Tuesday through Saturday, from 9:00 a.m. to 8:00 p.m., and closed Sunday and Monday;

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

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

THAT Local Law 58/87 compliance, which may include a waiver from the Mayor's Office for People with Disabilities, 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 the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 11, 2013.

59-12-BZ/60-12-A
APPLICANT – Mitchell S. Ross, Esq., for Ian Schindler, owner.
SUBJECT – Application March 15, 2012 – Variance (§72-21) to allow the enlargement of an existing home, contrary to front yard (§23-45) regulations.
Proposed construction is also located within a mapped but unbuilt portion of a street, contrary to General City Law Section 35. R1-2 zoning district.
PREMISES AFFECTED – 240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue, Block 8103, Lot 25, Borough of Queens.
COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for deferred decision.

113-12-BZ
APPLICANT – Mitchell S. Ross, Esq., for St. Paul CongHa-Sang R.C. Church, owners.
SUBJECT – Application April 23, 2012 – Variance (§72-21) to permit a proposed church (*St. Paul's Church*), contrary to front wall height (§§24-521 & 24-51). R2A zoning district.
PREMISES AFFECTED – 32-05 Parsons Boulevard, northeast corner of Parsons Boulevard and 32nd Avenue, Block 4789, Lot 14, Borough of Queens.
COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

242-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Toldos Yehuda*), contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.
PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, Borough of Brooklyn.
COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for deferred decision.

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 September 10, 2013, at 10 A.M., for continued hearing.

282-12-BZ
APPLICANT – Eric Palatnik, P.C., for Izhak Lati, owner.
SUBJECT – Application September 24, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard requirements (§23-461), and a variance (§72-21), contrary to front yard requirements (§23-45). R5 zoning district.
PREMISES AFFECTED – 1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, Lot 48, Borough of Brooklyn.
COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to August 13, 2013, at 10 A.M., for continued hearing.

54-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Ricky Novick, owner.
SUBJECT – Application January 31, 2013 – Variance (§72-21) for the enlargement of existing single-family residence, contrary to lot coverage and open space (§23-141), minimum required side yards (§113-543), and side yards (§23-461a) regulations. R5/OPSD zoning district.
PREMISES AFFECTED – 1338 East 5th Street, western side of East 5th Street between Avenue L and Avenue M, Block 6540, Lot 23, 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 July 16, 2013, at 10 A.M., for decision, hearing closed.

91-13-BZ
APPLICANT – Eric Palatnik, P.C., for ELAD LLC, owner; Spa Castle Premier 57, Inc., lessee.
SUBJECT – Application March 19, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Spa Castle*) to be located in a 57-story mixed use building. C5-3,C5-2.5(MiD) zoning district.
PREMISES AFFECTED – 115 East 57th Street, north side, between Park and Lexington Avenues, Block 1312, Lot 7501, 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 July 16, 2013, at 10 A.M., for decision, hearing closed.

104-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Gates Avenue Properties, LLC, owner; Blink Gates, Inc., lessee.
SUBJECT – Application April 16, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink*) within a portion of an existing five-story commercial building. C2-4 (R6A) zoning district.
PREMISES AFFECTED – 1002 Gates Avenue, 62' east of intersection of Ralph Avenue and Gates Avenue, Block 1480, Lot 10, 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 July 16, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on May 21 2013, under Calendar No. 63-12-BZ and printed in Volume 98, Bulletin No. 21, is hereby corrected to read as follows:

63-12-BZ
CEQR #12-BSA-095K
APPLICANT – Sheldon Lobel, P.C., for Khal Bnei Avrohom Yaakov Building Fund Inc., owner.
SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.
PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27th Street and Avenue N. Block 7663, Lot 6. 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated February 17, 2012, acting on Department of Buildings Application No. 320373449 reads, in pertinent part:

1. Proposed Floor Area Ratio(FAR) exceeds that permitted by ZR Section 24-11.
2. Proposed lot coverage is contrary to ZR Section 24-11.
3. Proposed minimum required front yards is contrary to ZR Section 24-34.
4. Proposed minimum required side yards are contrary to ZR Section 24-35(a).
5. Proposed maximum height of front wall and required front setback is contrary to ZR Section 24-521.
6. Required parking is not being provided; contrary to ZR Section 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R2 zoning district, the construction of a two-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for floor area ratio, lot coverage, front yards, side yards, height, setback, and parking, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521, and 25-31; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, with continued hearings on January 8, 2013, February 26, 2013, and April 9, 2013, and then to decision on May 21, 2013; 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 14, Brooklyn, recommends approval of the application on condition that the simcha hall use be reserved for use only by the members of the Synagogue; and

WHEREAS, the adjacent property owner on Avenue N provided a letter in support of the application; and

WHEREAS, the applicant submitted a petition signed by 376 community members in support of the application; and

WHEREAS, certain members of the community, represented by counsel, provided written and oral testimony in opposition to the application (the "Opposition"); the Opposition's primary concerns are that (1) the applicant has not reliably described the program and the congregant body; (2) the applicant has not established the need for the waivers; (3) the bulk of the building is not compatible with the surrounding area; (4) no parking is being provided (19 parking spaces are required); (5) the environmental analysis is flawed; and (6) any benefit to the community is outweighed by the detriment to the community;

WHEREAS, the Opposition submitted a petition signed by 100 community members opposed to the building proposal and a note saying that more signators were available; and

WHEREAS, this application is being brought on behalf of Congregation Khal Bnei Avrohom Yaakov (the "Synagogue"); and

WHEREAS, the site is located on the northeast corner of East 27th Street and Avenue N in an R2 zoning district with 60 feet of frontage along East 27th Street and 100 feet of frontage along Avenue N; and

WHEREAS, the subject site has a lot area of 6,000 sq. ft. and is currently occupied by a residential building with 3,623 sq. ft. of floor area (0.6 FAR); and

WHEREAS, the applicant initially proposed to construct a new building with the following parameters: a floor area of 9,000 sq. ft. (1.5 FAR) (a maximum of 0.5 FAR is permitted or 1.0 FAR by City Planning special permit under ZR § 74-901); a lot coverage of 75 percent (a maximum lot coverage of 60 percent is permitted); front yards with depths of 10'-0" on East 27th Street and Avenue N (front yards with minimum depths of 15'-0" are required); and no side yards (side yards with minimum widths of 8'-0" and 9'-0" are required); and

WHEREAS, at the Board's direction, the applicant revised the plans to provide side yards along the northern and eastern lot lines; the applicant ultimately reduced the width of the building along Avenue N from 90 feet to 85 feet; and included a side yard with a width of 2'-0" along the northern lot line and a side yard along the eastern lot line with a width of 5'-0"; the applicant reduced the front yard along the southern property line from a depth of 10'-0" to 8'-0"; and

WHEREAS, the addition of the yards resulted in a reduced floor area to 8,500 sq. ft. (1.41 FAR); a reduced lot

coverage to 71 percent; and a reduced parking requirement from 22 spaces to 19 spaces; and

WHEREAS, the applicant proposes the following additional non-complying conditions: a perimeter wall height of 29 feet (a maximum wall height of 25 feet is permitted); no setback of the street wall (a front setback within the 1:1 sky exposure plane are required); and no parking spaces (a minimum of 19 parking spaces are required); and

WHEREAS, the proposal provides for the following uses: (1) a simcha hall, restrooms, lobbies, storage, coat rooms, and a pantry at the cellar level; (2) men's sanctuary, men's lobby, a washing station, a coffee room, and a coat room at the first story; and (3) women's sanctuary, lobbies, conference room, rabbi's office, and children's library at the second story; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate a congregation with a desire to expand and currently consists of approximately 250 adults and 280 children; (2) to provide separate worship and study spaces for male and female congregants; (3) to provide the necessary space for offering weekly classes; (4) to provide a children's library; and (5) to satisfy the religious requirement that members of the congregation be within walking distance of the residences of the congregants; and

WHEREAS, the applicant also seeks to provide community and religious lectures on weekends, expand its educational programming for children, and offer Talmud classes twice daily; and

WHEREAS, the applicant states that for the past five years, it has leased a synagogue building located at 1249 East 18th Street, which accommodates only approximately 110 people; it has approximately 1,600 sq. ft. of floor area; and

WHEREAS, the applicant states that the leased building is located approximately 0.7 miles from the proposed synagogue location; and

WHEREAS, the applicant states that the Synagogue has been unable to establish a permanent synagogue in the past five years, having looked at many sites in its search to find a site of the appropriate size and central location to suit its programmatic needs; the site is centrally located within the neighborhood of the Synagogue, allowing congregants to walk to services, as required for religious observance; and

WHEREAS, the applicant initially determined that it requires approximately 9,000 sq. ft. of floor area and an additional 6,000 sq. ft. in the cellar but, ultimately, through redesign, was able to reduce the number to 8,500 sq. ft. of floor area; and

WHEREAS, as to the need for a floor area waiver, the applicant notes that a conforming development would be limited to 3,000 sq. ft. of floor area, and 6,000 sq. ft. by City Planning Commission special permit, both significantly less floor area than needed to fulfill the programmatic need; and

WHEREAS, specifically, the applicant notes that in a conforming development, the men's sanctuary would only accommodate 52 people and the women's sanctuary would only accommodate 48 people, whereas the proposed men's sanctuary would accommodate 187 people and the women's would accommodate 141 people; (the original proposal would have accommodated 216 people in the men's sanctuary and 153 people in the women's sanctuary); and

WHEREAS, the applicant asserts that a conforming development would eliminate the main women's lobby and children's library on the second floor; and that there would not be sufficient space to accommodate Talmud classes and other lectures; and

WHEREAS, as to the need for waivers to the front and side yards, and lot coverage, the applicant states a conforming development would result in a floor plate of 1,500 sq. ft. (50 feet by 30 feet), as opposed to the 4,250 sq. ft. floor plate proposed, and therefore would be insufficient to satisfy the Synagogue's programmatic needs to accommodate its congregation; and **COMMUNITY BOARD #**

WHEREAS, the applicant states that the proposed building will accommodate more congregants, which is essential considering the current number of congregants who attend the synagogue on weekends and holidays and the anticipated increase in membership; and

WHEREAS, as to the need for height and setback waivers, the applicant represents that the proposal will provide (1) the double-height ceiling of the main sanctuary which is necessary to create a space for worship and respect and an adequate ceiling height for the second floor women's balcony; and (2) other required uses on the second floor; and

WHEREAS, the applicant states that the parking waiver is necessary because providing the required 19 parking spaces would render the site wholly inadequate to support the proposed building and such parking spaces are not necessary because congregants must live within walking distance of their synagogue and must walk to the synagogue on the Sabbath and on high holidays; and

WHEREAS, the applicant states that 57 percent of the congregation lives within a three-quarter-mile radius of the site, which is less than the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship and waiver the parking requirement, but still a significant portion of the congregation; 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 studying and meeting, and a children's library and other lecture space; and

WHEREAS, the Opposition raised several concerns regarding the applicants stated programmatic need including (1) justification for the floor area increase based on the number of congregants; and (2) the need for the height and setback waiver; and

WHEREAS, the Opposition raised a concern that the request for floor area is not supported by the actual number of congregants who attend the Synagogue; and

WHEREAS, the Opposition questioned the veracity of the applicant's congregant numbers, stating that the applicant conflates the terms "congregants" and "members," which is problematic because the synagogue may have many members but fewer regular congregants; and

WHEREAS, the applicant produced a congregant list for the record which the Opposition contested; and

WHEREAS, the Board notes that the Opposition's concerns about the congregant list are unprecedented in the religious use context; the Board understands that congregant numbers may fluctuate and may not always correspond with the membership lists, but that Board sees no basis to reject the applicant's list because the Opposition has questions about whether a few of the noted people actually attend another synagogue; further, the Board accepts that the congregation is growing and that the Synagogue seeks to accommodate such growth; and

WHEREAS, as to height, the Opposition asserts that there is no basis for the requested height for the first floor (13'-4" in the area below the women's balcony and greater than 27'-0" in the double-height portion) as it is not required by religious law nor does it improve acoustics; and

WHEREAS, the Board notes that it has approved many applications from religious institutions seeking additional height for sanctuary space and accepts the applicant's representation that the height is necessary for its meaningful sacred space and to accommodate the second floor balcony; 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, 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 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, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed use is permitted in the subject R2 zoning district; and

WHEREAS, as to bulk, the applicant represents that the proposed FAR and all other bulk regulations are consistent with the character of the neighborhood; and

WHEREAS, in support of its assertions, the applicant provided a study of existing FAR's of larger buildings in the area, which reflects that there are numerous buildings of similar bulk to that proposed; and

WHEREAS, specifically, the applicant identified 15 homes within 600 feet of the subject site that have 1.25 FAR or greater (the ranges is from 1.25 to 3.17 FAR); and

WHEREAS, the applicant states that there are a number of educational and religious institutions in the area with comparable bulk, including four community facilities in the area with FAR ranging from 1.18 to 8.52; and

WHEREAS, the Board notes that the proposed 1.4 FAR falls within the range of FAR's of the larger buildings; and

WHEREAS, the applicant states that the site is currently occupied by a home that exceeds the maximum permitted floor area, has a noncomplying front yard along East 27th Street, a minimal side yard along its northern lot line, and its garage is built nearly to the eastern lot line; thus, the proposed yards are comparable to the existing and provide more space along the portion of the side lot line occupied by the garage; and

WHEREAS, the applicant notes that the proposed side yard with a width of 2'-0" along the northern lot line allows for a distance of 10'-0" from the adjacent home; and similarly, the proposed side yard with a width of 5'-0" along the eastern lot line allows for a distance of 8'-0" from the adjacent home; and

WHEREAS, at hearing, the Board directed the applicant (1) to analyze alternatives that would provide greater side yards than initially proposed and (2) to provide information about the yard context in the area; and

WHEREAS, in response, the applicant increased the side yards from no side yards in their initial application to widths of two and five feet; the front yard was reduced to eight feet along Avenue N and remained at ten feet along East 27th Street; and

WHEREAS, the applicant submitted a study that identified a significant number of sites in the surrounding area that have front yards with depths of less than eight feet and provide less than ten feet of open area between buildings on adjacent lots; and

WHEREAS, the applicant's study reflects that the three adjacent homes to the east on Avenue N have front yards with depths of less than eight feet and provide less than ten feet of open area between buildings on adjacent lots, a comparable condition to the proposed; and

WHEREAS, the opposition raised concerns regarding the accuracy and reliability of the data used for bulk and yard study; and

WHEREAS, with regard to the Opposition's questions about the reliability of the applicant's bulk and yards analyses, the Board accepts that the applicant relied on publicly available building and land use data and that any inaccurate bulk conditions were not intentional; and

WHEREAS, the Board concludes that even if the sites with disputed data were eliminated from the analysis, the applicant has still established that the Synagogue is

compatible with the surrounding context; and

WHEREAS, as noted, during the hearing process, the Board directed the applicant to provide side yards along the northern and eastern lot lines, even though the adjacent neighbor to the east supported the proposal prior to the inclusion of the side yard with a width of 5'-0" on its shared lot line; and

WHEREAS, as to height, the applicant provided a streetscape which reflects that the adjacent row of homes along Avenue N all have heights of 35'-0" as do the homes on East 27th Street; the adjacent home on East 27th Street has a total height of 37'-0"; and

WHEREAS, the applicant represents that the height in excess of 27 feet for portions of the first floor is required in order to promote the metaphysical and physical significance of Judaism in that the ceiling metaphorically reaches to Heaven and gives importance to the space while providing acoustical advantages befitting a place of worship; and

WHEREAS, the applicant asserts that high ceilings have historically been an important element of synagogue architecture; and

WHEREAS, the applicant states that the conforming development would reduce the height of the building and the floor area devoted to sanctuary space; and

WHEREAS, the Board notes that the proposed total height of the building of 35'-0" does not require a waiver and is contemplated by the zoning district regulations; and

WHEREAS, the Board notes that four commissioners visited the site on repeated occasions and personally observed and confirmed that the proposal is compatible with the existing context of the surrounding neighborhood; and

WHEREAS, the applicant states that the parking waiver requested will not result in a material increase in street parking in the surrounding area due to the close proximity to the congregants' homes, which allows congregants to walk to the site in observance of religious law; and

WHEREAS, further, as noted above, the applicant represents that 57 percent (fewer than the 75 percent minimum threshold), of congregants live within a three-quarter-mile radius of the site, thus do not meet the minimum threshold for the parking waiver, but are still within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the applicant performed a parking study which reflects that during the times of day when attendance is greatest and most area residents are at home, there were 369 vacant spaces on one day and 342 and 325 vacant spaces on two other days when the study was repeated; and

WHEREAS, accordingly, the applicant concludes that there is ample curbside parking to accommodate any demand; and

WHEREAS, the applicant notes that the study was conducted within an approximately one-quarter-mile radius of the subject site, consistent with CEQR Technical Manual methodology; and

WHEREAS, the applicant also notes that the trip generation falls below the CEQR Technical Manual threshold size, but, still, it assessed the trip generation based on occupancy and found it would not exceed threshold levels of vehicular traffic generation, even at its peak attendance level of 350 people during the high holidays; and

WHEREAS, the Opposition raises supplemental concerns about the sufficiency of the applicant's environmental review including that the conclusion that no potential for emissions exists is based on the assumption that the heating flue stacks will be more than 50 feet from the nearest building; and

WHEREAS, in response to the Opposition's assertions about the environmental review being insufficient, the applicant supplemented the record with an Environmental Assessment Statement (EAS) Full Form, including the following narratives: (1) Introduction, Land Use, Zoning, and Public Policy; (2) Urban Design and Visual Resources; (3) Transportation; and (4) Air Quality; and clearly identified the location of the heating flue stacks on the roof and their distance from the lot lines; and

WHEREAS, as to the Opposition's concerns about the environmental review, the Board has carefully considered both parties' environmental analyses, including the areas of traffic/parking, open space, air quality, and construction impacts, and agrees that the applicant has correctly applied the CEQR methodology to conclude that the incremental effect of the proposal versus the no build does not trigger any of the CEQR threshold requirements; and

WHEREAS, the Board notes that the required distance of the heating ducts from adjacent buildings in order to screen the HVAC system is 30 feet, rather than the 50 feet the Opposition alleges and the applicant proposes to locate its rooftop flues more than 30 feet from adjacent buildings; and

WHEREAS, the applicant submitted responses adequately addressing the concerns raised by the opposition regarding the environmental review; and

WHEREAS, the Opposition asserts that the Board must balance the interests of the community and the Synagogue and deny an application when "the (presumed) beneficial effect may be rebutted with evidence of a significant impact on traffic congestion, property values, municipal services and the like" Cornell Univ. v. Bagnardi, 68 N.Y.2d 583, (1986); and

WHEREAS, the Opposition asserts that the Board cannot grant a variance until it is assured that the proposed use is not contrary to public health, safety, or welfare; and

WHEREAS, the Opposition asserts that in order to appropriately analyze the application, the applicant must define the project fully and accurately including its programmatic needs, the number of people it will service, the hours and days of operation and to analyze each through the application of various strictly defined methodologies prescribed in the CEQR manuals; and

WHEREAS, the Opposition also asserts that the traffic study is flawed and that the impact on parking and traffic will be significant to the surrounding area to the extent of diminishing property values; and

WHEREAS, the applicant responded that the Synagogue will have a beneficial impact on the community surrounding the site and will provide a place of worship for many local residents; the applicant asserts that the Synagogue's beneficial effect has not been rebutted with any "evidence of a significant impact on traffic congestion, property values, municipal service, [or] the like," citing to Cornell; and

WHEREAS, the applicant submitted a petition signed by nearly 400 community members in support of the application; and

WHEREAS, further, in response to the Opposition's concerns about the operation of the Synagogue, the applicant revised its application to note that (1) there will be no onsite catering; (2) the simcha hall will be used primarily for Kiddush ceremonies following Sabbath prayer services; and (3) there will be no simultaneous use of the simcha hall and worship areas anytime there is a near-capacity crowd at the synagogue, but they may be used together when neither is at near capacity; and

WHEREAS, the Board agrees with the applicant that it has submitted (1) a full and complete description of the proposal including programmatic needs, number of people it will serve, and hours and days of operation; and (2) the Opposition has failed to provide any evidence of a significant negative impact caused by the proposal as required by the New York State courts to deny a variance for a religious institution; and

WHEREAS, the Board has reviewed the Opposition's concerns and notes the following: (1) the requirements of ZR § 72-21(a) are met by the demonstration of legitimate programmatic needs and the limitations of the site in meeting those goals; and (2) the case law does not recognize concerns about potential traffic and disruption of residential character of the neighborhood as basis for rejecting a variance request; 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 applicant analyzed a lesser variance scenario with a side yard with a width of 5'-0" along the eastern lot line and a side yard with a width of 5'-0" along the northern lot line and asserts that a lesser variance would compromise the programmatic needs of the Synagogue; and

WHEREAS, specifically, a lesser variance scenario that could only accommodate 175 men, as opposed to the 216 in the initial proposal (187 in the current proposal) and 137 women, as opposed to the 153 in the initial proposal (141 in the current proposal) for the women's sanctuary would be insufficient; and

WHEREAS, the applicant asserts that the addition of the proposed yards is the most possible without further limiting its ability to accommodate its congregation; and

WHEREAS, additionally, the applicant asserts that many of the rooms on the first and second floors, including the rabbi's office, children's library, and conference room would be greatly reduced under the lesser variance scenario; 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. 12BSA095K, dated March 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 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, topermit, on a site in an R2 zoning district, the construction of a two-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for floor area ratio, lot coverage, front yards, side yards, height, setback, and parking, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521; *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 May 15, 2013" – Fourteen (14) sheets and "Received May 17, 2013" – One (1) sheet; and *on further condition*:

THAT the building parameters will be: three stories; a maximum floor area of 8,500 sq. ft. (1.41 FAR); front yards

with depths of 8'-0" on the southern lot line and 10'-0" on the western lot line; side yards with widths of 2'-0" on the northern lot line and 5'-0" on the eastern lot line; a maximum lot coverage of 71 percent; a maximum building height of 35'-0"; and a maximum street wall height of 29'-0", as illustrated 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) and any classes will be accessory to this use;

THAT the use of the cellar kitchen will be limited to warming;

THAT no commercial catering will take place onsite;

THAT there will be no simultaneous use of the simcha hall and worship areas anytime there is more than half capacity in either space;

THAT the site, during construction and under regular operation, will be maintained safe and free of debris;

THAT garbage will be stored inside the building except when in the designated area for pick-up;

THAT any and all lighting will be directed downward and away from adjacent residences;

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

THAT rooftop mechanicals will comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings and that the flue stacks be located at least 30 feet from adjacent buildings, 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 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, May 21, 2013.

***The resolution has been amended. Corrected in Bulletin No. 24, Vol. 98, dated June 19, 2013.**

***CORRECTION**

This resolution adopted on May 21 2013, under Calendar No. 10-13-BZ and printed in Volume 98, Bulletin No. 21, is hereby corrected to read as follows:

10-13-BZ
CEQR #13-BSA-083M

APPLICANT – Friedman & Gotbaum LLP, by Shelly Friedman, Esq., for Stephen Gaynor School and Cocodrilo Development Corporation, owners.

SUBJECT – Application January 18, 2013 – Variance (§72-21) to permit an enlargement to an existing school (*Stephen Gaynor School*), contrary to lot coverage (§24-11), rear yard (§24-36/33-26), and height and setback (§24-522) regulations. C1-9 & R7-2 zoning districts.

PREMISES AFFECTED – 175 West 89th Street (South Building) and 148 West 90th Street (North Building), between West 89th Street and West 90th Street, 80ft easterly from the corner formed by the intersection of the northerly side of West 89th Street and the easterly side of Amsterdam Avenue, Block 1220, Lots 5 and 7506, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 21, 2012, acting on Department of Buildings Application No. 120406131, reads in pertinent part:

1. ZR 24-11 Proposed bridge connection at the 4th story level in R7-2 district does not qualify as a permitted obstruction pursuant to ZR 24-33 and therefore increases the degree of non-compliance with respect to lot coverage, contrary to ZR 24-11 and ZR 54-31;
2. ZR 24-36 Proposed vertical extension of building portion exceeding 23 ft above curb level and the proposed bridge connection at the 4th story level in R7-2 district does not qualify as permitted obstruction pursuant to ZR 24-33 and therefore increases the degree of rear yard non-compliance, contrary to ZR 24-36 and ZR 54-31;
3. ZR 24-522 Portion of proposed vertical extension of building at the 5th and 6th story levels penetrates the sky exposure plane and increases degree of front setback non-compliance, contrary to ZR 24-522 and ZR 54-31;
4. ZR 33-26 Proposed vertical extension of

building portion exceeding 23 ft above curb level in C1-9 district does not qualify as permitted obstruction pursuant to ZR 33-23 and therefore increases degree of rear yard non-compliance, contrary to ZR 33-26 and ZR 54-31; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of an existing school building to accommodate classrooms and an exercise and activity space ("the Enlargement"), and the construction of a bridge ("the Bridge") between the subject building located at 175 West 89th Street ("the South Building") and the building located at 148 West 90th Street ("the North Building"), which do not comply with zoning regulations for lot coverage, minimum required rear yard, permitted obstructions in a rear yard, and sky exposure plane, contrary to ZR §§ 24-11, 24-33, 24-36, 24-522, 33-23, 33-26 and 54-31; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in the *City Record*, and then to decision on May 21, 2013; and

WHEREAS, a companion variance application to allow the Bridge construction within the rear yard of the North Building has been filed under BSA Cal. No. 11-13-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 Hinkson, and Commissioner Montanez; and

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

WHEREAS, Councilmember Gail Brewer submitted a letter in support of the application; and

WHEREAS, certain members of the community testified at the hearing in support of the application; and

WHEREAS, this application is brought on behalf of the Stephen Gaynor School (the "School"), a nonprofit educational institution founded in 1962, which serves approximately 300 students with various special needs ranging in age from three to 14; and

WHEREAS, the subject site, which is Tax Lot 5, is an interior lot located on the north side of West 89th Street between Amsterdam Avenue and Columbus Avenue, partially within an R7-2 zoning district and partially within a C1-9 zoning district; and

WHEREAS, the site has 75 feet of frontage along West 89th Street and a lot area of 7,553 sq. ft.; and

WHEREAS, the site is currently occupied by the South Building, a five-story building that was originally constructed in 1892 as a boarding stable and came to be known as the Claremont Stables; the South Building was designated as an individual landmark by the Landmarks Preservation Commission in 1990, and it is also on the National Register of Historic Places; and

WHEREAS, the applicant states that the School purchased the South Building in 2009 and currently utilizes a portion of the first story and the entire second story as its Early Childhood Center; and

WHEREAS, the applicant notes that the campus of the School currently includes seven stories of the 11-story North Building and two stories of the five-story South Building; there is another School-owned building under construction at 171 West 89th Street; each building is a separate tax and zoning lot; and

WHEREAS, the applicant states that the South Building has a height of 79.18 feet, including mechanicals and a total floor area of 34,404 sq. ft., with 9,255 sq. ft. (4.60 FAR) located within the C1-9 portion of the lot and 25,149 sq. ft. (4.54 FAR) located within the R7-2 portion of the lot; and

WHEREAS, the applicant proposes to enlarge the South Building and construct a bridge in the rear yard to connect to the North Building, which would increase the floor area to 38,412 sq. ft. and result in an FAR increase from 4.60 FAR to 5.34 FAR within the C1-9 portion of the lot and 4.54 FAR to 4.99 FAR within the R7-2 portion of the lot; and

WHEREAS, the applicant represents that the South Building has the following existing, non-compliances: (1) the lot coverage within the R7-2 portion of the lot is 95 percent (per ZR § 24-11, the maximum lot coverage is 65 percent); (2) the rear yard is 5.04 feet (per ZR § 24-36, a minimum rear yard depth of 30 feet is required; per ZR § 33-26, a minimum rear yard depth of 20 feet is required); (3) the portion of the building wall within the R7-2 district does not provide the required 20-foot front setback, exceeds the 60-foot maximum height, and violates the sky exposure plane, contrary to ZR § 24-522; and (4) the projecting blade sign located above the main entrance exceeds the maximum size permitted by ZR § 22-341; the applicant notes that the degree of non-compliance with respect to (3) and (4) will not change under the application; and

WHEREAS, the applicant states that, contrary to ZR § 54-31, the proposal will increase the degree of non-compliance with respect to: (1) lot coverage, which will increase by one percent; (2) required rear yard within the R7-2 district, which, as a result of the Bridge, will be decreased by an area of approximately 41 sq. ft. and, as a result of the Enlargement, will be decreased by a total area of approximately 1,372 sq. ft. (the Bridge is not a permitted obstruction, per ZR § 24-33); (3) sky exposure plane, which will be penetrated by the 170.5 sq. ft. portion of the Enlargement that is located at the front of the South Building; and (4) required rear yard within the C1-9 district, which, as a result of the Enlargement, will be decreased by an area of approximately 300 sq. ft. (this portion of the South Building is not a permitted obstruction, per ZR § 33-23); and

WHEREAS, the applicant states that the Enlargement will accommodate three new academic/science classrooms on the fifth story, and a multifunctional activity space on the sixth story and rooftop; the proposed Bridge will integrate the South Building with the North Building; and

WHEREAS, because neither the Enlargement, nor the Bridge comply with the applicable bulk regulations in the subject zoning districts, the applicant seeks the requested

variance; and

WHEREAS, the applicant states that the variance is necessary to meet the School's programmatic needs of: (1) providing sufficient space to carry out its specialized curriculum, which is heavily infused with exercise, art, and photography; and (2) minimizing travel time between the South Building and the North Building in order to maximize instruction and learning times; and

WHEREAS, as to the specialized curriculum of the School, the applicant states that because the School specializes in educating children with special needs and certain learning differences, it emphasizes physical education and the arts to a much greater degree than mainstream schools, because these subjects help the students with both confidence and focus; and

WHEREAS, the applicant states that due to the relationship between physical activity and creating an effective learning environment for the School's students, the proposed activity space on the sixth story—which includes a synthetic floor that accommodates a multitude of activities—is neither recreational nor elective, but rather an important component of the School's highly-specialized educational program; and

WHEREAS, the applicant states that the proposal would allow for the creation of several new spaces to effectively conduct the curriculum; specifically, the Enlargement would result in new seminar rooms, a multi-media arts room, a state-of-the-art digital photography lab, and physical activity space, as mentioned above; and

WHEREAS, thus, the applicant states that the Enlargement effectively addresses the School's programmatic need to provide sufficient space to carry out its specialized curriculum and create a learning environment that is tailored to the particular needs of its student body; and

WHEREAS, as to the need to minimize travel time between the South Building and the North Building, the applicant represents that, currently, students, faculty and staff who must travel between the buildings must exit the front of their building on either West 89th Street (the subject building) or West 90th Street (the North Building), walk west to Amsterdam Avenue and travel either north or south for an entire block before turning east toward the other front door, a trip that takes approximately 15 minutes; and

WHEREAS, the applicant states that the School has determined that, on average, a student travels between the two buildings seven times per week, for a total weekly travel time of approximately 105 minutes; the applicant notes that this is the equivalent of more than two full class periods; in addition, because the walk takes the students past an active garage, traveling students are required to be accompanied by a faculty member; and

WHEREAS, the applicant states that the travel between the buildings is necessary because the School has a variety of educational specialists throughout the two buildings who provide one-on-one assistance to students; and

WHEREAS, in addition, the applicant states that several classes attended by most students are only offered in one building; for example, Music, Gym and Library are currently offered only in the North Building; and although there are cafeterias in both buildings, there is insufficient space for all students to eat, and Middle School students from the North Building must travel to the South Building for lunch; and

WHEREAS, the applicant also notes that student arrivals and dismissals are located in the North Building, so students taking all or most of their instruction in the subject building would benefit from the construction of the Bridge; and

WHEREAS, accordingly, the applicant states that the Bridge most effectively meets the School's programmatic need to minimize travel time and maximize instruction and learning times; and

WHEREAS, as to the selection of the fourth story for the location of the Bridge, the applicant states that such placement will enable the overlap and access of two similar programs between the Lower School in the North Building and the Middle School in the South Building; in particular, the North Building students will have access to Mixed Media and Digital Arts program and the physical activity space created by the Enlargement; and

WHEREAS, the applicant asserts that there is no as-of-right alternative for the proposed development because the building already exceeds the maximum permitted lot coverage, violates the sky exposure plane, and does not provide the required rear yard at all stories above the first story; and

WHEREAS, the applicant represents that the location of the stair and elevator bulkheads prevent the construction of the proposed activity space at the fifth story; and

WHEREAS, the applicant represents that the Bridge could not be located at the cellar, first, second, third or fifth stories without significantly disrupting existing program or mechanical spaces; and

WHEREAS, specifically, the applicant states that: (1) a connection at the cellar level would interfere with well-established program and support space; (2) a connection at the first story would interfere with a planned performing arts classroom at the South Building; (3) a bridge at the second story would interfere with a portion of the South Building's Early Childhood Center, whose program requires isolation due to the age of the students; (4) a bridge at the third story would interfere with program space in both buildings and create an elevational challenge for mechanical stacks located at the second story play yard at the North Building; and (5) a bridge at the fifth story would adversely affect the proposed classrooms in the South Building and significantly increase travel times for the North Building's third story students; and

WHEREAS, the applicant states that satisfying the School's programmatic needs without the Bridge and the Enlargement would require enlargement of one or both buildings (with new height and setback waiver requests) and the creation of redundant facilities, at significant cost; and

WHEREAS, the applicant notes that the width and height of the Bridge have been minimized to those dimensions necessary to further the School's mission and provide safe egress; 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 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 block on which the building is located within the West Side Urban Renewal Area and as such there has been considerable eclectic community facility development over the past half century; and

WHEREAS, the applicant states that the midblock is largely developed with religious, educational, and cultural institutions; the North Building is shared with Ballet Hispanico, an internationally-renowned dance company, the block to the south (Block 1219) is largely occupied by P.S. 166, and a large NYCHA development is located on the block to the north of the subject block (Block 1221); and

WHEREAS, the applicant represents that both the Enlargement and the Bridge will be minimally visible to the public; the Bridge will only be obliquely visible from West 89th Street and will be visible to—and approximately 80 feet from—only the northernmost windows on the rear elevation of The Sagamore, a residential building located at 189 West 89th Street; and

WHEREAS, the applicant states that approximately 45 percent of the new floor area will be within the rear yards of the South Building and the North Building, which minimizes the impact of the expansion on adjacent properties; and

WHEREAS, finally, the applicant notes that the proposed use is permitted in the subject zoning district and that the general welfare of any community is furthered by the strengthening of educational facilities;
and

WHEREAS, the Board notes that on April 30, 2012, the Landmarks Preservation Commission issued a Certificate of Appropriateness with respect to the proposal; 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 South Building and the North 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, 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 617.2; 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. 13BSA083M dated January 17, 2013; 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 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 partially within an R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of an existing school building to accommodate classrooms and an exercise and activity space, and the construction of a bridge between the subject building located at 175 West 89th Street and the building located 148 West 90th Street, which do not comply with zoning

regulations for lot coverage, minimum required rear yard, permitted obstructions in a rear yard, front setback, and sky exposure plane, contrary to ZR §§ 24-11, 24-33, 24-36, 24-522, 33-23, 33-26 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 1, 2013" – seventeen (17) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the South Building: a total floor area of 38,412 (4.99 FAR in the R7-2 district and 5.34 FAR in the C1-9 district), a maximum building height of 95'-7/8", a maximum street wall height without setback of 72'-0", and 96 percent lot coverage in the R7-2 district and 95 percent lot coverage in the C1-9 district, as illustrated on the BSA-approved plans;

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 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, May 21, 2013.

***The resolution has been amended. Corrected in Bulletin No. 24, Vol. 98, dated June 19, 2013.**

***CORRECTION**

This resolution adopted on May 21 2013, under Calendar No. 11-13-BZ and printed in Volume 98, Bulletin No. 21, is hereby corrected to read as follows:

11-13-BZ
CEQR #13-BSA-083M

APPLICANT – Friedman & Gotbaum LLP, by Shelly Friedman, Esq., for Stephen Gaynor School and Cocodrilo Development Corporation, owners.

SUBJECT – Application January 18, 2013 – Variance (§72-21) to permit an enlargement to an existing school (*Stephen Gaynor School*), contrary to lot coverage (§24-11), rear yard (§24-36/33-26), and height and setback (§24-522) regulations. C1-9 & R7-2 zoning districts.

PREMISES AFFECTED – 175 West 89th Street (South Building) and 148 West 90th Street (North Building), between West 89th Street and West 90th Street, 80ft easterly from the corner formed by the intersection of the northerly side of West 89th Street and the easterly side of Amsterdam Avenue, Block 1220, Lots 5 and 7506, 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 Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 21, 2012, acting on Department of Buildings Application No. 121397201, reads in pertinent part:

1. ZR 24-11 24-33 Proposed bridge connection at the 4th story level in R7-2 district does not comply with lot coverage requirements because the proposed bridge does not qualify as a permitted obstruction pursuant to ZR 24-33, contrary to ZR 24-11
2. ZR 24-33 24-36 Proposed bridge connection at the 4th story level in R7-2 district does not comply with rear yard requirements because the proposed bridge does not qualify as a permitted obstruction pursuant to ZR 24-33, contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R7-2 zoning district, the construction of a bridge ("the Bridge") between the subject building located at 148 West 90th Street ("the North Building") and the building located at 175 West 89th Street ("the South Building"), which does not comply with zoning regulations for lot coverage, minimum required rear yard, and permitted obstructions in a rear yard, contrary to ZR §§ 24-11,

24-33 and 24-36; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in the *City Record*, and then to decision on May 21, 2013; and

WHEREAS, a companion variance application to allow enlargement of the South Building and construction of the Bridge within its rear yard has been filed under BSA Cal. No. 10-13-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 Hinkson, and Commissioner Montanez; and

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

WHEREAS, Councilmember Gail Brewer submitted a letter in support of the application; and

WHEREAS, certain members of the community testified at the hearing in support of the application; and

WHEREAS, this application is brought on behalf of Stephen Gaynor School (the "School"), a nonprofit educational institution founded in 1962, which serves approximately 300 students with various special needs ranging in age from three to 14; and

WHEREAS, the subject site is an interior lot located on the south side of West 90th Street between Amsterdam Avenue and Columbus Avenue, within an R7-2 zoning district; and

WHEREAS, the site has 65 feet of frontage along West 90th Street and a lot area of 6,546 sq. ft.; and

WHEREAS, the site, which is Tax Lot 7506, was merged into a single zoning lot with Tax Lot 107 in 2004; Lot 107 has 47.5 feet of frontage along West 89th Street and a total lot area of 4,783; together the lots have a combined lot area of 11,329 sq. ft. and a total floor area of 50,050 sq. ft. (4.42 FAR); and

WHEREAS, the applicant states that the site is currently occupied by the 11-story North Building; the School occupies the first through seventh stories, Ballet Hispanico occupies the eighth through tenth stories, and the 11th story comprises mechanical space shared by both the School and Ballet Hispanico; and

WHEREAS, the applicant notes that Ballet Hispanico also occupies the two-story building on Lot 107; and

WHEREAS, the applicant notes that the campus of the School currently includes seven stories of the 11-story North Building and two stories of the five-story South Building; there is another School-owned building under construction at Lot 7 (171 West 89th Street); each building is a separate zoning lot; and

WHEREAS, the applicant states that the North Building complies in all respects with the zoning resolution; and

WHEREAS, the applicant proposes to create a bridge between the North Building and the South Building ("the Bridge"), which will increase the floor area from 50,050 sq. ft. (4.42 FAR) to 50,263 sq. ft. (4.43 FAR) and create new non-compliances with respect to rear yard, lot coverage, and permitted obstructions, contrary to ZR §§ 24-11, 24-33 and 24-36; specifically, the Bridge will: (1) encroach upon the required 30-foot rear yard for the full depth of the yard, a width of seven feet, and an area of 213 sq. ft.; (2) increase lot coverage from 65 percent, which complies, to 67 percent, which does not comply; and (3) violate ZR § 24-33, because the Bridge is a portion of the building located within the required rear yard at a height of greater than 23 feet; and

WHEREAS, the applicant states that the proposed Bridge will integrate the North Building with the South Building; and

WHEREAS, because the Bridge 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 minimize travel time between the North Building and the South Building in order to maximize instruction and learning times; and

WHEREAS, as to the need to minimize travel time between the North Building and the South Building, the applicant represents that, currently, students, faculty and staff who must travel between the buildings must exit the front of their building on either West 90th Street (the North Building) or West 89th Street (the South Building), walk west to Amsterdam Avenue and travel either north or south for an entire block before turning east toward the other front door, a trip that takes approximately 15 minutes; and

WHEREAS, the applicant states that the School has determined that, on average, a student travels between the two buildings seven times per week, for a total weekly travel time of approximately 105 minutes; the applicant notes that this is the equivalent of more than two full class periods; in addition, because the walk takes the students past an active garage, traveling students are required to be accompanied by a faculty member; and

WHEREAS, the applicant states the travel between the buildings is necessary because the School has a variety of educational specialists throughout the two buildings who provided one-on-one assistance to students; and

WHEREAS, in addition, the applicant states that several classes attended by most students are only offered in one building; for example, Music, Gym and Library are currently offered only in the North Building; and although there are cafeterias in both buildings, there is insufficient space for all students to eat, and Middle School students from the North Building must travel to the South Building for lunch; and

WHEREAS, the applicant also notes that student arrivals and dismissals are located in the North Building, so students taking all or most of their instruction in the subject building would benefit from the construction of the Bridge; and

WHEREAS, accordingly, the applicant states that the Bridge most effectively meets the School's programmatic need to minimize travel time and maximize instruction and learning times; and

WHEREAS, as to the selection of the fourth story for the location of the Bridge, the applicant states that such

placement will enable the overlap and access of two similar programs between the Lower School in the North Building and the Middle School in the South Building; in particular, the North Building students will have access to the Mixed Media and Digital Arts program and the physical activity space created by the Enlargement; and

WHEREAS, the applicant represents that the Bridge could not be located at the cellar, first, second, third or fifth stories without significantly disrupting existing program or mechanical spaces; and

WHEREAS, specifically, the applicant states that: (1) a connection at the cellar level would interfere with well-established program and support space; (2) a connection at the first story would interfere with a planned performing arts classroom at the South Building; (3) a bridge at the second story would interfere with a portion of the South Building's Early Childhood Center, whose program requires isolation due to the age of the students; (4) a bridge at the third story would interfere with program space in both buildings and create an elevational challenge for mechanical stacks located at the second story play yard at the North Building; and (5) a bridge at the fifth story would adversely affect the proposed classrooms in the South Building and significantly increase travel times for the North Building's third story students; and

WHEREAS, the applicant states that satisfying the School's programmatic needs without the Bridge would require enlargement of one or both buildings (with new height and setback waiver requests) and the creation of redundant facilities, at significant cost; and

WHEREAS, the applicant notes that the width and height of the Bridge have been minimized to those dimensions necessary to further the School's mission and provide safe egress; 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 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 block on which the North Building is located within the West Side Urban Renewal Area and as such there has been considerable eclectic community facility development
over the past half century; and

WHEREAS, the applicant states that the midblock is largely developed with religious, educational, and cultural institutions; the North Building is shared with Ballet Hispanico, an internationally-renowned dance company, the block to the south (Block 1219) is largely occupied by P.S. 166, and a large NYCHA development is located on the block to the north of the subject block (Block 1221); and

WHEREAS, the applicant represents that the Bridge will be minimally visible to the public; the Bridge will only be obliquely visible from West 89th Street and will be visible to—and approximately 80 feet from—only the northernmost windows on the rear elevation of The Sagamore, a residential building located at 189 West 89th Street; and

WHEREAS, finally, the applicant notes that the proposed use is permitted in the subject zoning district and that the general welfare of any community is furthered by the strengthening of educational facilities; 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, 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 617.2; 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, 13BSA083M dated January 17, 2013; 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 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, the construction of a bridge between the building located at 148 West 90th Street and the building located at 175 West 89th Street, which does not comply with zoning regulations for lot coverage, minimum required rear yard, and permitted obstructions in a rear yard, contrary to ZR §§ 24-11, 24-33 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 April 1, 2013" – twenty (20) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the North Building: a floor area of 50,263 sq. ft. (4.43 FAR) and 67 percent lot coverage, as illustrated on the BSA-approved plans;

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 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, May 21, 2013.

***The resolution has been amended. Corrected in Bulletin No. 24, Vol. 98, dated June 19, 2013.**

BULLETIN

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New Case Filed Up to June 18, 2013

173-13-BZ
752-758 West End Avenue, Southeast corner of ;West End Avenue and West 97th Street, Block 1868, Lot(s) 1401& part of 61, Borough of **Manhattan, Community Board: 7**. Variance (§72-21) to legalize the existing commercial Paris Health Club facility which occupies the cellar, first floor and the first mezzanine of a 24-story residential building, contrary to Section 22-00 of the zoning resolution. 72-21 district.

174-13-BZ
2449 Morris Avenue a/k/a 58-66 East FordhamRoad, Morris Avenue a/k/a 58-66 East Fordham Road, Block 3184, Lot(s) 45, Borough of **Bronx, Community Board: 7**. Special Permit (§73-36) the restablishment of an expired physical culture extablishment, contrary to Section 32-31 zoning resolution. C4-4 district.

175-13-BZ
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176-13-BZ
31 Bond Street, Located on the southern side of Bond Street approximately 1170' from Lafayette Street, Block 529, Lot(s) 25, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit Use Group 6 on the first floor and Use Group 2 residential on the second through sixth floors ofan existing building, contrary to Sections 42-14(D)(2)(b) and 42-10 of the zoning resolution. M1-5 district.

177-13-BZ
134 Langham Street, Property on west side of Langham Street between Shore Boulevard and Oriental Boulevard, Block 8754, Lot(s) 38, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home, contrary to Sections(23-141), (23-47) and (23-131) of the zoning resolutions. 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

JULY 16, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 16, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

615-57-BZ
APPLICANT – Sheldon Lobel, P.C. for Cumberland farms,INC., owner.
SUBJECT – Application May 10, 2013 – Extension of Term (§11-411) of a previously granted Variance for the continued operation of a (UG 16B) automotive service station (Gulf) with accessory uses which expired on June 5, 2013. C1-3/R5B zoning district.
PREMISES AFFECTED – 154-11 Horace Harding Expressway, Located on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place. Block 6731, Lot 1. Borough of Queens.
COMMUNITY BOARD #7Q

274-59-BZ
APPLICANT – Laurence Dalfino, R.A., for Richard Naclerio, Member, Manorwood Realty, LLC, owner.
SUBJECT – Application September 18, 2012 – Pursuant to (ZR 11-411) for an Extension of Term of a previously granted variance for the continued operation of a private parking lot accessory to a catering establishment which expired on September 28, 2011; waiver of the rules. R-4/R-5 zoning district.
PREMISES AFFECTED – 3356-3358 Eastchester Road aka 1510-151 Tillotson Avenue, south side of Tillotson Avenue between Eastchester Road & Mickle Avenue, Block 4744, Lot 1, 62, Borough of Bronx.
COMMUNITY BOARD #12BX

228-00-BZ
APPLICANT – Sheldon Lobel, P.C. for Hoffman & Partners LLC, owner.
SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the conversion of a vacant building in a manufacturing district for residential use (Use Group 2) which expired on May 15, 2005; Amendment for minor modifications contrary to previously approved plans; Waiver of the Rules. M1-1 zoning district.
PREMISES AFFECTED – 28/32 Locust Street, southeasterly side of Locust Street between Broadway and Beaver Street. Block 3135, Lot 16. Borough of Brooklyn.
COMMUNITY BOARD #4BK

APPEALS CALENDAR

67-13-A
APPLICANT – Bryan Cave LLC, for ESS-PRISAII LLC, owner; OTR 945 Zerega LLC, lessee.
SUBJECT – Application February 12, 2013 – Appeal challenging Department of Buildings' determination that the existing roof sign is not entitled to non-conforming use status. M1-1 zoning district.
PREMISES AFFECTED – 945 Zerega Avenue, Zerega Avenue between Quimby Avenue and Bruckner Boulevard, Block 3700, Lot 31, Borough of Bronx.
COMMUNITY BOARD #9BX

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

69-13-A
APPLICANT – Bryan Cave LLP, for 25 Skillman, LLC c/o CHETRIT GROUP LLC., owner; OTR BQE 25 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. M1-2/R6 Sp. MX-8 zoning district.
PREMISES AFFECTED – 25 Skillman Avenue, Skillman Avenue between Meeker Avenue and Lorimer Street, Block 2746, Lot 45, Borough of Brooklyn.
COMMUNITY BOARD #1BK

87-13-A
APPLICANT – Bryan Cave LLP, for 176 Canal Corp., owner .OTR Media Group ; lessee
SUBJECT – Application March 6, 2013 – Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status.
PREMISES AFFECTED – 174 Canal Street, Canal Street between Elizabeth and Mott Streets, Block 201, Lot 13, Borough of Manhattan.
COMMUNITY BOARD #3M

CALENDAR

ZONING CALENDAR

301-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Jam Realty of Bayside LLC, owner.
SUBJECT – Application October 22, 2012 – Special permit ZR 73-52 to allow for a 25 foot extension of an existing commercial use into a residential zoning district, and ZR 73-63 to allow the enlargement of a legal non-complying building. C2-2(R4) and R2A zoning districts.
PREMISES AFFECTED – 213-11/19 35th Avenue, Block 6112, Lot 47, Borough of Queens.
COMMUNITY BOARD #11Q

83-13-BZ
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 (ZR 23-141)and less than the required rear yard (ZR 23-47). R-2 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

109-13-BZ
APPLICANT – Goldman Harris LLC, for William Achenbaum, owner; 2nd Round KO, LLC, lessee.
SUBJECT – Application April 22, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (PCE) (*UFC Gym*). C5-5 (Special Lower Manhattan) zoning district.
PREMISES AFFECTED – 80 John Street, Lot bounded by John Street to the north, Platt Street to south, and Gold Street to the west, Block 68, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JUNE 18, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

853-53-BZ
APPLICANT – Carl A. Sulfaro, Esq., for Knapp, LLC, owner; Bolla Management Corp., owners.
SUBJECT – Application January 18, 2013 – Amendment (§11-412) to a previously-granted Automotive Service Station (*Mobil*) (UG 16B), with accessory uses, to enlarge the use and convert service bays to an accessory convenience store. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 2402/16 Knapp Street, southwest corner of Avenue X, Block 7429, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for an amendment to a prior grant to permit the conversion of automotive service bays to an accessory convenience store; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 21, 2013, and then to decision on June 18, 2013; and

WHEREAS, the site 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 site is located on the southwest corner of Knapp Street and Avenue X, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 22, 1954 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station with accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, on August 11, 2009, the grant was extended for a term of ten years to expire on October 23, 2019; and

WHEREAS, the applicant now requests an amendment to permit the conversion of automotive service bays to an accessory convenience store and to enlarge the building by approximately 600 sq. ft.; and

WHEREAS, pursuant to ZR § 11-412, the Board may amend the grant; and

WHEREAS, the applicant represents that the enlargement complies with the parameters of ZR § 11-412 in that the existing floor area is 1,875 sq. ft. and the proposed enlargement is 600 sq. ft. for a total of 2,475 sq. ft.; the maximum permitted enlargement pursuant to ZR § 11-412 would be 937.5 sq. ft. for a total of 2,812.5 sq. ft.; and

WHEREAS, the applicant notes that a steel storage container at the site will be removed during the construction process; and

WHEREAS, at hearing, the Board directed the applicant to (1) discuss how it complies with DOB's Technical Policy and Procedure Notice (TPPN) 10/99 requirements for accessory convenience stores; and (2) provide signage calculations by frontage and reflect compliance with underlying zoning district regulations; and

WHEREAS, in response, the applicant states that it complies with the TPPN in that (1) the store will be located on the same zoning lot as the existing automotive service station and will be contained within a completely enclosed building; (2) the retail selling floor will be 1,534 sq. ft. which is less than the maximum permitted 2,500 sq. ft. and less than 25 percent of the area of the zoning lot; and (3) the convenience store will be designated as Use Group 16E and not UG 6; and

WHEREAS, the applicant provided a revised zoning analysis by frontage that reflects compliance with the underlying zoning district regulations and has modified the signage accordingly; and

WHEREAS, based upon the above, the Board finds that the requested amendment 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 22, 1954, so that as amended this portion of the resolution shall read: "to allow for the conversion of automotive service bays to accessory convenience store, the enlargement of the building, and other related site changes; *on condition* that all use and operations shall substantially conform to plans filed with this application marked 'Received May 3, 2013' – (3) sheets and 'May 28, 2013'-(2) sheets; and *on further condition*:

THAT all signage comply with the underlying C2-2 zoning district regulations;

THAT the above condition and all relevant conditions from prior grants appear on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by June 18, 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."
(DOB Application No. 310091708)

Adopted by the Board of Standards and Appeals June 18, 2013.

30-02-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Trump Park Avenue, LLC, owner; Town Sports International dba New York Sports Club, lessee.
SUBJECT – Application January 28, 2013 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*New York City Sports Club*) which expired on July 23, 2012; Amendment to permit the modification of approved hours and signage; Waiver of the Rules. C5-3, C5-2.5(Mid) zoning district.
PREMISES AFFECTED – 502 Park Avenue, northwest corner of Park Avenue and East 59th Street, Block 1374, Lot 7502(36), 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an amendment to modify the hours of operation and the signage, and for an extension of term, which expired on July 23, 2012, for a physical culture establishment (PCE); and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, and then to decision on June 18, 2013; and

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

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

WHEREAS, the subject site is located on the northwest corner of Park Avenue and East 59th Street; and

WHEREAS, the site is occupied by a 32-story mixed-use residential/commercial building; and

WHEREAS, on August 2, 1994, under BSA Cal. No. 35-94-BZ, the Board granted a special permit pursuant to ZR § 73-36, to permit a PCE in the cellar and on the first and second floors of an existing 32-story commercial building for a term of ten years, to expire on August 2, 2004; and

WHEREAS, on July 23, 2002, under the subject calendar number, the Board granted a new special permit pursuant to ZR § 73-36, to permit a larger facility at the same site, to expire on July 23, 2012; and

WHEREAS, the applicant now seeks to change the hours of operation to Monday through Friday, 5:45 a.m. to 10:00 p.m.; Saturday, 9:00 a.m. to 4:00 p.m.; and Sunday, 9:00 a.m. to 3:00 p.m. from the approved Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant also seeks to reduce the amount of signage from 105 sq. ft. to 12 sq. ft.; and

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

WHEREAS, at hearing, the Board directed the applicant to revise its sign analysis to reflect the correct amount of signage identified on the proposed elevation drawing; and

WHEREAS, in response, the applicant submitted a revised sign analysis that is consistent with the elevation drawing; and

WHEREAS, based on its review of the record, the Board finds that the proposed change in hours of operation, change in signage, and ten-year extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, dated July 23, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the prior expiration, to change the hours of operation, and to reduce the signage; *on condition* that all work and site conditions shall comply with drawings marked 'Received January 28, 2013'–(6) sheets; 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 this grant will be limited to a term of ten years from the expiration of the prior grant, to expire on July 23 2022;

THAT the hours of operation be limited to Monday through Friday, 5:45 a.m. to 10:00 p.m.; Saturday, 9:00 a.m. to 4:00 p.m.; and Sunday, 9:00 a.m. to 3:00 p.m.;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

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. 300130551)

Adopted by the Board of Standards and Appeals, June 18, 2013.

197-08-BZ

APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.

PREMISES AFFECTED – 341-349 Troy Avenue, aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a prior grant for the construction of a five-story residential building; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 4, 2013, and then to decision on June 18, 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, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Troy Avenue and Carroll Street, within an R4 zoning district; and

WHEREAS, on March 16, 2010, the Board granted a variance under the subject calendar number to permit, on a site within an R4 zoning district, a proposed five-story (including penthouse) residential building with 34 dwelling units and 35 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and, does not provide the minimum required front or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45; and

WHEREAS, the applicant initially sought to amend the plans to allow for rooftop mechanical space which is not a permitted obstruction in an R4-infill district; to decrease the number of dwelling units by creating larger apartments to meet the neighborhood demand; and to reduce the number of parking spaces accordingly; and

WHEREAS, the applicant represents that the proposed changes will not increase the approved amount of floor area; and

WHEREAS, at hearing, the Board raised concerns about the scale of the rooftop mechanicals and questioned whether it would count as floor area; and

WHEREAS, accordingly, the Board directed the applicant to consider alternative locations for the mechanicals including the potential for it to be within the individual units; and

WHEREAS, in response, the applicant determined that it could provide mechanicals within the individual units and modified its original request; and

WHEREAS, the applicant now seeks only to reduce the number of dwelling units from 34 to 26 by creating duplex apartments throughout the building and to reduce the number of parking spaces from 35 to 32; and

WHEREAS, based on its review of the record, the Board finds the amendments are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated March 16, 2010, so that as amended this portion of the resolution shall read: "to allow for the reduction in the number of dwelling units from 34 to 26 and the number of parking spaces from 35 to 32 and the associated redesign; *on condition* that all work and site conditions will comply with drawings marked "Received May 22, 2013"– Thirteen (13) 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. 301575472)

Adopted by the Board of Standards and Appeals, June 18, 2013.

200-00-BZ
APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owners.
SUBJECT – Application April 18, 2013 – Extension of Time to obtain a Certificate of Occupancy of a variance (§72-21) to operate a Physical Culture Establishment (*Squash Fitness Center*) which expired on April 25, 2013. C1-4(R6B) zoning district.
PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, aka 37-16 108th Street, Block 1773, Lot 10, Borough of Queens.
COMMUNITY BOARD #3Q
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 16, 2013, at 10 A.M., for decision, hearing closed.

363-04-BZ
APPLICANT – Herrick Feinstein, LLP; by Arthur Huh, for 6002 Fort Hamilton Parkway Partnership, owner; Michael Mendiovic, lessee.
SUBJECT – Application June 5, 2013 – Extension of Time to Complete Construction for a previously granted Variance (§72-21) to convert an industrial building to commercial/residential use which expires on July 19, 2013. M1-1 zoning district.
PREMISES AFFECTED – 6002 Fort Hamilton Parkway, West side of Fort Hamilton Parkway, between 60th Street and 61st Street, Block 5715, Lot 27, 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 July 16, 2013, at 10 A.M., for decision, hearing closed.

27-05-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owners.
SUBJECT – Application February 4, 2013 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on April 18, 2011; Amendment to permit the legalization of site layout and operational changes; Waiver of the Rules. C2-4/R6 zoning district.
PREMISES AFFECTED – 91-11 Roosevelt Avenue, north side of Roosevelt Avenue between 91st and 92nd Street, Block 1479, Lot 38, Borough of Queens.
COMMUNITY BOARD #3Q
ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

317-12-A
APPLICANT – Eric Palatnik, P.C., for 4040 Management, LLC, owner.
SUBJECT – Application November 29, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior M1-3D zoning district regulations. M1-2/R5B zoning district.
PREMISES AFFECTED – 40-40 27th Street, between 40th Avenue and 41st Avenue, Block 406, Lot 40, Borough of Queens.
COMMUNITY BOARD #1Q
ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for continued hearing.

346-12-A
APPLICANT – Eric Palatnik, P.C., for Woodpoint Gardens, LLC, owners.
SUBJECT – Application December 12, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior R6 zoning district regulations. R6B zoning district.
PREMISES AFFECTED – 179-181 Woodpoint Road, between Jackson Street and Skillman Avenue, Block 2884, Lot 4, 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 July 16, 2013, at 10 A.M., for decision, hearing closed.

135-13-A thru 152-13-A
APPLICANT – Eric Palatnik, PC, for Ovas Building Corp, owner.
SUBJECT – Applications May 10, 2013 – Proposed construction of 18 two-family dwellings not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.
PREMISES AFFECTED – 18, 22, 26, 30, 34, 38,42, 46, 50, 54, 58, 45, 39, 35, 31, 27, 23, 19, Serena Court, on Amboy Road, Block 6523, Lot 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 113, 102, 103, 105, 106, 107, 108, Borough of Staten Island.
COMMUNITY BOARD #3 SI
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 16, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

63-13-BZ
CEQR #13-BSA-095Q

APPLICANT – Sheldon Lobel, P.C., for Cel-Net Holdings, Corp., owner; The Cliffs at Long Island City, LLC, lessee.
SUBJECT – Application February 11, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Cliffs*). M1-4/R7A (LIC) zoning district.
PREMISES AFFECTED – 11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street, Block 447, Lot 13, 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 Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 30, 2013, acting on Department of Buildings Application No. 420605768, reads in pertinent part:

1. ZR 42-10, 117-21: Proposed physical culture establishment is not permitted as-of-right
2. 136-01-BZ: Proposed conditions are contrary to approved BSA plans under Cal. No. 136-01-BZ; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within an M1-4/R7A zoning district within the Special Long Island City Mixed Use District and the Hunters Point Subdistrict, a physical culture establishment ("PCE") on the first floor and mezzanine of an existing two-story commercial building, contrary to ZR §§ 42-10 and 117-21; and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, with a continued hearing on June 4, 2013, and then to decision on June 18, 2013; 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, Community Board 2, Queens, recommends approval of this application; and

WHEREAS, the site is located on the north side of 44th Drive between 11th Street and 21st Street within an M1-1/R7A zoning district within the Special Long Island City Mixed Use District and the Hunters Point Subdistrict; and

WHEREAS, the site has 200 feet of frontage on 44th Drive, a depth of 100 feet, and 20,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with a floor area of 39,999 sq. ft., which is currently occupied by warehouse use on the first floor and offices on the mezzanine and second floor; and

WHEREAS, the site has been under the Board's jurisdiction since June 11, 2002 when the Board granted a variance, pursuant to BSA Cal. No. 136-01-BZ, to permit the enlargement of the existing building and to legalize an encroachment into the rear yard; in 2010, the Board amended the variance to allow for the reduction of the floor area from 55,762 sq. ft., as originally approved, to 31,784 sq. ft.; and

WHEREAS, the Board granted extensions of time to complete construction and obtain a certificate of occupancy and an amendment to increase the floor area to 39,999 sq. ft.; and

WHEREAS, by letter, dated June 12, 2013, the Board approved the conversion of the building's entire first floor to commercial use, which involves the removal of the building's parking and loading berth, resulting in an increase of 1,444 sq. ft. of floor area; the addition of a second mezzanine in the northwest corner of the building, totaling 1,654 sq. ft.; and the removal of 3,172 sq. ft. of floor area from the building's second floor to create a double-height space; and

WHEREAS, the applicant states that the proposed changes are related to the PCE design and that the proposed modifications will actually result in a small decrease in the building's total floor area, from 39,999 sq. ft. to 39,970 sq. ft.; and

WHEREAS, the applicant represents that there is no parking requirement for non-residential uses in this section of Queens pursuant to ZR § 13-41, and that a loading berth is not required for the proposed uses; and

WHEREAS, the PCE will be operated as the Cliffs, a rock-climbing facility; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the PCE are Monday through Thursday, from 10:00 a.m. to 10:00 p.m., Friday and Saturday from 9:00 a.m. to 12:00 a.m., and Sunday from 9:00 a.m. to 8:00 p.m.; 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 Department of Investigation (DOI) has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report to the Board; and

WHEREAS, during the hearing process, the applicant responded to DOI's report of an arrest and investigation related to one of the principals; the applicant provided evidence to support the legitimacy of the business, which has a successful facility in Westchester, and asserted that the arrest and investigation were unrelated to the special permit findings and are being addressed in another forum; and

WHEREAS, the Board has reviewed DOI's report and the applicant's response submission and has determined it to be satisfactory; and

WHEREAS, the PCE 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 §§ 73-36 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA095Q, dated February 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 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 an M1-4/R7A zoning district within the Special Long Island City Mixed Use District and the Hunters Point Subdistrict, a physical culture establishment ("PCE") on the first floor and mezzanine of an existing two-story commercial building, contrary to ZR §§ 42-10 and 117-21; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 22, 2013" – Seven (7) sheets and *on further condition*:

THAT the term of this grant will expire on June 18, 2023;

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 any massages must be performed by New York State licensed massage therapists;

THAT that the hours of operation will be Monday through Thursday, from 10:00 a.m. to 10:00 p.m., Friday and Saturday from 9:00 a.m. to 12:00 a.m., and Sunday from 9:00 a.m. to 8:00 p.m.;

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

Adopted by the Board of Standards and Appeals, June 18, 2013.

73-13-BZ

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

SUBJECT – Application February 19, 2013 – Special Permit (§73-49) to allow rooftop parking in a proposed commercial development. M1-1 and C4-4 zoning districts.

PREMISES AFFECTED – 459 E. 149th Street, northwest corner of Brook Avenue and 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, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated February 13, 2013, acting on Department of Buildings Application No. 220150869, reads:

> Proposed roof parking is not permitted as per section 36-11 & section ZR 44-10 in such that 'No spaces shall be located on any roof which is immediately above a story other than a basement'; and

WHEREAS, this is an application under ZR § 73-49 to permit accessory parking for 87 vehicles on the rooftop of a two-story commercial building located partially within a C4-4 zoning district and partially within an M1-1 zoning district, contrary to ZR §§ 36-11 and 44-10; and

WHEREAS, a public hearing was held on this application on May 21, 2013, after due notice by publication in the *City Record*, and then to decision on June 18, 2013; and

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

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

WHEREAS, the site is located on the northwest corner of East 149th Street and Brook Avenue, with the southern 88 percent of the site in a C4-4 zoning district and the northern 12 percent within an M1-1 zoning district; and

WHEREAS, the subject site has a lot area of 59,523 sq. ft. and will be developed with a two-story building with a floor area of 85,342 sq. ft.; and

WHEREAS, the applicant proposes to provide 87 parking spaces on the roof of the new building, which will be occupied by a supermarket (in the FRESH program), retail, and medical and office space; and

WHEREAS, the applicant states that it was selected following a Request for Proposal issued by the New York City Economic Development Corporation and, as part of the property sale process, it was subject to a series of public reviews including the disposition of City-owned property and minor changes to the Bronxchester Urban Renewal Plan to amend site boundaries of Urban Renewal Area Sites 7A and 7B; and

WHEREAS, the applicant states that the parking requirement for the proposed development is 86; it proposes 87 accessory rooftop spaces; and

WHEREAS, in order to meet these needs, the applicant seeks a special permit pursuant to ZR § 73-49, to permit rooftop parking in order to accommodate the requisite number of spaces; 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 the site is triangular and adjacent to a subway line, which changes from above-grade to below-grade to the north and west; commercial and institutional uses are to the east, and a mix of commercial and residential uses are to the south across East 149th Street; and

WHEREAS, the applicant asserts that the subway line will not be impacted nor will the use of the several four-, five-, and six-story mixed-used residential and ground floor commercial buildings along the south side of 149th Street, which are separated from the site by East 149th Street, a busy commercial artery with four lanes of traffic, including busses, and two parking lanes; and

WHEREAS, the applicant states that only a few residential units across East 149th Street are above the proposed rooftop level at a height of 30 feet; and

WHEREAS, the applicant notes that the other nearby properties, at a distance of at least 100 feet across Brook Avenue, include a two-story youth detention center and a one-story Burger King on the east side of Brook Avenue, which are both below the level of the roof; there are a series of vacant sites to the north, and a five-story commercial building across the street to the west on Third Avenue; and

WHEREAS, the applicant states that the rooftop parking will be approximately 100 feet from the noted buildings and the following conditions are proposed to mitigate any impacts: a parapet with a height of 4'-6" along the perimeter which will support a mesh screen with a height of 3'-6" which are both designed to obstruct street level views of the parking as well as to prevent vehicle lights from shining on adjacent buildings; and

WHEREAS, further, the applicant states that the building will actually serve to block the sound and views of the subway line as it changes between below-grade and above-grade; and

WHEREAS, the applicant concludes that the rooftop parking will help relieve any congestion created by the parking demand generated by the retail and offices that will serve the community; and

WHEREAS, the applicant states that it will implement traffic and safety measures including convex mirrors, signs indicating the flow of traffic, signs for pedestrian safety, and signs to prohibit honking; and

WHEREAS, further, the applicant will post a speed limit of five miles per hour and install speed bumps; and

WHEREAS, as for security, the applicant will install security cameras at the roof and the driveway entrance to the roof and an attendant will monitor the area; and

WHEREAS, at hearing the Board asked the applicant to provide more information about the proposed screening and directed it to orient all lighting towards the ground and establish a time to close the parking and secure the gate; and

WHEREAS, in response, the applicant provided photographs of the screening materials, agreed to direct lighting towards the ground, and established an 11:00 p.m.

closure of the security gate and time to access the roof; and

WHEREAS, the applicant asserts that the proposal serves the community as it is within an Urban Renewal Area (URA) which promotes the objectives of establishing convenient community facilities, recreational uses, and shopping; eliminating blight, and redeveloping the area in a comprehensive manner; and

WHEREAS, the applicant notes that the site is designated within the URA for commercial use; 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 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 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 accessory parking for 87 vehicles on the rooftop of a two-story commercial building located partially within a C4-4 zoning district and partially within an M1-1 zoning district, contrary to ZR §§ 36-11 and 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 3, 2013"- (14) sheets; and *on further condition*:

THAT the maximum number of parking spaces on the rooftop will be 87, as approved by DOB;

THAT the hours of operation for the rooftop parking will be limited to 6:00 a.m. to 11:00 p.m., daily and will be properly secured at all other times, including the closure of the gate to the driveway by 11:00 p.m.;

THAT all lighting on the roof will be directed down and away from adjacent residential use;

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) only;

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, June 18, 2013.

80-13-BZ
CEQR #13-BSA-104M
APPLICANT – Goldman Harris LLC., for Everett Realty LLC c/o Mildred Kayden, owner; Elizabeth Arden New York, lessee.
SUBJECT – Application February 27, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Red Door Spa*). C6-4A zoning district.
PREMISES AFFECTED – 200 Park Avenue South, northwest corner of Park Avenue South and East 17th Street, Block 846, Lot 33, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 11, 2013, acting on Department of Buildings Application No. 120778033, reads in pertinent part:

1. ZR 42-10: Proposed Spa, Physical Health Establishment is not a permitted use in a C6-4A zoning district as per ZR 73-36.

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-4A zoning district within the Special Union Square District, a physical culture establishment ("PCE") on a portion of the first floor and cellar of a 17-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 21, 2013, after due notice by publication in *The City Record*, and then to decision on June 18, 2013; 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, has no objection to the application; and

WHEREAS, the site is located on the northwest corner of Park Avenue South and East 17th Street within a C6-4A zoning district within the Special Union Square District; and

WHEREAS, the site is occupied by a 17-story commercial building with a floor area of 209,330 sq. ft.; and

WHEREAS, the building is known as the Everett Building and is an individual landmark under the jurisdiction of the Landmarks Preservation Commission (LPC); and

WHEREAS, the PCE will be operated as an Elizabeth Arden Red Door Spa; and

WHEREAS, the PCE will occupy 2,348 sq. ft. of floor area at the ground floor and 7,084 sq. ft. of floor space in the cellar; and

WHEREAS, the applicant represents that the services at the PCE include facilities for body treatments, salon services, and massage therapy; and

WHEREAS, the hours of operation for the PCE are 8:00 a.m. to 9:00 p.m., daily; and

WHEREAS, LPC has issued a Certificate of No Effect, dated May 1, 2013, and a Certificate of Appropriateness, dated April 23, 2013, associated with 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 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 to the Board, which the Board finds satisfactory; and

WHEREAS, the PCE 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 §§ 73-36 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA104M, dated February 27, 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 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 within a C6-4A zoning district within the Special Union Square District, a physical culture establishment ("PCE") on a portion of the first floor and cellar of a 17-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 27, 2013" – Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on June 18, 2023;

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 any massages must be performed by New York State licensed massage therapists;

THAT that the hours of operation for the PCE are limited to 8:00 a.m. to 9:00 p.m., daily;

THAT all signage will comply with underlying C6-4A zoning district regulations and not exceed that reflected on the Board-approved plans;

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

Adopted by the Board of Standards and Appeals, June 18, 2013.

35-11-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.
SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.
PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.
COMMUNITY BOARD #13Q
ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for adjourned hearing.

50-12-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.
COMMUNITY BOARD #12Q
ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for adjourned hearing.

199-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.
SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.
PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #4BK
ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for adjourned hearing.

259-12-BZ
APPLICANT – Davidoff Hutcher & Citron LLP, for 5239 LLC, owner.
SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the development of a single-family house, contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district.
PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, Borough of Bronx.
COMMUNITY BOARD #8BX
ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for continued hearing.

293-12-BZ
APPLICANT – Eric Palatnik, P.C., for Mr. and Mrs. Angelo Colantuono, owners.
SUBJECT – Application October 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(a)) regulations. R3X zoning district.
PREMISES AFFECTED – 1245 83rd Street, north side of 83rd Street, between 12th Avenue and 13th Avenue, Block 6302, Lot 60, 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 July 16, 2013, at 10 A.M., for decision, hearing closed.

321-12-BZ
APPLICANT – Dennis D. Dell'Angelo, for Jay Lessler, owner.
SUBJECT – Application December 6, 2012 – 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 (§23-141); perimeter wall height (§23-631) and rear yard (§23-47) regulations R3-1 zoning district.
PREMISES AFFECTED – 22 Girard Street, west side of Girard Street, 149.63' south of Shore Boulevard, Block 8745, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

5-13-BZ
APPLICANT – Goldman Harris LLC, for Queens College Special Projects Fund, Inc., owners.
SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of an education center (UG 3A) in connection with an existing community facility (*Louie Armstrong House Museum*), contrary to lot coverage (§24-11/24-12), front yard (§24-34), side yard (§24-35), side yard setback (§24-551), and planting strips (§24-06/26-42). R5 zoning district.
PREMISES AFFECTED – 34-47 107th Street, eastern side of 107th Street, midblock between 34th and 37th Avenues, Block 1749, Lot 66, 67, Borough of Queens.
COMMUNITY BOARD #3Q

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 23, 2013, at 10 A.M., for decision, hearing closed.

99-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mehran Equities Ltd., owner; Blink Steinway Street, Inc., lessee.
SUBJECT – Application April 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink*) within a two-story commercial building. C4-2A zoning district.
PREMISES AFFECTED – 32-27 Steinway Street, 200' south of intersection of Steinway and Broadway, Block 676, Lot 35, 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 July 23, 2013, at 10 A.M., for decision, hearing closed.

102-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for 28-30 Avenue A LLC, owner; TSI Avenue A LLC dba New York Sports Club, lessee.
SUBJECT – Application April 11, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*New York Sports Club*) within a five-story commercial building. C2-5 (R7A/R8B) zoning district.
PREMISES AFFECTED – 28-30 Avenue A, East side of Avenue A, 79.5" north of East 2nd Street, Block 398, Lot 2, Borough of Manhattan.
COMMUNITY BOARD #3M
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 23, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on July 10, 2012, under Calendar No. 20-12-BZ and printed in Volume 97, Bulletin Nos. 27-29, is hereby corrected to read as follows:

20-12-BZ
CEQR #12-BSA-071K
APPLICANT – Herrick, Feinstein LLP, for LNA Realty Holdings, LLC, owner; Brookfit Ventures LLC, lessee.
SUBJECT – Application January 31, 2012 – Special Permit (§73-36) to allow the legalization of the operation of a physical culture establishment (*Retro Fitness*) in an under construction mixed residential/commercial building. M1-2/R6B zoning district.
PREMISES AFFECTED – 203 Berry Street, aka 195-205 Berry Street; 121-127 N. 3rd Street, northeast corner of Berry and N. 3rd Streets, Block 2351, Lot 1087, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –
For Applicant: Lee Gold.
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated January 18, 2012, acting on Department of Buildings Application No. 320411256, reads in pertinent part:

> The subject property to be used as a physical culture establishment is contrary to section 42-10 ZR and requires a special permit from the NYC BSA pursuant to Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-2/R6B zoning district within Special Mixed Use District 8 (MX-8), the legalization of a physical culture establishment (PCE) at the sub-cellar and first floor of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 15, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2012, and then to decision on July 10, 2012; and

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application on the condition that it cease operations until the applicant receives the BSA special permit; and

WHEREAS, the subject site is located on the northeast corner of Berry Street and North 3rd Street, within an M1-2/R6B (MX-8) zoning district; and

WHEREAS, the site is located on a corner lot with approximately 122 feet of frontage on Berry Street, 400 feet frontage on North 3rd Street, and a total lot area of 41,419 sq. ft. and

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

WHEREAS, the proposed PCE will occupy 2,635 sq. ft. of floor area on the first floor, with an additional 21,337 sq. ft. of floor space located at the sub-cellar level; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, 5:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 5:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, the Board raised concerns regarding the adequacy of sound attenuation provided to minimize any potential noise impacts on the residential units within the building; and

WHEREAS, in response, the applicant notes that less than ten percent of the PCE's exercise area is located adjacent to residential units; and

WHEREAS, further the applicant notes that the existing PCE has eight inch thick concrete walls and floor slabs which provide sound insulation that complies with the sound insulation requirements of the New York City Building Code; and

WHEREAS, the Board also questioned whether a Public Assembly permit is required for the PCE; and

WHEREAS, in response, the applicant represents that they are in the process of preparing their Public Assembly permit application for submission to the Department of Buildings; and

WHEREAS, the PCE 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, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement; 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 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 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 PCE has been in operation since March 17, 2012, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between March 17, 2012 and the date of this grant; 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. 12BSA071K, dated January 23, 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 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 in an M1-2/R6B (MX-8) zoning district, the legalization of a PCE at the sub-cellar and first floor of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 29, 2012" – Seven (7) sheets and *on further condition*:

THAT the term of this grant will expire on March 17, 2022;

THAT the applicant will obtain a Public Assembly permit from the Department of Buildings by January 10, 2013; and

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 above conditions will appear on the Certificate of Occupancy;

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

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

THAT the site will be maintained free of graffiti;

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

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

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

Adopted by the Board of Standards and Appeals, July 10, 2012.

***The resolution has been amended on June 20, 2013. Corrected in Bulletin No. 25, Vol. 98, dated June 26, 2013.**

***CORRECTION**

This resolution adopted on March 12 2013, under Calendar No. 55-12-BZ and printed in Volume 98, Bulletin No. 11, is hereby corrected to read as follows:

55-12-BZ
CEQR #12-BSA-088K
APPLICANT – Eric Palatnik, P.C., for Kollel L'Horoah, owner.
SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based, non-profit school (*Kollel L'Horoah*), contrary to use regulations (§42-00). M1-2 zoning district.
PREMISES AFFECTED – 762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot 19, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 29, 2012, acting on Department of Buildings Application No. 310112990 reads in pertinent part:

> Proposed Use Group 3 use is not permitted as of right within manufacturing zoning districts, and is contrary to ZR Section 42-00 and therefore requires a special permit from the NYC BSA pursuant to ZR Section 73-19; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within an M1-2 zoning district, the legalization of a six-story yeshiva (Use Group 3), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on November 15, 2012, after due notice by publication in the *City Record*, with continued hearings on January 8, 2013 and February 12, 2013, and then to decision on March 12, 2013; 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, Brooklyn, recommends approval of this application; and

WHEREAS, the application is brought on behalf of the Central United Talmudical Association (the "Yeshiva"); and

WHEREAS, the site is located on the west side of Wythe Avenue, between Penn Street and Rutledge Street, within an M1-2 zoning district; and

WHEREAS, the site has 200 feet of frontage on Wythe Avenue, 125 feet of frontage on Penn Street, 125 feet of frontage on Rutledge Street, and a lot area of 25,000 sq. ft.; and

WHEREAS, the subject building is six stories with a floor area of approximately 119,997.4 sq. ft. (4.80 FAR), and was formerly occupied by a factory; and

WHEREAS, the applicant represents that the Yeshiva meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M1 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 states that the school serves an estimated 1,920 students from pre-nursery through ninth grade; and

WHEREAS, the Yeshiva's program includes 86 classrooms, 142 teachers, and 26 support staff positions; and

WHEREAS, the applicant states that the Yeshiva's program requires a minimum lot area of 20,000-25,000 sq. ft. and a building with a floor area of approximately 120,000 sq. ft. with an additional 20,000 sq. ft. of space in the cellar; and

WHEREAS, accordingly, the applicant searched for two years in South Williamsburg in R6 or equivalent zoning districts, which would allow for an FAR of 4.80 and accommodate the programmatic needs; and

WHEREAS, the applicant represents that it specifically evaluated the feasibility of 11 sites that were either vacant or under-developed within the catchment area of the school, and which could potentially be redeveloped for a school that could accommodate the projected enrollment; and

WHEREAS, the applicant submitted a chart identifying the sites (on Bedford Avenue, Flushing Avenue, Myrtle Avenue, Park Avenue, Willoughby Avenue, and Skillman Street) and summarizing the insufficiencies; and

WHEREAS, the applicant states that, of the 11 sites it evaluated, only two had lot area greater than 20,000 sq. ft. (one was a vacant lot which has since been developed by HPD and one is a banquet hall parking lot not available for sale); six of the smaller sites are in the process or have recently been developed for residential use; and the remaining three are used as parking and a gas station and are not available for sale; and

WHEREAS, the applicant submitted a letter from a real estate broker stating that the Yeshiva sought an existing building for immediate occupancy, but also considered vacant lots, which were not available due to an active residential market that resulted in residential development on the vacant lots; and

WHEREAS, further, the applicant submitted communication between its representation, City Councilperson Letitia James, and the Department of Education (DOE), seeking space to lease in DOE buildings; the applicant represents that no available DOE space was identified; and

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

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

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

WHEREAS, the applicant submitted a radius diagram which reflects that directly across Wythe Avenue there is an R6 zoning district and directly across Rutledge Street there is an R7-1 zoning district, and therefore the site is within 400 feet of at least two zoning districts 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 adequate separation from noise, traffic and other adverse effects of the surrounding M1-2 zoning district will be provided through the building's 12-inch thick exterior masonry with four-inch wood stud interior walls and double-paned glass windows; and

WHEREAS, the noise analysis submitted by the applicant indicates that the existing windows comply with the required noise attenuation and no additional mitigation measures are recommended; and

WHEREAS, the Board finds that the exterior wall and window construction of the building and the adjacency of residential zoning districts with residential uses directly across Wythe Avenue and Rutledge Street will adequately separate the Yeshiva 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 states that approximately 1,800 students arrive by bus, and that the school operates approximately 15 buses; and

WHEREAS, the applicant further states that the buses arrive between 7:40 a.m. and 10:00 a.m., and that their arrival is spread out so that the buses arrive at the school in a staggered manner with a maximum of six buses parked in front of the school at one time; and

WHEREAS, the applicant further states that there are two teachers/monitors on each bus with young children and constant radio contact between the bus and a monitor at the school who is solely responsible for buses and stands in front of the school; there are also two monitors on the street in front of the school at the time of arrival and departure; and

WHEREAS, the applicant states that the students are also dismissed in a staggered manner from 2:30 p.m. for the youngest to 6:00 p.m. for the oldest; and

WHEREAS, the Yeshiva confirms that its 15 buses make a total of 35 runs each day at designated times; and

WHEREAS, the applicant states that when buses are not in use, they are parked nearby at 671 Myrtle Avenue and 41 South 11th Street, off street; and

WHEREAS, the applicant states that the street system has significant capacity to enable the buses to access the school without disruption; and

WHEREAS, the Department of Transportation submitted a letter stating that it does not object to the proposed legalization of the school from a traffic safety perspective; and

WHEREAS, the Board finds that the above-mentioned measures maintain safe conditions for children going to and from the 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 notes that the Fire Department has inspected the site on numerous occasions and that its only violation is that the operating Interior Fire Alarm and full Sprinkler Systems require application and approval by DOB; 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 has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 12BSA088K, dated March 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, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2012 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 May 15, 2012 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, DEP reviewed the applicant's October 2012 noise analysis and concurs with the conclusions regarding the required sound attenuation levels and measures; and

WHEREAS, DEP determined that, with these noise measures, the proposed project is not anticipated to result in significant noise 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 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 legalization of a six-story yeshiva (Use Group 3), on a site within an M1-2 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 March 7, 2013" - Eleven (11) sheets; and *on further condition*:

THAT a certificate of occupancy will be obtained by March 12, 2015;

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 sound attenuation measures in the proposed building will be maintained 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 12, 2013.

***The resolution has been amended. Corrected in Bulletin No. 25, Vol. 98, dated June 26, 2013.**

***CORRECTION**

This resolution adopted on May 21, 2013, under Calendar No. 315-12-BZ and printed in Volume 98, Bulletin No. 21, is hereby corrected to read as follows:

315-12-BZ
CEQR #13-BSA-057Q
APPLICANT – Akerman Senterfitt, LLP, for Pali Realty LLC, owner.
SUBJECT – Application November 20, 2012 – Special Permit (§73-50) to allow for a community facility and commercial building, contrary to rear yard requirements (§33-29). C4-3 zoning district.
PREMISES AFFECTED – 23-25 31st Street, east side of 31st Street, between 23rd Avenue and 23rd Road, Block 835, Lot 27 & 31, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 22, 2012, acting on Department of Buildings Application No. 420229194, reads in pertinent part:

> [t]he rear lot line of this zoning lot coincides with the residential district boundary. Provide 30 ft. rear yard as per ZR 33-292; and

WHEREAS, this is an application under ZR §§ 73-50 and 73-03, to legalize, on a site in a C4-3 zoning district abutting an R5B zoning district, the construction of an eight-story commercial and community facility building with an open area 23 feet above curb level with a minimum depth of 20 feet, contrary to ZR § 33-292; 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 19, 2013 and April 23, 2013, and then to decision on May 21, 2013; 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, Queens, recommends approval of the application on condition that (1) the rear wall with a height of 23 feet be completely finished with stucco; (2) the mechanical equipment on the roof setback at the rear be installed on vibration pads and encased with sound-attenuating materials to reduce noise and vibrations; (3) the entire parapet wall at the rear setback be high enough to conceal rooftop mechanical equipment; (4) the front of the building and setback area be well-lit when the building is not in operation; and (5) the applicant remedy damages to the adjacent owners on 31st and 32nd streets by agreeing to pay repair costs; and

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

WHEREAS, certain members of the surrounding community provided written and oral testimony in opposition to the application ("the Opposition"); and

WHEREAS, the Opposition's primary concerns are that: (1) no grant should be given until all damage to adjacent properties has been repaired and owners' costs recouped; (2) the insurance claims process has been unsatisfactory; (3) the applicant has not provided evidence of the need for the special permit; and (4) the potential nuisance of light and noise on the adjacent properties; and

WHEREAS, the subject site is an interior zoning lot (comprising Tax Lots 27 and 31) located on the east side of 31st Street between 23rd Avenue and 23rd Road, with 125 feet of frontage on 31st Street, a depth of 90 feet, and a total lot area of 11,250 sq. ft.; and

WHEREAS, the site is located within a C4-3 zoning district that abuts an R5B zoning district to its rear; and

WHEREAS, pursuant to ZR § 33-292, an open area 23 feet above curb level with a minimum depth of 30 feet is required on a zoning lot within a C4-3 district with a rear lot line that abuts the rear lot line of a zoning lot in a residence district; and

WHEREAS, the applicant proposes to legalize a partially-constructed eight-story community facility building that provides an open area along the rear lot line beginning above the roof of the first story (23 feet above curb level), with a depth of 20 feet (the "20-foot yard"), rather than the required 30 feet; and

WHEREAS, the applicant represents that the building complies in all other respects with the applicable provisions of the Zoning Resolution; and

WHEREAS, under ZR § 73-50, the Board may grant a waiver of the rear yard (open area) requirements set forth in ZR § 33-29 in appropriate cases; and

WHEREAS, the applicant states that the instant application is an appropriate case for a waiver of the requirements set forth in ZR § 33-29; and

WHEREAS, the applicant states that the non-complying 20-foot yard is attributable to a design error by the project architect and that the error was discovered after approximately 80 percent of the building was completed; and

WHEREAS, the applicant states that in order to comply with ZR § 33-292 at this stage of construction, the rearmost 10-foot portion of the building at the first seven stories would have to be demolished by hand and reconstructed with a completely redesigned structural system; the applicant represents that such work is infeasible; and

WHEREAS, as to the infeasibility, the applicant represents that the line of columns at the rear of the building begin below ground at the foundation and continue to the

roof level, and cannot practically be moved without the construction of new footings and the removal of the parking ramps; and

WHEREAS, additionally, the roof water tanks would have to be relocated to a different portion of the roof and such portion would have to be structurally reinforced to carry the additional loads, at significant design and construction costs; and

WHEREAS, lastly, the removal of 10 feet of building depth would result in a building depth of 45 feet at the fourth through eighth stories, which the applicant asserts is inadequate to provide an efficient floor plate for a modern medical office use; and

WHEREAS, the applicant asserts that the waiver will not have an adverse effect on the surrounding area; and

WHEREAS, the applicant represents that of the seven other zoning lots located on the 31st Street frontage, six extend to the rear lot line; and

WHEREAS, the applicant also notes that prior to the construction of the subject building, Lot 27 was occupied by a one-story commercial building that extended to its rear lot line and Lot 31 was occupied by a three-story residential building that provided an approximately 20-foot rear yard consistent with the proposed; and

WHEREAS, the applicant notes that there is a lack of adequate medical facilities in the neighborhood and states that the proposed facility is desired by the community at large; and

WHEREAS, the applicant notes that the proposed tenants include University Orthopedics of NYC, Metropolitan Gastroenterology and Endoscopy Center of Queens; and

WHEREAS, the applicant notes that if the building were redesigned to comply with ZR § 33-292, the building height would be increased from 158 feet to 182 feet; such increase in height would be as of right and result in longer shadows being cast on neighboring buildings; further, the decreased floor plates would be detrimental to the proposed medical use, which the applicant states requires large floor plates so as to minimize the movement of patients from floor to floor; and

WHEREAS, the applicant submitted a shadow study demonstrating the increased neighborhood impact of a taller building; and

WHEREAS, during the public review and hearing process, the Opposition raised concerns about the impact of the building on the residences directly abutting the site; specifically, the Opposition raised concerns regarding: (1) the visibility, noise and potential contamination from exhaust and intake vents and stair pressurization fans at the rear first story roof; (2) glass blocks within the rear wall at the first story and basement, which would allow light to transfer outside the building; (3) open violations from the Department of Buildings ("DOB"); and (4) damages allegedly sustained by the adjacent properties during the course of construction of the subject building and related DOB violations; and

WHEREAS, accordingly, the Board directed the applicant to (1) redesign the exhaust and vent system so that it was further from the adjacent residents at the rear; (2) remove the glass blocks in the rear wall and replace with concrete block and stucco that will be opaque; (3) describe the nature of any outstanding violations; and (4) address the Opposition's concerns about property damage; and

WHEREAS, in response, the applicant: (1) relocated exhaust vents from the rear of the building to the front setback; (2) relocated intake vents and stair pressurization fans to be as far as functionally possible from the rear parapet; (3) provided a detailed statement from the project engineer certifying the make, model, size, functionality and necessity of the intake vents and stair pressurization fans; (4) submitted a visibility study indicating that the intake vents and stair pressurization fans will not be visible from the tallest of the residences abutting the rear lot line (23-26 32nd Street); (5) amended the plans to show the replacement of glass blocks with solid masonry; and (6) submitted evidence of a request from the project architect to the Queens DOB Commissioner for permission to perform work in order to remove the conditions that gave rise to the violations; and

WHEREAS, as to the damages allegedly sustained by the adjacent properties during the course of construction at the subject building and related DOB violations, the applicant asserts that such matters are under the purview of the general contractor and its insurance company and that it is prohibited, by contract, from intervening in the insurance negotiations; and

WHEREAS, further, the applicant represents that the violations were all issued in response to the neighbors' complaints and, thus, cannot be resolved absent the neighbors' cooperation, particularly given that a number of the violations are not actually issued to the subject lot, but to the neighbors', and that other violations require access to the neighbors' property; and

WHEREAS, a search of the Buildings Information System reflects that there are three outstanding violations on the site: (1) ECB Violation No. 34959031Y was issued on September 18, 2012 and alleged a failure to safeguard persons and property affected by construction operations, contrary to New York City Building Code § 3301.2; the respondent was found in violation on January 22, 2013, and no certificate of correction has been approved by DOB; (2) ECB Violation No. 34959207Z was issued on January 15, 2013 and alleged a failure to safeguard persons and property affected by construction operations, contrary to BC § 3301.2; the respondent was found in violation on April 30, 2013, and no certificate of correction has been approved by DOB; and (3) DOB Violation No. 073112C0101SA was issued on July 31, 2012 and alleged that the borough commissioner had issued an intent to revoke the permit and approval for Job No. 420229194 and a Stop Work Order, pursuant to New York City Administrative Code § 28-207.2; and

WHEREAS, the Board notes that disputes between

neighbors and the resolution of property damage caused by construction are beyond its purview and it cannot get involved in such disputes; however, it strongly encourages the parties to work together to achieve a resolution fairly and expeditiously; and

WHEREAS, the applicant represents that the negotiations between the contractor's insurance company and the neighbors' insurance companies are ongoing; and

WHEREAS, the applicant also notes that, on April 15, 2013, one of the neighbors has commenced an action in New York State Supreme Court, Sesumi v. Pali Realty, LLC et al., Index No. 7428/13, Queens County, for alleged property damages; and

WHEREAS, the Opposition also raised additional concerns regarding light pollution from the building, the sufficiency of the roof drains, the functioning of the electrical and mechanical systems and equipment, the general contractor's means and methods of construction, and the completeness of plans submitted in connection with this application; and

WHEREAS, as to these concerns, the Board finds that the applicant adequately addressed them and that all construction methods and plans are subject to DOB review and approval; and

WHEREAS, the Board notes that the construction activities have given rise to certain damage to property and disputes with adjacent property owners, but that such effects are the result of physical construction work and not the land use and planning effects that the Board considers in determining whether or not the open area required by ZR § 33-292 must be provided; and

WHEREAS, further, the Board notes that the use and building are permitted as of right but for the rear ten feet of building depth above a height of 23 feet; and

WHEREAS, the Board notes that the portion of the new building which appears to have created the most conflict with the adjacent property owners is actually the portion of the building (and its rear wall) within the rear yard *below* 23 feet, which is permitted as-of-right pursuant to ZR § 33-292; and

WHEREAS, the Board finds that the extra ten feet of building depth at the rear above a height of 23 feet has not led to the adjacent property owners' concerns in the short-term and is compatible with the adjacent uses in the long-term, pursuant to ZR §§ 73-03 and 73-50; however, the impact of the physical construction work upon adjacent properties may be considered by the Board in determining the appropriate conditions and safeguards to impose along with the grant of a special permit pursuant to ZR § 73-03; and

WHEREAS, the Board notes that the applicant has satisfied all of the Community Board's requests related to building design and site conditions, in that: (1) the rear wall will be completely finished with stucco; (2) the mechanical equipment on the roof setback at the rear will be installed on vibration pads and encased with sound-attenuating materials to reduce noise and vibrations; (3) the entire parapet wall at the rear setback is high enough to conceal rooftop mechanical equipment; and (4) the front of the building and setback area will be well-lit when the building is not in operation; and

WHEREAS, as to the Community Board's additional request that the applicant remedy damages to the adjacent owners on 31st and 32nd streets, the Board notes that both parties have testified that there are ongoing negotiations between the property owners' and contractor's insurance companies to resolve the damages; and

WHEREAS, based on the record, the Board finds that the application meets the requirements of ZR § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of ZR § 73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-50 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 §§ 73-50 and 73-03, to permit, on a site in a C4-3 zoning district abutting an R5B zoning district, the construction of an eight-story community facility building with an open area 23 feet above curb level with a minimum depth of 20 feet, contrary to ZR § 33-292, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received April 2, 2013" – sixteen (16) sheets; and *on further condition*;

THAT the vents atop the rear first story roof will be for intake only;

THAT the stair pressurization fans atop the rear first story roof will be operated only in an emergency;

THAT all lighting will be directed away from adjacent residences, as reflected on the plans;

THAT the glass blocks at the rear wall will be replaced by masonry and stucco;

THAT the mechanical equipment on the roof setback at the rear will be installed on vibration pads and encased with sound-attenuating materials to reduce noise and vibrations;

THAT the entire parapet wall at the rear setback will be built to a sufficient height, as reflected on the BSA-approved plans and approved by DOB, to conceal rooftop mechanical equipment;

THAT the front of the building and setback area will be well-lit when the building is not in operation;

THAT the above conditions be noted on the Certificate of Occupancy;

THAT DOB will not issue a Temporary Certificate of Occupancy (or Final Certificate of Occupancy) and the building will not be occupied until all violations on the site

have been cured to DOB's satisfaction;

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 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 21, 2013.

***The resolution has been amended on June 20, 2013. Corrected in Bulletin No. 25, Vol. 98, dated June 26, 2013.**

BULLETIN

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12 Savona Court, West side of Savona Ct distant 71.05' south of the corner formed by Station Avenue and Savona Ct, Block 7534, Lot(s) 330, Borough of **Staten Island, Community Board: 3**. Proposed construction of a single detached residence not fronting on a legally mapped street, contrary to General City Law 36, R3X (SSRD) zoning district. R3X district.

203-13-A
16 Savona Court, West side of Savona Ct distant 118.05' south of the corner formed by Station Avenue and Savona Ct., Block 7534, Lot(s) 331, Borough of **Staten Island, Community Board: 3**. Proposed construction of single detached residence not fronting on a legally mapped street, contrary to General City Law 36 R3X (SSRD) zoning district R3X district.

203-10-A
1359 Davies Road, Located on the southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lot(s) 15, Borough of **Queens, Community Board: 14**. Extension of Time to Obtain a Certificate of Occupancy for a single-family home to continue construction commenced under the prior R5 zoning district. R4-1 zoning district. R4-1 district.

204-13-A
20 Savona, West side of Savona Ct distant 165.05' south of the corner formed by Station Avenue and Savona Ct, Block 7534, Lot(s) 332, Borough of **Staten Island, Community Board: 3**. Proposed construction of single detached residence not fronting on a legally mapped street, contrary to General City Law 36 R3X (SSRD) zoning district R3X district.

204-10-A
1365 Davies Road, Located on the southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lot(s) 13, Borough of **Queens, Community Board: 14**. AMENDMENT: to extend the period to complete construction and secure Certificates of Occupancy R4-1 district.

205-13-A
24 Savona Court, West side of Savona Ct distant 212.51' south of the corner formed by Station Avenue and Savona Ct, Block 7534, Lot(s) 335, Borough of **Staten Island, Community Board: 3**. Proposed construction of a single detached residence, not fronting on a legally mapped street, contrary to General City Law 36, R3X (SSRD) zoning district. R3X district.

205-10-A
1367 Davies Road, Located on the southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lot(s) 12, Borough of **Brooklyn, Community Board: 14**. Extension of Time to Obtain a Certificate of Occupancy for a single-family home to continue construction commenced under the prior R5 zoning district. R4-1 zoning district. R4-1 district.

206-13-BZ
605 West 42nd Street, Located on the eastern portion of the city block bounded by West 42nd St, West 43rd St.,11th Avenue and 12th Avenue, Block 1090, Lot(s) 29,23,7501, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation of a physical culture establishment within an existing building, contrary to Section 32-31. 32-31&73-36 district.

207-13-BZ
177 Hastings Street, East side of Hastings Street, between Oriental Boulevard and Hampton Avenue, Block 8751, Lot(s) 456, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area regulation (23-141(b), R3-1 zoning district. R3-1 district.

208-13-BZ
1601 Gravesend Neck Road, Located on Gravesend Neck Road Between East 16th and East 17th Street., Block 7377, Lot(s) 29, Borough of **Brooklyn, Community Board: 3**. 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 C8-1/R4 district.

209-13-BZ
12 West 21st Street, Located on West 21st Street between 5th Avenue and 6th Avenue, Block 822, Lot(s) 49, Borough of **Manhattan, Community Board: 5**. 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 C6-4A district.

210-13-BZ
43-12 50th Street, Located on the west side of 50th Street between 43rd Avenue and Queens Boulevard, Block 138, Lot(s) 25, Borough of **Queens, Community Board: 2**. 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. R7A/C1-4 district.

211-13-BZ
346 Broadway, Block bounded by Broadway, Leonard and Lafayette Streets & Catherine Lane, Block 170, Lot(s) 6, Borough of **Manhattan, Community Board: 1**. Re-instatement (§11-411) of a previously approved variance, which permitted the use of the cellar and basement levels of a 12-story building as a parking garage, which expired in 1971; Amendment to permit a change to the curb-cut configuration; Waiver of the rules. C6-4A zoning district. C6-4A 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 23, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 23, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

327-88-BZ
APPLICANT – Eric Palatnik, P.C., for George Hui, owner.
SUBJECT – Application October 4, 2012 – Amendment to a previously granted Variance (ZR72-21) 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

APPEALS CALENDAR

220-10-BZY
APPLICANT – Goldman Harris LLC, Orchard Hotel LLC,c/o Maverick Real Estate Partners, vendee ,DAB Group LLC, owner.
SUBJECT – Application March 11, 2013 – Extension of time to complete construction and obtain a Certificate of Occupancy under ZR§ 11-332 of a previously approved Board approval which expires on March 15, 2013. Prior zoning district C6-1. C4-4A zoning district.
PREMISES AFFECTED – 77, 79, 81 Rivington Street, a/k/a 139 , 141 Orchard Street , northern p/o block bounded by Orchard Street to the east, Rivington Street to the north, Allen Street to the west, and Delancy Street to the south, Block 415, Lot 61-63, 66, 67, Borough of Manhattan.
COMMUNITY BOARD #3M

272-12-A
APPLICANT – Michael Cetera, for Aaron Minkowicz, owner.
SUBJECT – Application September 6, 2012 – Appeal challenging Department of Buildings' determination that an existing non-conforming single family home may not be enlarged as per ZR 52-22. R2 zoning district.
PREMISES AFFECTED – 1278 Carroll Street, between Brooklyn Avenue and Carroll Avenue, Block 1291, Lot 19, Borough of Brooklyn.
COMMUNITY BOARD #9BK

127-13-A
APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Brusco Group, Inc., owner.
SUBJECT – Application May 1, 2013 – Application filed pursuant to Section 310 of the Multiple Dwelling Law "MDL" and requests that the Board vary MDL Sections 171-2(a) and 2(f) to allow for the vertical enlargement of the 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

190-13-A
APPLICANT – Zygmunt Staszweski, for The Breezy Point Cooperative, Inc., owner; Tracey McEachern, lessees.
SUBJECT – Application June 27, 2013 – Proposed reconstruction of a single family dwelling in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law and the proposed upgrade of an existing septic system contrary to DOB policy. R4 zoning district.
PREMISES AFFECTED –107 Arcadia Walk, East of Arcadia Walk 106' South Rockaway Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.
COMMUNITY BOARD #14Q

ZONING CALENDAR

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, lot area, front yard, side yard and side yard setback. 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

62-12-BZ
APPLICANT – Akerman Senterfitt LLP, for VBI Land Inc., owner.
SUBJECT – Application March 19, 2012 – Variance (§72-21) to allow for 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

86-13-BZ
APPLICANT – Eric Palatnik, P.C., for Yefim Portnov, owner.
SUBJECT – Application March 6, 2013 – Special Permit (§73-621) to permit, in an R2 zoning district, the enlargement of an existing one-family dwelling which will not provide the required open space ratio, and which exceeds the maximum permitted floor area (ZR 23-141). R-2 zoning district.
PREMISES AFFECTED – 65-43 171st Street, between 65th Avenue and 67th Avenue, Block 6912, Lot 14, Borough of Queens.
COMMUNITY BOARD #8Q

101-13-BZ
APPLICANT – Dennis D. Dell'Angelo, for Meira N. Sussman, owner.
SUBJECT – Application April 10, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to open space and floor area (ZR §23-141); side yards (ZR 23-461) and less than the required rear yard (ZR §23-47). R-2 zoning district.
PREMISES AFFECTED – 1271 East 23rd Street, East side 190’ north of Avenue "M", Block 7641, Lot 15, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JULY 9, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

256-82-BZ
APPLICANT – Vito J. Fossella, P.E., for Philip Mancuso, owner.
SUBJECT – Application December 24, 2012 – Extension of Term of a previously granted Special Permit (§73-44) for the continued operation of a veterinary clinic and general UG6 office use in an existing two (2) story building with a reduction of the required parking which expired on November 23, 2012. C2-1/R3-1 zoning district.
PREMISES AFFECTED – 1293 Clove Road, north side of Clove Road, corner formed by the intersection of Glenwood Avenue and Clove Road, Block 605, Lot 8, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit authorizing a reduction in required parking in connection with offices (Use Group 6), which expired on November 23, 2012; and

WHEREAS, a public hearing was held on this application on May 14, 2013, after due notice by publication in *The City Record*, with a continued hearing on June 11, 2013, and then to decision on July 9, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by 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 southeast corner of the intersection of Clove Road and Glenwood Avenue, within an R2 (C2-1) zoning district within the Special Hillsides Preservation District; and

WHEREAS, the site has approximately 100 feet of frontage along Glenwood Avenue and 60 feet of frontage along Clove Road, and a total lot area of 6,000 sq. ft.; and

WHEREAS, the site is occupied by a two-story commercial building with accessory parking for 12 automobiles; and

WHEREAS, the Board has exercised jurisdiction over the site since November 30, 1982, when, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-44 authorizing a reduction in the number of accessory parking spaces required by ZR § 36-21; and

WHEREAS, subsequently, the term was extended; and

WHEREAS, most recently, on February 11, 2003, the Board extended the term of the special permit for ten years, to expire on November 23, 2012; and

WHEREAS, the applicant now seeks an extension of the term; and

WHEREAS, the applicant notes that the site has been rezoned from R3-1 (C2-1) to R2 (C2-1) since the prior extension of the term; in addition, the Use Group 6 use has changed from a dental laboratory and office to veterinarian, clerical and lending offices; however, there is no change to the building or site characteristics and the parking category will remain category (B); and

WHEREAS, at hearing, the Board directed the applicant to: (1) plant trees along the Glenwood Avenue frontage; (2) remove the garbage container from the parking area; and (3) amend the plans to reflect the existing conditions at the site; and

WHEREAS, in response, the applicant submitted an amended site plan showing the existing conditions at the site and an additional tree along the Glenwood Avenue frontage; in addition, the applicant submitted photographs showing the removal of the garbage container and the newly-planted tree; and

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated November 30, 1982, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years until November 23, 2022; on condition that all work shall substantially conform to drawings marked 'Received April 26, 2013' – (4) sheets and 'June 25, 2013'-(1) sheet, and on further condition:

THAT the term of this grant will expire on November 23, 2022;

THAT the conditions from all prior BSA resolutions for this site shall remain in effect;

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

THAT any graffiti located on the premises shall be removed within 48 hours;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

THAT the layout and design of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

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

THAT the approved plans shall be considered

approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all 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". (DOB Application No. 500577949)

Adopted by the Board of Standards and Appeals, July 9, 2013.

103-91-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.

SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term of a previously granted variance for an automobile laundry (Use Group 16) in an R3-2 (C2-1) zoning district, which expires on February 23, 2014, and an amendment to allow an enlargement, renovations to the existing building, site modifications, and an expansion of the hours of operation; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, with continued hearings on February 26, 2013, April 23, 2013, May 14, 2013 and June 11, 2013 and then to decision on July 9, 2013; and

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

WHEREAS, the subject site is located on the south side of Sunrise Highway between Hook Creek Road and West Circle Drive, within an R3-2 (C2-1) zoning district; and

WHEREAS, the site has a total area of approximately 9,800 sq. ft., with 140 feet of frontage along Sunrise Highway; and

WHEREAS, the site is occupied by a one-story building with 4,169 sq. ft. of floor area; the applicant states that an automobile laundry has operated within the building since 1994; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 2, 1958 when, under BSA Cal. No. 939-57-BZ, the Board granted a variance pursuant to 1916 Zoning Resolution § 21, authorizing in the former E-1 Area District the building's encroachment into the required rear yard; and

WHEREAS, subsequently, under the subject calendar number, the Board, on February 23, 1994, granted a variance pursuant to ZR § 72-21, authorizing the alteration, enlargement, and conversion of a bakery and cabaret into an automobile laundry; and

WHEREAS, the applicant now seeks to extend the term of the variance for ten years; and

WHEREAS, the applicant also requests an amendment to permit: (1) enclosure of an open storage area at the rear of the building; (2) the installation of opaque windows at the rear; (2) installation of an outdoor heating fan; (3) relocation of vacuum machinery from the rear property line to the cellar to minimize noise; (4) rearrangement and renovation of the accessory retail store; (5) installation of new washing equipment, including water recycling machinery, new doors, lighting, ceiling material and flooring; (6) installation of an accessible ramp at the entrance; (7) removal of security gates from windows and doors; (8) installation of a new canopy; (9) new landscaping on the site; (10) installation of a sound-attenuating fence at the rear property line; and (11) modification of the driving lanes; and

WHEREAS, the applicant represents that the proposed renovations and site modifications will reduce the impact of the use upon the neighboring residential area; and

WHEREAS, in addition, the applicant seeks to amend the hours of operation from 7:00 a.m. to 8:00 p.m., seven days per week to Monday through Saturday from 7:00 a.m. to 12:00 a.m., and Sunday from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the existing restrictions on the auto laundry's hours of operation increasingly hamper the operator's ability to maintain a profitable business; and

WHEREAS, the applicant submitted statements in support of the expanded hours from the four neighbors directly adjacent to the site; and

WHEREAS, at hearing, the Board raised concerns about accessory signage at the site, noting that it was well in excess of the signage permitted under the C2-1 district regulations; and

WHEREAS, in response, the applicant submitted photographs of the removal of all excessive signs except the "menu boards" and the directional signs, which the applicant states are essential to the operation of an auto laundry; the applicant also submitted photographs of other automobile laundries, which maintain similar "menu boards" and directional signs; and

WHEREAS, the Board agrees with the applicant that there is a conflict between allowing the automobile laundry within the C2-1 district, where it is not permitted as-of-right, but applying the sign regulations applicable within a C2-1

zoning district, which do not contemplate the signage typically found with automobile-oriented uses; further, the Board is persuaded that limiting the accessory signage would prevent the applicant from announcing its service in a manner that is familiar to patrons of automobile laundries, which would be detrimental to its business; and

WHEREAS, in addition, the Board agrees with the applicant that directional signs are essential to maintaining a safe and orderly traffic flow on the site; and

WHEREAS, accordingly, the Board finds that, in addition to 150 sq. ft. of accessory signage permitted as-of-right in the C2-1 zoning district, the menu boards and the directional signage, as set forth in the approved drawings, are justified by the use variance and appropriate under the circumstances; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment are appropriate with certain conditions as set forth below; and

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on February 23, 1994, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from July 9, 2013, to expire on July 9, 2023, and to permit the noted modifications to the site; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received February 13, 2013'-(5) sheets and 'May 30, 2013'-(2) sheets; and *on further condition*:

THAT the term of this grant will expire on July 9, 2023;

THAT landscaping, site trees and fencing will be provided and maintained in accordance with the BSA-approved plans;

THAT site lighting will be directed downward and away from adjacent residential uses;

THAT the surface area of accessory signage will be limited to 150 sq. ft., except menu boards and directional signs, in accordance with the BSA-approved plans, will be permitted;

THAT there will be no open storage on the lot;

THAT reservoir space for at least ten motor vehicles will be provided;

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

THAT a new certificate of occupancy will be obtained by July 9, 2014;

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."
(DOB Application No. 420602903)

Adopted by the Board of Standards and Appeals, July 9, 2013.

102-94-BZ
APPLICANT – C.S. Jefferson Chang, for BL 475 Realty Corp., owner.
SUBJECT – Application January 9, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continuous (UG 6) grocery store which expired on June 20, 2005; Waiver of the Rules. R-5 zoning district.
PREMISES AFFECTED – 475 Castle Hill Avenue, south side of Lacombe Avenue and West of the corner formed by the intersection of Lacombe Avenue and Castle Hill Avenue, Block 3510, Lot 34, 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 Montanez 5
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 of a previously granted variance for a retail grocery store (Use Group 6) in a residence district, which expired on June 20, 2005, and an amendment to legalize minor interior layout changes; and

WHEREAS, a public hearing was held on this application on May 14, 2013, after due notice by publication in *The City Record*, with a continued hearing on June 11, 2013, and then to decision on July 9, 2013; 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 southwest corner of Lacombe Avenue and Castle Hill Avenue, within an R5 zoning district; and

WHEREAS, the site has a total area of approximately 5,423 sq. ft. and is occupied by a one-story building with approximately 1,567 sq. ft. of floor area and accessory parking for six automobiles; the building is occupied by a retail grocery store (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 20, 1995 when, under the subject calendar number, the Board granted a variance to legalize the conversion of a gasoline service station (Use Group 16) to a retail grocery store (Use Group 6) for a term of ten years, to expire on June 20, 2005; and

WHEREAS, the applicant now seeks to extend the term of the variance for ten years; and

WHEREAS, the applicant also requests an amendment to permit minor interior layout changes and a reduction in the size of the accessory sign; and

WHEREAS, at hearing, the Board raised concerns about

the poor state of the site, including the presence of an unauthorized trailer, unlawful parking of commercial vehicles, a pigeon coop, tarpaulins, and barbed wire atop the fence enclosing the site; in addition, the Board noted that the accessory signage was in excess of that permitted under the variance; and

WHEREAS, in response, the applicant submitted photographs showing that the barbed wire and trailer were removed, the site was cleaned up, and the accessory sign was reduced to a complying size; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on June 20, 1995, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from July 9, 2013, to expire on July 9, 2023, and to permit the noted modifications to the site; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received June 5, 2013'-(3) sheets; and *on further condition*:

THAT the term of this grant will expire on July 9, 2023;

THAT a new certificate of occupancy will be obtained by July 9, 2014;

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."
(DOB Application No. 210040926)

Adopted by the Board of Standards and Appeals, July 9, 2013.

240-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Lionshead 110 Development LLC, owner; Lionshead 110 Development LLC, lessee.

SUBJECT – Application December 11, 2012 – Extension of term of a Special Permit (§73-36) for a physical culture establishment, which expired on December 17, 2012. C6-4(LM) zoning district**.**

PREMISES AFFECTED – 110/23 Church Street, southeast corner of intersection of Church Street and Murray Street, Block 126, Lot 27, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a Physical Culture Establishment ("PCE"), which expired on December 17, 2012; and

WHEREAS, a public hearing was held on this application on June 4, 2013, after due notice by publication in *The City Record*, and then to decision on July 9, 2013; 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 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Church Street and Park Place, within a C6-4 zoning 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 first and second floors of the building; and

WHEREAS, on December 17, 2002, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 to permit the operation of a physical culture establishment on portions of the first and second floors of the 21-story mixed residential and commercial building at the site; and

WHEREAS, the term of the original grant expired on December 17, 2012; and

WHEREAS, the applicant now seeks an extension of the term; and

WHEREAS, the PCE will continue to be operated as Equinox Tribeca; and

WHEREAS, the applicant notes that the hours of operation of the PCE established in the original grant are Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 6:00 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

WHEREAS, based on its review of the record, the Board finds that the proposed ten-year extension of term 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 December 17, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years until December 17, 2022; *on condition* that all work shall substantially conform to drawings marked 'Received June 25, 2013' – (1) sheet, 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 this grant will be limited to a term of ten years, to expire on December 17, 2022;

THAT the hours of operation shall be limited to Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 6:00 a.m.

to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

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. 103343561)

Adopted by the Board of Standards and Appeals, July 9, 2013.

292-01-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Villa Mosconi Restaurant, owner.

SUBJECT – Application January 17, 2013 – Extension of Term of a previously-granted Variance (§72-21) which permitted the legalization of a new dining room and accessory storage for a UG6 eating and drinking establishment (*Villa Mosconi*), which expired on January 7, 2013. R7-2 zoning district.

PREMISES AFFECTED – 69/71 MacDougal Street, west side of MacDougal Street between Bleecker Street and West Houston Street, Block 526, Lot 33, 34, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for the continued use of an eating and drinking establishment, which expired on January 14, 2013; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in *The City Record*, with continued hearings on May 21, 2013, and then to decision on July 9, 2013; 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, Manhattan, recommends approval of this application, on condition that the applicant remove the advertising sign on the south wall of the building; and

WHEREAS, the subject site is an interior lot located on the west side of MacDougal Street between Houston Street and Bleecker Street, within an R7-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 2003, when under the subject calendar number, it granted a variance to legalize the enlargement of a non-conforming eating and drinking establishment at the ground floor of the building at the site; the enlargement consisted of a new dining room at the rear of the building and a new accessory cellar level storage space; the term of the grant was for ten years, to expire on January 14, 2013; and

WHEREAS, accordingly, the applicant now requests an additional extension of the term; and

WHEREAS, the applicant notes that under the terms of the grant, the applicant was required to obtain a certificate of occupancy by January 14, 2004; however, a certificate of occupancy was not obtained until 2006; and

WHEREAS, at hearing, the Board directed the applicant to determine whether the advertising sign on the south wall of the building was lawful; and

WHEREAS, in response, the applicant submitted photographs showing that the sign had been removed; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 14, 2003, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the prior expiration, to expire on January 14, 2023; *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT the term of the grant will expire on January 14, 2023;

THAT an amended certificate of occupancy will be obtained by July 9, 2014;

THAT signage will comply with C1 district regulations;

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 the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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. 102321952)

Adopted by the Board of Standards and Appeals, July 9, 2013.

102-95-BZ
APPLICANT – Law Office of Fredrick A. Becker, for 50 West Realty Company LP, owner; Renegades Associates/dba Splash Bar, lessee.
SUBJECT – Application April 22, 2013 – Extension of Term of a Special Permit (§73-244) for the continued operation of a UG12 Easting/Drinking Establishment (*Splash*) which expired on March 5, 2013; Amendment to modify the interior of the establishment. C6-4A zoning district.
PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street between 5th Avenue and 6th Avenue, Block 818, Lot 78, 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 August 13, 2013, at 10 A.M., for decision, hearing closed.

45-08-BZ
APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.
SUBJECT – Application June 10, 2013 – Extension Time to Complete Construction of Variance (§72-21) to construct a new four-story, 81 unit age restricted residential facility which expired on May 19, 2013. M1-1 (Area M), SRD & SGMD zoning district.
PREMISES AFFECTED – 55 Androvette Street, North side of Androvette Street at the corner of Manley Street, Block 7407, Lot 1, 80, 82 (tentative 1), Borough of Staten Island.
COMMUNITY BOARD #3SI
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 13, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

111-13-BZY thru 119-13-BZY
APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., lessee.
SUBJECT – Applications April 24, 2013 – Extension of time (§11-332b) to complete construction of a major development commenced under the prior Special Natural Area zoning district regulations in effect on October 2004. R1-2/NA-2 zoning district.
PREMISES AFFECTED – 5031, 5021 Grosvenor Avenue, Lots 50, 60, 70, 5030 Grosvenor Avenue, Block 5830, Lot 3930, 5310 Grosvenor Avenue, Block 5839, Lot 4018, 5300 Grosvenor Avenue, Block 5839, Lot 4025, 5041 Goodridge Avenue, Block 5830, Lot 3940, 5040 Goodridge Avenue, Block 5829, Lot 3635, 5030 Goodridge Avenue, Block 5829, Lot 3630. 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332(b), to permit an extension of time to complete construction and obtain certificates of occupancy for nine single-family dwellings currently under construction on nine separate lots within a major development at the subject site; and

WHEREAS, a public hearing was held on this application on June 4, 2013, after due notice by publication in *The City Record*, and then to decision on July 9, 2013; and

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

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

WHEREAS, the subject site, known as Villanova Heights or Chapel Farm Estates, is located in the Fieldston section of the Bronx, on an approximately 15-acre parcel within an R1-2 zoning district within Special Natural Area District 2 ("SNAD"); and

WHEREAS, the site is located within: the arcing portion of Grosvenor Avenue that begins at West 250th Street, crosses Longview Place and West 252nd Street, and terminates at Iselin Avenue; the portion of Goodridge Avenue between West 250th Street and West 252nd Street; and the portion of West 252nd Street between Grosvenor Avenue and Goodridge Avenue; and

WHEREAS, the site is a major development comprising 12 lots, nine of which are the subject of this application; one single-family home is proposed on each of the nine lots; the applicant notes that the three lots that are not the subject of this application have been completed; and

WHEREAS, each of the nine buildings within the major development comply with a prior version of the SNAD requirements set forth in Zoning Resolution Article X, Chapter 5; and

WHEREAS, however, on February 2, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt a text amendment, which affected the SNAD regulations and resulted in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for all nine homes under New Building Permit Nos. 200922528, 200922537, 200922546, 200922555, 200922564, 200922591, 200922608, 200922617, and 200922626 ("the New Building Permits"), and it had completed the foundation for one home, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings ("DOB") to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction of the entire development and to obtain certificates of occupancy; and

WHEREAS, accordingly, because the two-year time limit expired and construction was still ongoing, on April 24, 2007, under BSA Cal. Nos. 20-07-BZY through 31-07-BZY, the Board granted the applicant relief pursuant to ZR § 11-30 *et seq.*, renewing the New Building Permits for one term of two years; and

WHEREAS, consistent with BSA Cal. Nos. 20-07-BZY through 31-07-BZY, the Board renewed the New Building Permits for two additional two-year terms by letters dated June 15, 2009 and June 22, 2011; as a consequence, on June 22, 2013, the New Building Permits lapsed; and

WHEREAS, the applicant notes that since the last renewal of the New Building Permits in 2011, it has performed infrastructure related work on Lots 50, 60, 70, 3930, 3940, 3630, 3635, 4018 and 4025, including the installation of: (1) roadway asphalt; (2) cul-de-sac grading and curbs; (3) a gray water sprinkler system; (4) utility connections for each lot from lines installed in the roadway beds; (5) electrical conduits for the street lamp system; and (6) partial landscaping; during that same time period, the applicant has expended approximately $8,921,405, including soft costs; and

WHEREAS, the applicant now seeks an additional extension of time to complete construction and obtain certificates of occupancy pursuant to ZR § 11-332(b); and

WHEREAS, pursuant to ZR § 11-332(b), where construction that was permitted to continue has not been completed at the expiration of extended terms pursuant to ZR § 11-332(a), the Board may grant an additional one-year extension if it finds that: (1) the applicant has been prevented from completing construction by hardship or circumstances beyond the applicant's control; (2) the applicant has not recovered all or substantially all of the financial expenditures incurred in construction, nor is the applicant able to recover substantially all of the financial expenditures incurred through development that conforms and complies with any applicable Zoning Resolution amendment(s); and (3) that there are no considerations of public safety, health and welfare that have become apparent since the issuance of the permit that indicate an overriding benefit to the public in enforcement of the applicable amendment(s) to the Zoning Resolution; and

WHEREAS, as a threshold issue, per ZR § 11-31(a), the Board must determine that proper permits were issued; and

WHEREAS, the applicant represents—and the Board previously recognized in BSA Cal. Nos. 20-07-BZY through 31-07-BZY—that all of the relevant DOB permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and have been timely renewed since initial issuance; and

WHEREAS, turning to the findings of ZR § 11-332(b), the applicant states that the scope of the project and the limited availability of commercial financing are hardships that have prevented completion of construction; and

WHEREAS, the applicant notes that its original intention was to build and sell the homes two or three at a time, however, the 2008 credit crisis and subsequent downturn in the housing market have prevented the applicant from selling the homes at the originally-projected price point; as such, the applicant has been forced to finance construction with a trickle of rent payments, rather a series of sales; and

WHEREAS, in addition, the applicant states that in January 2011, a contractor filed a mechanic's lien against the site for $1,566,000; the applicant defended against the lien for approximately 15 months; ultimately, the lien was settled and discharged; however, while the matter was pending, the applicant was unable to secure financing, which delayed the pace of construction; and

WHEREAS, based on these assertions and on the supporting documentation in the record, the Board finds that the applicant has been prevented from completing construction by hardship and by circumstances beyond the applicant's control; and

WHEREAS, the applicant represents that it has not recovered all or substantially all of the financial expenditures incurred in construction, nor is it able to recover substantially all of the financial expenditures incurred through development that complies with the SNAD requirements; and

WHEREAS, the applicant represents recovery of its financial expenditures is dependent on completing construction on the site as originally designed, and the applicant notes that only three out of 12 of the homes on the site have been completed; and

WHEREAS, the applicant also states that if the site were to be subject to the SNAD requirements, no as-of-right development would be permitted; instead, all unfinished homes on the site would be subject to City Planning Commission ("CPC") actions, which the applicant states are difficult to predict; and

WHEREAS, the applicant contends that fewer homes would be permitted by CPC, which would result in a substantial redesign of the site, at significant cost, including

sums already spent for infrastructure that might not be utilized; and

WHEREAS, accordingly, the Board finds that the applicant would not be able to recover all or substantially all of its financial expenditures through development that complies with the SNAD requirements; and

WHEREAS, finally, the applicant represents that there are no considerations of public safety, health and welfare that have become apparent since the issuance of the New Building Permits that indicate an overriding benefit to the public in enforcement of the SNAD requirements; and

WHEREAS, the Board agrees with the applicant that there are no considerations of public safety, health and welfare that have become apparent since the issuance of the New Building Permits that indicate an overriding benefit to the public in enforcement of the SNAD requirements; and

WHEREAS, therefore, the Board finds that the applicant has satisfied all the requirements of ZR § 11-332(b), and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a one-year extension of time to complete construction, pursuant to ZR § 11-332(b).

Therefore it is Resolved that this application made pursuant to ZR § 11-332(b) to renew Building Permit Nos. 200922519, 200922528, 200922537, 200922546, 200922555, 200922564, 200922573, 200922582, 200922591, 200922608, 200922617, and 200922626, 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 the proposed development for one term of one year from the date of this resolution, to expire on July 9, 2014.

Adopted by the Board of Standards and Appeals, July 9, 2013.

172-13-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Margaret & Robert Turner, lessees.

SUBJECT – Application June 11, 2013 – Proposed reconstruction of a single family home and installation of the disposal system located partially in the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law. R4 zoning district.

PREMISES AFFECTED –175 Ocean Avenue, East side of Ocean Avenue, 40' North of Breezy Point Boulevard, Block 16350, Lot p/o 400, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 6, 2013, acting on Department of Buildings ("DOB") Application No. 420830998, reads in pertinent part:

A1- The proposed building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35.

A2- The proposed upgrade of the private disposal system partially in the bed of the mapped street is contrary to General City Law Article 3, Section 35 and the Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated June 13, 2013 the Fire Department states that it has reviewed the subject proposal and has no objections; the Fire Department also states that it requires that DOB-approved drawings indicate that the building will be fully sprinklered; and

WHEREAS, the record reflects that the applicant has provided a site plan indicating that the building will be fully sprinklered and smoke alarms will be interconnected to the existing hard-wired electrical system; and

WHEREAS, by letter dated June 13, 2013, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated June 20, 2013, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency'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 June 6, 2013, acting on DOB Application No. 420830998, 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 shall substantially conform to the drawing filed with the application marked "Received June 11, 2013"- one (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) only;

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;

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

THAT the Department of Buildings must ensure compliance 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 9, 2013.

29-12-A
APPLICANT – Vincent Brancato, owner
SUBJECT – Application February 8, 2012 – Appeal seeking to reverse Department of Building's padlock order of closure (and underlying OATH report and recommendation) based on determination that the property's commercial/industrial use is not a legal non-conforming use. R3-2 Zoning district.
PREMISES AFFECTED – 159-17 159th Street, Meyer Avenue, east of 159th Street, west of Long Island Railroad, Block 12178, Lot 82, Borough of Queens.
COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to September 17, 2013, at 10 A.M., for continued hearing.

268-12-A thru 271-12-A
APPLICANT – Eric Palatnik, P.C., for Mr. Frank Naso, owner.
SUBJECT – Application September 6, 2012 – Proposed construction of a single family semi-detached building not fronting a mapped street, contrary to General City Law Section 36. R3-1 zoning district.
PREMISES AFFECTED – 8/10/16/18 Pavillion Hill Terrace, corner of Homer Street and Swan Street, Block 569, Lot 318, 317, 316, 285, Borough of Staten Island.
COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to August 13, 2013, at 10 A.M., for adjourned hearing.

308-12-A
APPLICANT – Francis R. Angelino, Esq., for LIC Acorn Development LLC, owner.
SUBJECT – Application November 8, 2012 – Request that the owner has a common law vested right to continue construction and obtain a Certificate of Occupancy under the prior M1-3 zoning district. M1-2/R5D zoning district.
PREMISES AFFECTED – 39-27 29th Street, east side 29th Street, between 39th and 40th Avenues, Block 399, Lot 9, 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 13, 2013, at 10 A.M., for decision, hearing closed.

75-13-A
APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by llya 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 – Laid over to August 13, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

321-12-BZ
CEQR #13-BSA-061K
APPLICANT – Dennis D. Dell'Angelo, for Jay Lessler, owner.
SUBJECT – Application December 6, 2012 – 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 (§23-141); perimeter wall height (§23-631) and rear yard (§23-47) regulations R3-1 zoning district.
PREMISES AFFECTED – 22 Girard Street, west side of Girard Street, 149.63' south of Shore Boulevard, Block 8745, Lot 70, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 9, 2012, acting on Department of Buildings Application No. 320586781, reads in pertinent part:

1. The proposed FAR is contrary to Section 23-141 of the Zoning Resolution;

2. The proposed enlargement provides less than the required rear yard, contrary to Section 23-47 of the Zoning Resolution;
3. The proposed perimeter wall height is contrary to Section 23-631(b) of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement and conversion of a two-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), rear yard, and maximum permitted wall height, contrary to ZR §§ 23-141, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, with continued hearings on April 16, 2013, May 21, 2013, and June 18, 2013, and then to decision on July 9, 2013; and millennium

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 Girard Street, between Shore Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 5,356 sq. ft. and is occupied by a two-family home with a floor area of 2,623 sq. ft. (0.49 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 proposes to enlarge the subject building and convert it from a two-family dwelling to a single-family dwelling; and

WHEREAS, the applicant seeks an increase in the floor area from of 2,623 sq. ft. (0.49 FAR) to 3,380 sq. ft. (0.63 FAR); the maximum permitted floor area is 2,687 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to maintain the existing non-complying rear yard depth of 27'-5" in the proposed enlargement of the second story; the minimum required rear yard depth is 30 feet; and

WHEREAS, the applicant proposes to decrease the existing non-complying perimeter wall height from 24'-3" to 23'-5" and extend the wall at the front and at the rear of the building; 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 (23'-5") is less than the height of the adjacent building's non-complying perimeter walls facing the street (23'-6 3/8"), 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, 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 R3-1 zoning district, the proposed enlargement and conversion of a two-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), rear yard, and maximum permitted wall height, contrary to ZR §§ 23-141, 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 December 6, 2012"-(3) sheets and "June 25, 2013"-(8) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,380 sq. ft. (0.63 FAR), a rear yard with a minimum depth of 27'-5", and a maximum perimeter wall height of 23'-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 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, July 9,

2013.

62-13-BZ
CEQR #13-BSA-094X
APPLICANT – Sheldon Lobel, P.C., for BXC Gates, LLC, owner.
SUBJECT – Application February 7, 2013 – Special Permit (§73-243) to legalize the existing eating and drinking establishment (*Wendy's*) with an accessory drive-through facility. C1-2/R6 zoning district.
PREMISES AFFECTED – 2703 East Tremont Avenue, property fronts on St. Raymond's Avenue to the northwest, Williamsbridge Road to the northeast, and East Tremont Avenue to the southwest, Block 4076, Lot 12, 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 Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated January 25, 2013, acting on Department of Buildings Application No. 220245759, reads:

> Eating and drinking establishment with accessory drive-through facility in an R6 (C1-2) zoning district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within an R6 (C1-2) zoning district, the legalization 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 § 32-10; and

WHEREAS, a public hearing was held on this application on May 14, 2013, with a continued hearing on June 4, 2013, and then to decision on July 9, 2013; 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, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of East Tremont Avenue and St. Raymond's Avenue within an R6 (C1-2) zoning district; and

WHEREAS, the site has approximately 138 feet of frontage along East Tremont Avenue, approximately 188 feet of frontage along St. Raymond's Avenue and approximately 100 feet of frontage along Williamsbridge Road; and

WHEREAS, the site has a total lot area of 18,487.21 sq. ft. and is occupied by a one-story eating and drinking establishment (Use Group 6) operated by Wendy's, an accessory drive-through and 23 accessory parking spaces; and

WHEREAS, the Board previously exercised jurisdiction over the site when, on October 22, 1985, under BSA Cal. No. 88-85-BZ, it granted a special permit for the operation of a drive-through for a term of five years; and

WHEREAS, the term of the grant under BSA Cal. No. 88-85-BZ was renewed on May 14, 1991 for an additional five years, to expire on October 22, 1995; after 1995, the grant was never renewed; and

WHEREAS, the applicant states that it purchased the property in February 2006, was unaware of the requirement for the special permit and only became aware of the requirement when it sought to obtain a permit from DOB to perform façade repairs; and

WHEREAS, the applicant seeks to legalize the existing drive-through and reduce the number of accessory parking spaces at the site from 23 to 21 in order to accommodate a dedicated travel lane around the drive-through queuing lane; and

WHEREAS, a special permit is required for the proposed accessory drive-through facility in the R6 (C1-2) 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 10 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, one on each frontage, 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 to accommodate a travel lane will further improve the traffic flow; and

WHEREAS, the applicant notes that the restaurant has operated a drive-through since 1985; therefore, the drive-through is well-established in the neighborhood and will not create new traffic patterns in the vicinity; and

WHEREAS, the applicant represents that the facility fully complies with the accessory off-street parking regulations for the R6 (C1-2) zoning district; and

WHEREAS, in support of this representation, the applicant submitted a proposed site plan providing 21

accessory off-street parking spaces, which complies with 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 the motor vehicle; and

WHEREAS, the applicant states that both East Tremont Avenue and Williamsbridge Road are heavily-travelled commercial thoroughfares 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 are occupied by commercial uses and that the properties containing both commercial and residential uses are located across a four-lane commercial thoroughfare from the site; and

WHEREAS, the applicant also states that a drive-through facility has been in operation on the site for approximately 28 years, and the proposed reconfiguration will substantially improve current conditions; and

WHEREAS, the applicant represents that there will be adequate buffering between the drive-through facility and adjacent residential uses, in that: (1) the site fronts on three streets, two of which are busy commercial thoroughfares (East Tremont Avenue and Williamsbridge Road); (2) the only adjacent building is occupied by a bank; and (3) the nearest residential uses are located on the upper floors of a mixed-use building across a four-lane commercial thoroughfare; 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 28 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, the applicant represents that the proprietor of the restaurant maintains a clean and orderly site and that providing a drive-through is essential to the operation of the Wendy's franchise; and

WHEREAS, at hearing, the Board raised concerns about the landscaping and striping (the painted markings for circulation, drive-through and parking spaces) of the site; and

WHEREAS, in response, the applicant represented that, upon the grant of the special permit, new landscaping will be installed and the lot will be re-striped; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA094X dated February 5, 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, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to permit, on a site within an R6 (C1-2) zoning district, the legalization 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 § 32-10; *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 2, 2013"- four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on July 9, 2018;

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 shall conform to C1-2 zoning district regulations;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) 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, July 9, 2013.

85-13-BZ
CEQR #13-BSA-109K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for St. Matthew's Roman Catholic Church, owner; Blink Utica Avenue, Inc., lessee.

SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within existing building. C4-3/R6 zoning district.

PREMISES AFFECTED – 250 Utica Avenue, northeast corner of intersection of Utica Avenue and Lincoln Place, Block 1384, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #8BK

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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated February 5, 2013, acting on Department of Buildings Application No. 320373546, reads in pertinent part:

> Proposed Physical Culture Establishment on the 3rd floor, within C4-3 district portion of zoning lot split by district boundary 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 within a C4-3 zoning district, the operation of a physical culture establishment ("PCE") on portions of the first and third stories of a four-story mixed commercial and community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 4, 2013, after due notice by publication in *The City Record*, and then to decision on July 9, 2013; 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 8, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Utica Avenue and Lincoln Place; and

WHEREAS, the site, identified as Tax Lot 51, is part of a single zoning lot comprising Tax Lots 51 and 52; Lot 51 is entirely within the C4-3 zoning district and Lot 52 is entirely within the R6 zoning district; and

WHEREAS, a four-story new building is under construction at the site; upon completion, the building will be occupied by commercial and community facility uses; and

WHEREAS, the site has 150 feet of frontage along Lincoln Place and 100 feet of frontage along Utica Avenue; the subject zoning lot has a total lot area of 32,028.64 sq. ft.; and

WHEREAS, the proposed PCE will occupy a total of 337 sq. ft. of floor area on the first story and 14,000 sq. ft. of floor area on the third story; and

WHEREAS, the PCE will be operated as Blink; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed 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, 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 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 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 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. 13BSA109K, dated February 25, 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 operation of a PCE on portions of the first and third stories of a 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 June 27, 2013" – Six (6) sheets and *on further condition*:

THAT the term of this grant will expire on July 9, 2023;

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 all massages must be performed by New York State licensed massage therapists;

THAT the hours of operation will not exceed 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 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 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 9, 2013.

72-12-BZ

APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.

SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.

PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to September 24, 2013, at 10 A.M., for adjourned hearing.

113-12-BZ

APPLICANT – Mitchell S. Ross, Esq., for St. Paul CongHa-Sang R.C. Church, owners.

SUBJECT – Application April 23, 2012 – Variance (§72-21) to permit a proposed church (*St. Paul's Church*), contrary to front wall height (§§24-521 & 24-51). R2A zoning district.

PREMISES AFFECTED – 32-05 Parsons Boulevard, northeast corner of Parsons Boulevard and 32nd Avenue, Block 4789, Lot 14, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to July 16, 2013, at 10 A.M., for adjourned hearing.

195-12-BZ

APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.

COMMUNITY BOARD #10Q

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 13, 2013, at 10 A.M., for decision, hearing closed.

236-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.

SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to August 13, 2013, at 10 A.M., for adjourned hearing.

338-12-BZ

APPLICANT – Eric Palatnik, P.C., for 164-20 Northern Boulevard, LLC, owner; Northern Gym, Corp., lessee.

SUBJECT – Application December 13, 2012 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Metro Gym*) located in an existing one-story and cellar commercial building. C2-2/R5B zoning district.

PREMISES AFFECTED – 164-20 Northern Boulevard, west side of the intersection of Northern Boulevard and Sanford Avenue, Block 5337, Lot 17, Borough of Queens.

COMMUNITY BOARD # 7Q

ACTION OF THE BOARD – Laid over to August 13, 2013, at 10 A.M., for continued hearing.

13-13-BZ & 14-13-BZ

APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.

SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, 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 August 13, 2013, at 10 A.M., for decision, hearing closed.

50-13-BZ

APPLICANT – Lewis E. Garfinkel, for Mindy Rebenwurzel, owner.

SUBJECT – Application January 29, 2013 – 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 rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1082 East 24th Street, west side of East 24th Street, 100' north of corner of Avenue K and East 24th Street, Block 7605, Lot 79 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 August 13, 2013, at 10 A.M., for decision, hearing closed.

57-13-BZ

APPLICANT – Eric Palatnik, P.C., for Lyudmila Kofman, owner.

SUBJECT – Application February 2, 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 rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, 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 August 13, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to August 20, 2013, at 10 A.M., for continued hearing.

84-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 184 Kent Avenue Fee LLC, owner; SoulCycle Kent Avenue, LLC, lessee.
SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*SoulCycle*) within portions of an existing cellar and seven-story mixed-use building. C2-4/R6 zoning district.
PREMISES AFFECTED – 184 Kent Avenue, northwest corner of intersection of Kent Avenue and North 3rd Street, Block 2348, Lot 7501, 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 August 13, 2013, 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 September 10, 2013, at 10 A.M., for continued hearing.

96-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Urban Health Plan, Inc., owner.
SUBJECT – Application April 2, 2013 – Variance (§72-21) to permit construction of ambulatory diagnostic treatment health facility (UG4), contrary to rear yard regulations (§23-47). R7-1 and C1-4 zoning districts.
PREMISES AFFECTED – 1054 Simpson Street, 121.83 feet north of intersection of Westchester Avenue, Block 2727, Lot 4, Borough of Bronx.
COMMUNITY BOARD #2BX
ACTION OF THE BOARD – Laid over to August 13, 2013, at 10 A.M., for continued hearing.

108-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for EOP-Retail, owner; Equinox 1095 6th Avenue, Inc, lessee.
SUBJECT – Application April 19, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Equinox*). C5-3, C6-6, C6-7 & C5-2 (Mid)(T) zoning districts.
PREMISES AFFECTED – 100/28 West 42nd Street aka 101/31 West 41st Street, West side of 6th Avenue between West 41st Street and West 42nd Street, Block 00994, Lot 7501, 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 August 13, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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213-13-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

AUGUST 13, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 13, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

378-04-BZ
APPLICANT – Sheldon Lobel, PC, for Krzysztof Ruthkoski, owner.
SUBJECT – Application May 16, 2013 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the construction of a four story residential building with an accessory four car garage on a vacant lot which expired on December 11, 2011 and an Amendment to reduce the scope and non-compliance of the prior BSA grant; waiver of the Rules.
M1-1 zoning district.
PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection formed by Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #1BK

107-11-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Yeshiva Bais Yitzchok, owners.
SUBJECT – Application March 8, 2013 – Amendment of a recently granted variance to waive parking requirements under ZR 25-31 relating to the proposed of a synagogue and rabbi's residence at the premises. R4-1 zoning district.
PREMISES AFFECTED – 1643 East 21st Street, east side of 21st Street, between Avenue O and Avenue P, Block 6768, Lot 84, Borough of Brooklyn.
COMMUNITY BOARD #14BK

APPEALS CALENDAR

200-10-A. 203-10-A thru 205-10-A
APPLICANT – Sheldon Lobel, PC, for William Davies LLC, owner.
SUBJECT – Application June 21, 2013 –Extension of time to complete construction and obtain a Certificate of Occupancy of a previous vested rights approval, which expires on June 21, 2013. Prior zoning district R5. R4-1 zoning district.
PREMISES AFFECTED – 1359, 1365, 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lot 15, 13, 12 Borough of Queens.
COMMUNITY BOARD #14Q

157-12-A
APPLICANT – Sheldon Lobel, P.C., for John F. Westerfield, owner; Welmar Westerfield, lessee.
SUBJECT – Application May 21, 2012 – Appeal challenging Department of Building's determination that an existing lot may not be developed as an "existing small lot" pursuant to ZR Section 23-33 as it does not meet the definition of ZR 12-10. R1-2 zoning district.
PREMISES AFFECTED – 184-27 Hovenden Road, Block 9967, Lot 58, Borough of Queens.
COMMUNITY BOARD #8Q

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

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 GCL 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

ZONING CALENDAR

322-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.
SUBJECT – Application December 6, 2012 – Variance (§72-21) to permit the enlargement of a single family residence contrary to open space and lot coverage (ZR 23-141); less than the minimum required front yard (ZR 23-45 & 113-542) and perimeter wall height (ZR 23-631 & 113-55). R5 (OP Subdistrict) zoning district.
PREMISES AFFECTED – 701 Avenue P, 1679-87 East 7th Street, northeast corner of East 7th Street and Avenue P,

Block 6614, Lot 60, Borough of Brooklyn.
COMMUNITY BOARD # 12BK

61-13-BZ
APPLICANT – Ellen Hay, Wachtel Masyr & Missry LLP, for B. Bros. Broadway Realty, owner; Crunch LLC, lessee.
SUBJECT – Application February 7, 2013 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Crunch*). M1-6GC zoning district.
PREMISES AFFECTED – 1385 Broadway, west side Broadway between West 37th and West 38th Streets, Block 813, Lot 55, Borough of Manhattan.
COMMUNITY BOARD #5M

77-13-BZ
APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 45 Great Jones Street LLC, for Joseph Lauto, owner.
SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit floors 2 through 8 of an 8-story building to be used for residential purposes (Use Group 2) and waive ZR§42-14(D)(2)(b), to permit 1,803 sf of retail (Use Group 6) below the level of the second floor. M1-5B zoning district.
PREMISES AFFECTED – 45 Great Jones Street, between Lafayette and Bowery Streets, on the south side of Great Jones Street, Block 530, Lot 29, Borough of Manhattan.
COMMUNITY BOARD #2M

82-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Michal Cohen and Isaac Cohen, owners.
SUBJECT – Application March 1, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R5 zoning district.
PREMISES AFFECTED – 1957 East 14th Street, east side of East 14th Street between Avenue S and Avenue T, Block 7293, Lot 64, Borough of Brooklyn.
COMMUNITY BOARD # 15BK

170-13-BZ
APPLICANT – Venable LLP, for The Mount Sinai Hospital, owner.
SUBJECT – Application June 6, 2013 – Variance (§72-21) to allow the expansion of the Mount Sinai Hospital of Queens and the partial renovation of the existing hospital and administration building contrary to § 24-52 (height & Set back, sky exposure plane & initial setback distance); §24-11 (maximum corner lot coverage); § 24-36 (Required rear yard); & §§24-382 & 33-283 (required rear yard equivalents zoning resolutions). R6 & C1-3 zoning districts.
PREMISES AFFECTED – 25-10 30th Avenue, block bounded by 30th Avenue, 29th Street, 30th Road and Crescent street, Block 576, Lot 12; 9; 34; 35, Borough of Queens.
COMMUNITY BOARD #1Q

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JULY 16, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

207-86-BZ
APPLICANT – Kramer Levin Naftalis & Frankel, LLP by Paul Selver, for NYC Industrial Development Agency, owner; Nightingale-Bamford School, lessee.
SUBJECT – Application April 11, 2013 – Amendment of a previously approved variance (§72-21) for a community facility use (*The Nightingale-Bamford School*) to enlarge the zoning lot to permit the school's expansion. C1-5 (R-10) and R8B zoning districts.
PREMISES AFFECTED – 20, 28 & 30 East 92nd Street, northern mid-block portion of block bounded by East 91st and East 92nd Street and Madison and Fifth Avenues, Block 1503, Lot 57, 58, 59, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on June 11, 2013, after due notice by publication in the *City Record*, and then to decision on July 16, 2013; and

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

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

WHEREAS, certain members of the community testified in opposition to the application, citing concerns about the proposed mechanical equipment on the roof; and

WHEREAS, the subject site is located mid-block on the south side of East 92nd Street between Madison Avenue and Fifth Avenue, partially within a C1-5 (R10) zoning district and partially within an R8B zoning district, within the Special Madison Avenue Preservation District and within the Expanded Carnegie Hill Historic District; and

WHEREAS, the site has 165.43 feet of frontage along East 92nd Street and 16,660.46 sq. ft. of lot area; and

WHEREAS, the site is occupied by the seven-story building located at 20 East 92nd Street ("the School Building") and two four-story brownstones located at 28 and 30 East 92nd Street ("the Adjacent Buildings"), which are all operated by the School; and

WHEREAS, on February 7, 1989, under the subject calendar number, the Board granted: (1) a variance to allow the enlargement of the School Building contrary to the requirements for: (a) lot coverage (ZR § 24-11); (b) rear yard (ZR § 24-33); and (c) street wall height and initial setback (ZR § 99-052); and (2) a special permit to allow the enlargement of the School Building to penetrate the front and rear sky exposure planes in the portion of the lot located in the R8B district, contrary to ZR § 24-523; and

WHEREAS, the applicant now requests an amendment to permit the merger of the School Building's zoning lot with the Adjacent Buildings' zoning lots and the subsequent as-of-right enlargement and renovation of the Adjacent Buildings (collectively, "the proposal"); and

WHEREAS, the applicant represents that the proposal does not trigger the need for any further relief from the Board but is required due to the prior action for the School Building; the applicant also notes that the Adjacent Buildings are being enlarged and renovated in compliance with the Zoning Resolution; and

WHEREAS, the applicant states that the proposal will allow the School Building and the Adjacent Buildings to function together as a single school building; and

WHEREAS, the applicant represents that the proposal will further the School's programmatic needs without affecting any of the previously-obtained bulk waivers; in addition, the proposal will result in decreases in lot coverage and floor area ratio; and

WHEREAS, as to the effect on the neighborhood character, the applicant represents that the proposal will have no effect, since the School currently operates both the School Building and the Adjacent Buildings; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission, dated, June 20, 2013, approving the alterations proposed to the Adjacent Buildings; 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 7, 1989, 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 June 14, 2013'- (19) 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 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 16, 2013.

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owners.

SUBJECT – Application April 18, 2013 – Extension of Time to obtain a Certificate of Occupancy of a variance (§72-21) to operate a Physical Culture Establishment (*Squash Fitness Center*) which expired on April 25, 2013. C1-4(R6B) zoning district.

PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, aka 37-16 108th Street, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment ("PCE"), which expired on April 25, 2013; and

WHEREAS, a public hearing was held on this application on April 21, 2013, after due notice by publication in *The City Record*, with a continued hearing on June 18, 2013, and then to decision on July 16, 2013; 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 at the southwest corner of 37th Avenue and 108th Street, within a C1-4 (R6B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 17, 2001 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the legalization of an existing PCE on the first floor and a portion of the second floor of an existing two-story mixed-use manufacturing/office building within a C1-4 (R6B) zoning district for a term of five years; and

WHEREAS, on May 11, 2004, the grant was amended to permit the expansion of the PCE onto the entire second floor; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board on various occasions; and

WHEREAS, on June 8, 2010, the Board granted a ten-year extension of term, to expire on June 8, 2020, and an extension of time to obtain a certificate of occupancy, to expire on June 8, 2011; however, a certificate of occupancy was not obtained by that date; and

WHEREAS, accordingly, on October 25, 2011, the Board extended the time to obtain a certificate of occupancy until April 25, 2013; and

WHEREAS, the applicant states that a certificate of occupancy has still not been obtained due to open DOB applications that do not pertain to the PCE; and

WHEREAS, the applicant now requests an additional 18 months to obtain a certificate of occupancy; and

WHEREAS, based on its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy 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 17, 2001, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for 18 months from the date of this grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and *on further condition*:

THAT a certificate of occupancy be obtained by January 16, 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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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. 401008636)

Adopted by the Board of Standards and Appeals, July 16, 2013.

363-04-BZ

APPLICANT – Herrick Feinstein, LLP; by Arthur Huh, for 6002 Fort Hamilton Parkway Partnership, owner; Michael Mendiovic, lessee.

SUBJECT – Application June 5, 2013 – Extension of Time to Complete Construction for a previously granted Variance (§72-21) to convert an industrial building to commercial/residential use which expires on July 19, 2013. M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, West side of Fort Hamilton Parkway, between 60th Street and 61st Street, Block 5715, Lot 27, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy in accordance with a variance, which expires on July 19, 2013; and

WHEREAS, a public hearing was held on this application on June 18, 2013, after due notice by publication in *The City Record*, and then to decision on July 16, 2013; 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 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Forth Hamilton Parkway, between 60th Street and 61st Street, within an M1-1 zoning district; and

WHEREAS, the site is currently occupied by a partially-demolished commercial and manufacturing building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 2005 when, under the subject calendar number, the Board granted a variance to permit the conversion of the existing commercial and manufacturing building to residential and commercial use, contrary to ZR §§ 42-00 and 43-12; under the original grant, the building was to contain 103,972 sq. ft. of floor area, ground floor retail space, 100 dwelling units and 92 accessory off-street parking spaces; and

WHEREAS, on November 21, 2006, the Board amended the grant to allow the removal of mezzanines, reconfiguration of the dwelling units, commercial space, and parking lot, and other minor interior and exterior modifications; and

WHEREAS, by resolution dated May 11, 2010, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, to expire on July 19, 2013; and

WHEREAS, the applicant represents that substantial construction will not have been completed as of July 19, 2013; therefore, on that date, per ZR § 72-23, the variance will lapse; and

WHEREAS, in anticipation of the lapse, the applicant seeks an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant represents that additional time is necessary to complete the project because severe financing problems have delayed work significantly; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 19, 2005, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for a period of four years from July 19, 2013, to expire on July 19, 2017; and on further condition:

THAT construction will be completed and a certificate of occupancy obtained by July 19, 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) 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."

Adopted by the Board of Standards and Appeals, July 16, 2013.

608-70-BZ
APPLICANT – Walter T. Gorman, P.E., P.C., for Neptune Avenue Property LLC, owner. Dunkin Donuts Corporate Office, lessee.
SUBJECT – Application January 22, 2013 – Amendment (§11-412) to convert the previously granted UG16B automotive service station to a UG6 eating and drinking establishment (*Dunkin' Donuts*). R6 zoning district.
PREMISES AFFECTED – 351-361 Neptune Avenue, north west corner Brighton 3rd Street, Block 7260, Lot 101, Borough of Brooklyn.
COMMUNITY BOARD #13BK
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 20, 2013, at 10 A.M., for decision, hearing closed.

615-57-BZ
APPLICANT – Sheldon Lobel, P.C. for Cumberland farms,INC., owner.
SUBJECT – Application May 10, 2013 – Extension of Term (§11-411) of a previously granted variance for the continued operation of a (UG 16B) automotive service station (*Gulf*) with accessory uses, which expired on June 5, 2013. C1-3/R5B zoning district.
PREMISES AFFECTED – 154-11 Horace Harding Expressway, Located on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place. Block 6731, Lot 1. Borough of Queens.
COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to August

13, 2013, at 10 A.M., for continued hearing.

274-59-BZ
APPLICANT – Laurence Dalfino, R.A., for Richard Naclerio, Member, Manorwood Realty, LLC, owner.
SUBJECT – Application September 18, 2012 – Extension of Term (§11-411) of a previously granted variance for the continued operation of a private parking lot accessory to a catering establishment, which expired on September 28, 2011; Waiver of the Rules. R-4/R-5 zoning district.
PREMISES AFFECTED – 3356-3358 Eastchester Road aka 1510-151 Tillotson Avenue, south side of Tillotson Avenue between Eastchester Road & Mickle Avenue, Block 4744, Lot 1, 62, Borough of Bronx.
COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to September 10, 2013, at 10 A.M., for continued hearing.

228-00-BZ
APPLICANT – Sheldon Lobel, P.C. for Hoffman & Partners LLC, owner.
SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the conversion of a vacant building in a manufacturing district for residential use (UG 2), which expired on May 15, 2005; Amendment for minor modifications to approved plans; Waiver of the Rules. M1-1 zoning district.
PREMISES AFFECTED – 28/32 Locust Street, southeasterly side of Locust Street between Broadway and Beaver Street. Block 3135, Lot 16. Borough of Brooklyn.
COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to August 20, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

346-12-A
APPLICANT – Eric Palatnik, P.C., for Woodpoint Gardens, LLC, owners.
SUBJECT – Application December 12, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior R6 zoning districts. R6B zoning district.
PREMISES AFFECTED – 179-181 Woodpoint Road, between Jackson Street and Skillman Avenue, Block 2884, Lot 4, Borough of Brooklyn
COMMUNITY BOARD #1BK
ACTION OF THE BOARD – Application granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
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 five-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, with a continued hearing on June 18, 2013, and then to decision on July 16, 2013; 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, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the east side of Woodpoint Road, between Jackson Street and Skillman Avenue; and

WHEREAS, the site has a lot area of 4,580 sq. ft. and approximately 50 feet of frontage along Woodpoint Road; and

WHEREAS, the applicant proposes to develop the site with a five-story residential building with 9,956.40 sq. ft. of floor area (2.17 FAR) and 15 dwelling units (the "Building"); and

WHEREAS, the subject site is currently located within an R6B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies in all respects with the former R6 zoning district parameters; and

WHEREAS, however, on July 29, 2009 (the "Enactment Date"), the City Council voted to adopt the Greenpoint-Williamsburg Contextual Rezoning, which rezoned the site to R6B; and

WHEREAS, as a result of the rezoning, the Building does not comply with the district parameters regarding maximum floor area, maximum base height, maximum building height and maximum number of dwelling units (density); 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, the applicant states that New Building Permit No. 310057390-01-NB (the "Permit") was issued to the owner by the Department of Buildings ("DOB") on April 28, 2008; and

WHEREAS, by letter dated July 12, 2013, DOB confirmed that the Permit was lawfully issued; and

WHEREAS, the applicant notes that ZR § 11-31(c)(1) classifies the construction authorized under the Permit as a "minor development"; and

WHEREAS, the applicant notes that, per ZR §§ 11-331 and 11-332, where all work on foundations for a minor development has been completed prior to the effective date of an applicable amendment to the Zoning Resolution, work may

continue for two years, and if after two years, construction has not been completed and a certificate of occupancy has not been issued, the permit shall automatically lapse and the right to continue construction shall terminate; and

WHEREAS, the applicant states that, as of the Enactment Date, the entire foundation for the Building was completed; and

WHEREAS, accordingly, the applicant states, DOB recognized the owner's right to continue construction under the Permit for two years until July 29, 2011, pursuant to ZR § 11-331; and

WHEREAS, however, as of July 29, 2011, construction was not complete and a certificate of occupancy had not been issued; therefore, on that date the Permit lapsed by operation of law; and

WHEREAS, accordingly, the applicant now seeks to proceed pursuant to the common law doctrine of vested rights; and

WHEREAS, the Board notes that when work proceeds under a valid 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 to substantial construction, the applicant states that prior to July 29, 2009, the owner had completed the following work: demolition, excavation, footings, the entire foundation, the entire superstructure and steel decking for all five stories, masonry block up to roof, mechanical, electrical and plumbing roughing up for four stories, and some window framing and sheetrock installation; since July 29, 2009, the applicant states that the following has been completed: partition studs and mechanical, electrical and plumbing roughing have been installed on all five stories, and doorways are blocked out; and

WHEREAS, the applicant represents that the Building is approximately 89 percent complete; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: invoices, concrete delivery slips, construction contracts, plans highlighting the work completed, and photographs of the site showing certain aspects of the completed work; 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, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; 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 states that prior to the Enactment Date, the owner expended $2,547,480.03, including hard and soft costs and irrevocable commitments, out of $3,200,000.00 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 80 percent of the projected total cost; 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 if the owner is not permitted to vest the nearly-completed Building under the former R6 zoning and must comply with the R6B zoning, the maximum permitted residential floor area ratio would: (1) decrease from the allowable 2.2 FAR for the entire lot to 2.0 FAR, representing a loss of 916 sq. ft. of buildable residential floor area in the building; (2) reduce the maximum base height from 45 feet to 40 feet; (3) reduce the maximum building height from 55 feet to 50 feet; and (4) reduce the maximum number of dwelling units from 15 to 13; and

WHEREAS, the applicant also states that because

construction is nearly complete, its contractor estimates that demolishing and rebuilding portions of the Building to bring it into compliance will cost an estimated $1,859,440.00; and

WHEREAS, the applicant also represents that the loss of nearly 10 percent of its residential floor area and two out of 15 dwelling units will significantly decrease the market value of the Building; and

WHEREAS, the Board agrees with the applicant that that the owner would incur substantial additional costs in reconstructing the Building to comply with the current zoning; and

WHEREAS, the Board also agrees with the applicant that the reduction in the floor area and dwelling units results in a significant decrease in the market value of the Building; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building has accrued to the owner of the premises.

Therefore it is Resolved that this application made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 310057390, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 16, 2013.

69-13-A

APPLICANT – Bryan Cave LLP, for 25 Skillman, LLC c/o CHETRIT GROUP LLC., owner; OTR BQE 25 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. M1-2/R6 Sp. MX-8 zoning district.

PREMISES AFFECTED – 25 Skillman Avenue, Skillman Avenue between Meeker Avenue and Lorimer Street, Block 2746, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW – m

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

Adopted by the Board of Standards and Appeals, July 16, 2013.

79-13-A

APPLICANT – Law Offices of Howard B. Hornstein, for 813 Park Avenue holdings, LLC, owner.

SUBJECT – Application February 27, 2013 – Appeal from Department of Buildings' determination regarding the status of a zoning lot and reliance on the Certificate of Occupancy's recognition of the zoning lot. R10(Pl) zoning district.

PREMISES AFFECTED – 807 Park Avenue, East side of Park Avenue, 77.17' south of intersection with East 75th Street, Block 1409, Lot 72, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated January 29, 2013 by the First Deputy Commissioner of the Department of Buildings ("DOB") (the "Final Determination"); and

WHEREAS, the Final Determination states, in pertinent part:

> The Department is in receipt of your correspondence dated September 27, 2012 in which you request confirmation that Lot 72 is a separate zoning lot, notwithstanding the current Certificate of Occupancy (CO No. 109233) dated April 24, 1996 which contains the note: "This premises is part of a zoning lot consisting of Lots 69 and 72, as per Commissioner Minkin's memo dated December 9, 1983. Easement filed under Reel 591, Pages 620-630." . . .
>
> The Department cannot issue a determination that Lot 72 is a separate zoning lot because the CO states that Lots 69 and 72 together form a single zoning lot. Per New York City Charter Section 645(b)(3)(e), every certificate of occupancy is binding and conclusive as to all matters set forth in the certificate and no determination can be at variance with any matter in the certificate unless it is set aside, vacated or modified by the Board of Standards and Appeals (BSA) or a court. The Charter prohibits the Department from disregarding the CO's note that Lots 69 and 72 are merged into one zoning lot.
>
> The Department does not intend to file an application at BSA to set aside the CO in favor of treating Lot 72 as a separate zoning lot. Lot 72 cannot be a separate zoning lot because a "building" as defined by the New York City Zoning Resolution must be located within the lot lines of a zoning lot and portions of the building on Lot 72 extend onto Lot 69. Application documents and plans approved under Alteration No. 1059/79 show

that an elevator required in connection with an enlargement of the building on Lot 72 to twelve stories was installed on Lot 69. The required elevator located on Lot 69 is a part of the building it serves on Lot 72 and therefore the Lots cannot be considered separate zoning lots. In addition, the October 12, 1981 easement referenced on the current CO is a grant from the owner of Lot 69 to the owner of Lot 72 for use of Lot 69 for light and air and the construction and maintenance of elevators and chimneys and notably, for "use and maintenance of the northerly wall of the building on the Premises [Lot 72] which may encroach on the Adjacent Premises [Lot 69] or may be a party wall…". The survey submitted with your correspondence, dated March 9, 1996, depicts portions of the northern wall of the building on Lot 72 as an encroachment onto Lot 69.

Based on the above, documentation described in the New York City Zoning Resolution definition of "zoning lot" must be filed with the Department that is consistent with the zoning lot comprised of Lots 69 and 72 as described on the CO.

WHEREAS, a public hearing was held on this appeal on April 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 21, 2013, and then to decision on July 16, 2013; and

WHEREAS, the site had visits by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHERAS, the appeal is filed on behalf of the owner of Lot 72 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, Lot 72 at 807 Park Avenue (formerly known as 813 Park Avenue) is located on the east side of Park Avenue, between East 74th Street and East 75th Street, within an R10 zoning district in the Special Park Improvement District and the Upper East Side Historic District; and

WHEREAS, Lot 72 is occupied by a 12-story residential building (the "Lot 72 Building"); and

WHEREAS, Lot 69 at 815 Park Avenue is the adjacent lot to the north which is occupied by a 14-story residential building (the "Lot 69 Building") and a portion of Lot 72 Building's north wall and elevator bank; and

WHEREAS, the Appellant seeks to increase the floor area of the Lot 72 Building on Lot 72, based on the premise that Lots 69 and 72 are not merged and there is available floor area on Lot 72 such that the enlarged Lot 72 Building would comply with floor area regulations; and

WHEREAS, the Appellant contests DOB's determination that Lots 69 and 72 were merged, as noted on the 1996 certificate of occupancy for the Lot 72 Building (the "1996 CO" or "CO") and seeks to have the CO modified to remove the reference to Lot 69; and

WHEREAS, the Appellant requests that the Board (1) reject DOB's determination that the zoning lots were merged and (2) modify the 1996 CO to remove the reference to Lot 69; and

SITE HISTORY

WHEREAS, beginning in 1979, under Alteration Application No. 1059/79, the former owner of the Lot 72 Building sought to construct a four-story vertical enlargement to the then eight-story building; and

WHEREAS, the proposal included the construction of portions of the Lot 72 Building – the elevator tower and a portion of the northern wall – on Lot 69; and

WHEREAS, DOB objected to the encroachment of Lot 72 Building components on Lot 69 due to the Zoning Resolution requirements that buildings be contained within the boundaries of a single zoning lot; and

WHEREAS, in anticipation of construction, the former owners of Lots 69 and 72 entered into an easement agreement (the "Easement Agreement") to allow for the construction of the elevator tower and a portion of the northern wall on Lot 69; and

WHEREAS, in 1983, DOB stated that an easement agreement is not sufficient to resolve an objection that portions of the building are located on Lot 69 and reiterated the requirement that Lots 69 and 72 be merged into a single zoning lot because the enlargement application relies on area located on the adjoining Lot 69; and

WHEREAS, during the Board's public hearing process, DOB discovered that the issue of the zoning lot formation was the subject of litigation titled 813 Park Avenue Associates and Panjandrum Realty, Inc. v. City of New York, (no index number is available for the unpublished case), a lawsuit brought by the former owners of 807 [813] Park Avenue against DOB, in which the parties ultimately acknowledged the formation of a single zoning lot comprising Lots 69 and 72; and

WHEREAS, the associated July 1983 settlement agreement (the "Settlement Agreement") states that the owners of 807 [813] Park Avenue agree to file with DOB a single zoning lot declaration for both lots and DOB agrees to accept a single zoning lot for both properties; it also states that DOB agrees that it will not seek to revoke the COs for either building on the lots provided the Lot 72 building owner files a single zoning lot declaration referred to in the agreement; and

WHEREAS, in sum, the Settlement Agreement reflects the parties' agreement that the City will not seek to revoke COs notwithstanding objections it had previously raised including objections to the elevator shaft encroachment and excess floor area if the lots are formally merged into one zoning lot; it is signed by the Corporation Counsel as attorneys for DOB and by attorneys for the owner of the Lot 72 Building at that time; and

WHEREAS, there is a second agreement, dated October 3, 1983 (the "Stipulation") in which the parties agree that the single zoning lot comprising both lots already exists; it states that rights over the rear yard and courts of Lot 69 were sold to allow a portion of the building on Lot 72 to be built on Lot 69 at the time when the lots were under common beneficial

ownership and that it was the intent of the single beneficial owner to develop the lots as a single zoning lot; and

WHEREAS, the Stipulation states that the zoning lot declaration is not required as part of the resolution of the litigation; however, the Lot 72 owner agreed that all future permit applications would reflect the single zoning lot and that they would record a restrictive declaration acknowledging the existence of the single zoning lot: "Plaintiffs further agree that all applications to the Department of Buildings filed on behalf of 813 [now known as 807] Park Avenue shall recognize and affirm the existence of the single zoning lot, and its applicability to all future alterations or developments of 813 [807] Park Avenue, and that Plaintiffs will file a restrictive declaration to that effect so binding 813 [807] Park Avenue;" the Stipulation is signed by the Corporation Counsel as attorneys for DOB and by attorneys for the owner of the Lot 72 Building at that time; and

WHEREAS, in the Alteration Application job folder is a November 1, 1983 amendment to the application submitted by the applicant that acknowledges the zoning lot comprising Lots 69 and 72, along with the Settlement Agreement, and the Stipulation; and

WHEREAS, as a result of the discovery of the litigation and the two agreements, DOB and the Appellant revised their positions on appeal to include assertions about the effect of the agreements rather than reliance solely on the notation on the CO; and

WHEREAS, COs issued after December 2, 1983 describe the zoning lot as including Lots 69 and 72; and

WHEREAS, on April 24, 1996, DOB issued a CO for the current 12-story Lot 72 Building, which states "THIS PREMISES IS PART OF A ZONING LOT CONSISTING OF LOTS 69 and 72, AS PER COMMISSIONER MINKIN'S MEMO DATED 12/9/83. EASEMENT FILED UNDER REEL 591. PAGES 620-630."; and

WHEREAS, the referenced Minkin Memo has not been located; and

WHEREAS, the Lot 69 Building does not have a CO; and

WHEREAS, in 2012, the Appellant sought an opinion from DOB as to whether an enlargement to the Lot 72 Building would comply with ZR § 54-41, which permits reconstruction of a non-complying building as long as less than 75 percent of the floor area is demolished and reconstructed; and

WHEREAS, the Appellant proposes to renovate and increase the floor area on Lot 72 from 18,126 sq. ft. to 18,750 sq. ft., which it represents complies with floor area regulations and does not increase the existing non-complying rear yard, lot coverage, and setback conditions; and

WHEREAS, the Appellant represents that there is floor area available on Lot 72 (10.0 FAR is the maximum permitted and the Lot 72 Building is 9.67 FAR); and

WHEREAS, by pre-determination, DOB granted an approval of the proposed enlargement and reconstruction with conditions, that state that ZR § 54-41 applies to allow the proposed demolition and reconstruction but that it still required confirmation about whether or not the zoning lot referenced on the CO was properly formed; and

RELEVANT ZONING RESOLUTION PROVISIONS

"Zoning lot" is defined in ZR § 12-10 as follows:

A "zoning lot" is either:

(a) a lot of record existing on December 15, 1961 or any applicable subsequent amendment thereto;

(b) a tract of land, either unsubdivided or consisting of two or more contiguous lots of record, located within a single #block#, which, on December 15, 1961 or any applicable subsequent amendment thereto, was in single ownership;

(c) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single #block#, which at the time of filing for a building permit (or, if no building permit is required, at the time of the filing for a certificate of occupancy) is under single fee ownership and with respect to which each party having any interest therein is a party in interest (as defined herein); or

(d) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single #block#, which at the time of filing for a building permit (or, if no building permit is required, at the time of filing for a certificate of occupancy) is declared to be a tract of land to be treated as one #zoning lot# for the purpose of this Resolution.

Such declaration shall be made in one written Declaration of Restrictions covering all of such tract of land or in separate written Declarations of Restrictions covering parts of such tract of land and which in the aggregate cover the entire tract of land comprising the #zoning lot#. Any Declaration of Restrictions or Declarations of Restrictions which individually or collectively cover a tract of land are referred to herein as "Declarations". Each Declaration shall be executed by each party in interest (as defined herein) in the portion of such tract of land covered by such Declaration (excepting any such party as shall have waived its right to execute such Declaration in a written instrument executed by such party in recordable form and recorded at or prior to the recording of the Declaration). Each Declaration and waiver of right to execute a Declaration

shall be recorded in the Conveyances Section of the Office of the City Register or, if applicable, the County Clerk's Office of the county in which such tract of land is located, against each lot of record constituting a portion of the land covered by such Declaration; and

THE APPELLANT'S POSITION

- Lot 69 and Lot 72 Are Separate Zoning Lots

WHEREAS, the Appellant asserts that Lot 72 meets the definition of a zoning lot and that a combined Lot 69/72 does not, based on the clear meaning of the definition and the absence of a zoning lot merger; and

WHEREAS, the Appellant contends that there is not any ambiguity in the Zoning Resolution's definition of zoning lot, which includes how it is formed, and thus it must be given its plain meaning; and

WHEREAS, the Appellant asserts that a lot of record or a tract of land, including an unsubdivided tract of land, may be determined to be a zoning lot under solely one of the four subdivisions of the zoning lot definition, given that a zoning lot is, by the terms of the definition, a zoning lot under "either" subdivision (a), (b), (c), or (d); and

WHEREAS, the Appellant asserts that Lot 72 qualifies as a zoning lot under three of the four subdivisions and may be deemed a zoning lot under any of the three; and

WHEREAS, the Appellant states that subdivision (a) is satisfied because on December 15, 1961, Lot 72 was a lot of record as evidenced by the deed of December 19, 1958; on that date the certificate of occupancy that was in effect was that of October 17, 1922, listing a five-story tenement building; and

WHEREAS, the Appellant submitted evidence to support its assertion that the lot was (1) a lot of record on December 15, 1961 and (2) was never in common ownership with another lot nor declared together with another lot to be part of a multiple-lot zoning lot; and

WHEREAS, the Appellant states that subdivision (b) is satisfied because On December 15, 1961, Lot 72 was an unsubdivided tract of land in the single ownership of an entity that was different that the entity that owned Lot 69, as evidenced by the deed of December 19, 1958 and it was an unsubdivided tract of land in single ownership without any common ownership of these two, separate lots; and

WHEREAS, the Appellant states that subdivision (c) is satisfied because at all times since December 15, 1961, Lot 72 has been an unsubdivided tract of land in single fee ownership and at the time of each filing for building permits or certificates of occupancy there was a zoning lot under this subdivision (c); and

WHEREAS, the Appellant asserts that Lot 72 meets the ZR § 12-10 definition of zoning lot in the following ways: (1) it was a lot of record on December 15, 1961 and therefor is a zoning lot under subdivision (a) of the definition; (2) it was an unsubdivided tract of land on December 15, 1961, and therefore also meets subdivision (b) of the definition; and (3) because it was in separate ownership from Lot 69 on each occasion that a permit or certificate of occupancy application for lot 72was made, it also satisfies subdivision (c) of the definition; and

WHEREAS, the Appellant asserts, significantly, since Lot 72 was never declared together with any other lot to be part of a multiple-lot zoning lot, it cannot satisfy subdivision (d) of the definition, which applies where there is a "written Declaration of Restrictions" that is recorded with the City Clerk to declare two or more adjoining lots to be a zoning lot; and

WHEREAS, the Appellant relies on the following: (1) there is no recorded zoning lot declaration for Lot 72; and (2) there is certification by a title insurance company for Lot 72 as a zoning lot; and

- The Effect of the Stipulation

WHEREAS, in light of the evidence regarding the litigation and Stipulation, the Appellant provided the following supplementary arguments: (1) a stipulation is not a functional equivalent to a zoning lot certification; (2) a stipulation is unable to effectuate a zoning lot certification and a zoning lot certification is required by the Zoning Resolution; and (3) zoning requirements cannot be varied absent jurisdiction; and

WHEREAS, the Appellant asserts that the stipulation is not a functional equivalent to a zoning lot declaration and is vulnerable to challenge by the owner of Lot 69 whose rights are affected by it to which it was not a party, or by any other person with standing; and

WHEREAS, the Appellant states that DOB acknowledged that the Stipulation conditions that the Lot 69/72 zoning lot "already exists by virtue of . . . the sale of rights of the rear yard and courts of 815 Park Avenue" and "the fact that 813 and 815 Park Avenue were under common beneficial ownership at the time of the sale of such rights" do not form a zoning lot; and

WHEREAS, the Appellant asserts that the Zoning Resolution does not recognize any "functional equivalent" for forming a zoning lot and DOB must rely on the Zoning Resolution; and

WHEREAS, the Appellant asserts that the stipulation, which is contrary to the clear meaning of the statute was executed in error as statutory law is supreme in the hierarchy of legal authority, and no agreement for an illegal act is ever valid; and

WHEREAS, the Appellant asserts that for those reasons, a Lot 69/72 zoning lot cannot exist absent zoning lot formation consistent with the requirements of the Zoning Resolution; and

WHEREAS, further, the Appellant asserts that under the definition of zoning lot, there are requirements for certifying a zoning lot having two or more fee owners and for recording the description of the zoning lot, each in connection with a development; and

WHEREAS, the Appellant asserts that the following Zoning Resolution requirements must be followed for the preparation and the recording of a zoning lot (1) a zoning lot certification and (2) a zoning description and ownership

statement; allowing a "functional equivalent" would prevent the owner of Lot 72 from complying with zoning lot certification and zoning lot description and ownership statement requirements; and

WHEREAS, the Appellant asserts that under the Zoning Resolution's definition of "zoning lot," at subdivision (f)(1) of the definition, title insurance companies are given a role in the certifying of a zoning lot and that a title insurance company cannot certify Lots 69 and 72 as a zoning lot as there exists no "duly record" Declaration of Restrictions; and

WHEREAS, the Appellant asserts that the agreements, no matter their content, do not allow a title insurance company to certify Lots 69 and 72 as a single zoning lot because it does not comport with the Zoning Resolution, specifically under subdivision (d) of the zoning lot definition, the only method for forming a zoning lot of "two or more lots of record," as there are here, to be "declared to be a tract of land to be treated as one 'zoning lot … [s]uch declaration shall be made in one written Declaration of Restrictions" that, the definition states, "shall be recorded;" and

WHEREAS, the Appellant states that in the case of Lots 69 and 72, there is no recorded Declaration of Restrictions, and no zoning lot declaration that declares these lots of record to be treated as a zoning lot; and

WHEREAS, the Appellant asserts that to alter the requirements for zoning lot formation, as the supplemental stipulation purports to do, for the formation of a zoning lot among multiple lots and multiple owners by a zoning lot declaration varies zoning, without authority; and

WHEREAS, the Appellant asserts that only the Board, under Charter Section 666(5), has jurisdiction to vary zoning; and

- The Definition of Building

WHEREAS, the Appellant asserts that DOB's mention of the definition of building in its Final Determination is not relevant because the review is not whether the Lot 72 Building is a "building" per the Zoning Resolution but whether Lot 72 is a zoning lot under the definition of zoning lot; and

- Relief Requested

WHEREAS, accordingly, the Appellant requests that the Board modify the Lot 72 Building's CO so as to indicate that the lot is a zoning lot (and that no zoning lot merger was formed between Lots 69 and 72) in order to allow the Appellant to apply for and obtain a CO for solely Lot 72 as a zoning lot; and

WHEREAS, the Appellant asserts that if the Board modifies the CO, DOB is not in a position to then revoke it; and

WHEREAS, the Appellant proposes instead that following the Board's modification of the CO, it will make application to the Landmarks Preservation Commission for its proposed construction and then ultimately seek a new CO at which time DOB may or may not object to the CO application; and

WHEREAS, the Appellant represents that it is unclear about what form the construction will take and what position DOB may have on a new CO; and

DOB'S POSITION

- Lot 69 and Lot 72 Are a Single Zoning Lot

WHEREAS, DOB asserts that it does not have the authority to issue a determination that Lot 72 is a separate zoning lot because the CO states that Lots 69 and 72 form a single zoning lot; and

WHEREAS, DOB relies on New York City Charter Section 645(b)(3)(e), which states that a CO is binding and conclusive as to all matters set forth in the certificate and no determination can be at variance with any matter in the certificate unless it is set aside, vacated or modified by the Board of Standards and Appeals or a court; and

WHEREAS, DOB notes that the 1996 CO contains the note: "This premises is part of a zoning lot consisting of Lots 69 and 72, as per Commissioner Minkin's memo dated 12/9/83. Easement filed under Reel 591, Pages 620-630" and the Charter prohibits DOB from disregarding the CO's note that Lots 69 and 72 are merged into one zoning lot; and

WHEREAS, DOB adds that a zoning lot merger was proposed at the time of the application for the CO; a description of the work on the approved Alteration Application No. 645/89 which includes the following: "An amended C of O will be obtained. This is a major alteration and structural stability is involved; this premises is part of a zoning lot consisting of lots 69 & 72, as per Commissioner Minkin's memo dated 12/9/83. Easement filed under reel 591, pages 620-630;" and

WHEREAS, DOB also notes that the former owner's representative's last two typewritten sentences are circled and a handwritten note reads: "This note to be indicated on certificate of occupancy" followed by what appear to be the initials of both the DOB plan examiner and the former owner's representative dated June 21, 1995; and

- The Effect of the Stipulation

WHEREAS, DOB rejects the Appellant's assertion that the failure to record a zoning lot declaration and a zoning lot description and ownership statement means that the zoning lot was not lawfully created pursuant to the ZR § 12-10 definition of "zoning lot" because it recognizes that the attorneys representing the former owner of Lot 72 signed agreements conceding that Lots 69 and 72 comprised a single zoning lot and binding both the City and the owner of Lot 72 to recognize the zoning lot in all future applications; and

WHEREAS, accordingly, DOB finds that the Stipulation is the functional equivalent of a zoning lot declaration and zoning lot description and ownership statement in that it is a statement signed by attorneys representing the owners of the premises identifying the zoning lot; instead of the owners declaring the formation of the zoning lot, the parties stipulated and agreed to the zoning lot and are bound to recognize its existence in all permit applications; and

WHEREAS, DOB asserts that in the event the Appellant denies having an obligation to comply with the Stipulation, the CO that was conditioned on the existence of the zoning lot is placed in jeopardy because the CO is valid only to the extent it was issued in reliance on the existence of the zoning lot as

described in the Stipulation; and

WHEREAS, DOB contends that if there were no such zoning lot, the CO was issued in error given that the merger was necessary to resolve the DOB's objections concerning the encroaching elevator and northern wall; and

WHEREAS, DOB asserts that if the Appellant does not follow the Stipulation and instead claims that the zoning lot merger was defective, the Lot 72 Building will be exposed to the same violating conditions DOB raised before the merger was recognized; and

WHEREAS, accordingly, DOB concludes that if the Appellant insists that the zoning lot was not properly formed, the CO issued in reliance on the zoning lot is likewise rendered defective; and

WHEREAS, DOB concludes that the CO properly reflects that the two tax lots are merged into one zoning lot as the zoning lot merger was made necessary by the development on both lots; and

- The Definition of Building

WHEREAS, DOB asserts that, by definition, one building cannot straddle two zoning lots and because there are elements of the Lot 72 Building on both Lots 69 and 72, Lots 69 and 72 cannot be separate zoning lots; and

WHEREAS, DOB relies on the ZR § 12-10 definition of "building," which requires that a building be located within the lot lines of a zoning lot; and

WHEREAS, DOB asserts that the application plans approved under Alteration No. 645/89 reflect elevators on Lot 69 that serve the building on Lot 72; and

WHEREAS, DOB provides that the 1981 easement reference on the CO reflects a grant from the owner of Lot 69 to the owner of Lot 72 for use of Lot 69 for the construction and maintenance of two elevators and elevator shaft to service 813 Park Avenue and for the use and maintenance of the northerly wall that encroaches on Lot 69; and

WHEREAS, further, the Appellant submitted a survey, dated March 9, 1996, which depicts portions of the northern wall of the building on Lot 72 as an encroachment on Lot 69; and

WHEREAS, DOB asserts that in the event the CO is revoked, no new CO could be issued to Lot 72 as a separate zoning lot and it could not be lawfully occupied given that the elevator tower and north wall are not on the Lot 72 Building's zoning lot; and

WHEREAS, DOB asserts that under both the Zoning Resolution's 1961 and 2011 definitions of building, there is a prohibition on straddling multiple zoning lots; specifically, under the 1961 ZR text, a "building" must be "bounded by either open area or the *lot lines* of a *zoning lot*;" further, where a structure's exterior walls are not located on zoning lot lines and the structure is instead bounded by open area, the 1961 definition is understood to mean that the structure is bounded by the open area of its zoning lot; and

WHEREAS, DOB notes that in 2011 the definition was amended, but it still requires a building to be located within zoning lot lines: a "building" must be "located within the *lot lines* of a *zoning lot*… ;" therefore, while a building can straddle a tax lot line, the post-1961 Zoning Resolution never permitted a building to straddle the zoning lot line; and

WHEREAS, additionally, DOB notes that the 2011 Zoning Resolution key terms text amendment made a substantive change to the 1961 "building" definition to allow abutting buildings that are located on a single zoning lot to be treated as separate independent buildings for zoning purposes, but the amendment did not change that part of the definition that required a building to be wholly contained within zoning lot lines; and

WHEREAS, DOB asserts that exterior building walls cannot straddle zoning lot lines without undermining the concept of the zoning lot as the basic unit for zoning regulations and that the Zoning Resolution regulates land use and development by controlling the use, building size, density and open areas of each zoning lot and each building must be located on only one zoning lot in order to demonstrate the building's compliance with the Zoning Resolution; and

WHEREAS, DOB discovered its March 30, 1983 letter to the owners of Lots 69 and 72 listing outstanding objections to the alteration application and describing the lots as a single zoning lot, while acknowledging that an easement agreement is not sufficient to resolve an objection that portions of the Lot 72 Building are proposed to be located on Lot 69 and also reflects the Zoning Resolution requirement that Lots 69 and 72 be merged into a single zoning lot because the enlargement application filed by the owner of Lot 72 relies on area located on the adjoining Lot 69; and

WHEREAS, DOB states that unless both lots are treated as a single zoning lot, the premises is not entitled to receive a CO certifying that the building conforms to applicable laws; and

- The Remedy Sought

WHEREAS, DOB states that if the CO's zoning lot description is incorrect, the CO cannot be modified to reflect a different zoning lot but rather must be set aside in its entirety; and

WHEREAS, DOB states that if the Board determines that the zoning lot merger did not take effect and the CO was erroneously issued for the building on a merged lot, the Appellant cannot obtain a new CO describing Lot 72 as the zoning lot given the building's encroachment onto Lot 69 and without a CO, the premises cannot be lawfully occupied; and

WHEREAS, DOB states that given that the building is already constructed, the best way to correct the error in formation of the zoning lot is by submitting the missing zoning lot documents; in the alternate, it would seek the Board's revocation of the CO since the building will remain but occupancy of the building will be prohibited; and

CONCLUSION

WHEREAS, the Board agrees with the Appellant that (1) the ZR § 12-10 definition of zoning lot has clear requirements and does not provide for any exceptions such as a functional equivalent to the zoning lot declaration; and (2) there is not any evidence to establish that a Lot 69/72 zoning lot was created; and

WHEREAS, the Board agrees with the Appellant that

the ZR § 12-10 definition as it applies to these facts is not ambiguous and that Lot 72 satisfies the definition in at least one of the subdivisions (a) through (c); and

WHEREAS, on the contrary, the Board does not find that there is any acceptable evidence that Lot 69/72 was formed in accordance with the definition's subdivision (d); the insufficient evidence includes that as of the date of the Settlement Agreement, no zoning lot merger was effectuated and through the Stipulation, it was agreed that the zoning lot merger was no longer required; and

WHEREAS, the Board is not persuaded that agreements made between only the City and the former owner of Lot 72 (but not the former owner of Lot 69) absent any of the other standard zoning lot declaration documents and that are inconsistent with the Zoning Resolution are substitutes for the Zoning Resolution's requirement; and

WHEREAS, the Board does not condone the practice of a property owner benefitting from flouting an agreement made in good faith for a clear purpose, but it also does not find that a functional equivalent to Zoning Resolution requirements is contemplated within the ZR § 12-10 definition of zoning lot; and

WHEREAS, the Board rejects the notion that the parties' intent and DOB's good faith at the time of the Stipulation can override zoning; and

WHEREAS, the jurisdiction to waive Zoning Resolution provisions is vested in the Board and the Board does not find any basis to accept the Settlement Agreement and Stipulation as being imbued with such jurisdiction; and

WHEREAS, nor does the Board find that notations on the CO or the Alteration Application, recognizing information inconsistent with what is required by the Zoning Resolution, are substitutes for required zoning lot declaration documents; and

WHEREAS, the Board concludes that the CO issued in reliance on an agreement contrary to law was issued in error; and

WHEREAS, accordingly, the Board finds that Lot 72 is a zoning lot and a merged Lot 69/72 does not exist; and

WHEREAS, the Board does not deny that zoning regulations necessitated a merger of lots 69 and 72 to allow for the construction of the Lot 72 Building; however, it does not find that the requirement to satisfy the definition of building willed the zoning lot into being absent satisfaction of the Zoning Resolution's clear requirements for zoning lots; and

WHEREAS, the Board agrees with DOB that the Lot 72 Building, with portions on Lot 69 and Lot 72, does not satisfy the Zoning Resolution definition of building; and

WHEREAS, the Board agrees with DOB's interpretation of the definition of building and that the Lot 72 Building's non-compliance precludes it from obtain a CO as currently constructed; and

WHEREAS, as to the Lot 72 Building's zoning compliance, the Board cites to the Appellant's own assertion that only the Board may waive zoning regulations to note that DOB has no such authority to waive the definition of building and allow a building to straddle two zoning lots; and

WHEREAS, the Board declines to direct DOB to modify the CO to remove any notations associated with the zoning lot merger between Lots 69 and 72 as such modification would result in another erroneous CO due to zoning non-compliance; and

WHEREAS, thus, the Board directs the Appellant to apply to modify the CO for a building on Lot 72 that complies with the definition of building and all other zoning regulations; and

WHEREAS, the Board does not modify the CO and restricts the Appellant from doing so until DOB is satisfied with the Lot 72 Building's zoning compliance; and

Therefore it is Resolved that the Board grants the appeal to the extent of agreeing that the merged zoning lot was not formed, but the Board does not direct DOB to modify the Certificate of Occupancy until such time as it is satisfied that the Lot 72 Building is fully zoning compliant.

Adopted by the Board of Standards and Appeals, July 16, 2013.

135-13-A thru 152-13-A

APPLICANT – Eric Palatnik, PC, for Ovas Building Corp, owner.

SUBJECT – Applications May 10, 2013 – Proposed construction of 18 two-family dwellings not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.

PREMISES AFFECTED – 18, 22, 26, 30, 34, 38,42, 46, 50, 54, 58, 45, 39, 35, 31, 27, 23, 19, Serena Court, on Amboy Road, Block 6523, Lot 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 113, 102, 103, 105, 106, 107, 108, Borough of Staten Island.

COMMUNITY BOARD #3 SI

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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 10, 2013, acting on Department of Buildings Application Nos. 520074945, 520074990, 520074954, 520074981, 520074972, 520074963, 520075007, 520080313, 520125070, 520125052, 520125089, 520075418, 520075409, 520075338, 520075365, 520075356, 520075347, and 520125061 reads in pertinent part:

1. The streets giving access to proposed buildings 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 501.3.1 of the New York City Building Code; and

WHEREAS, this is an application to allow the construction of 18 two-family homes not fronting a legally mapped street contrary to General City Law ("GCL") § 36; and

WHEREAS, the development will consist of 21 one- and two-family homes of which only 18 homes are the subject of the application before the Board; and

WHEREAS, a public hearing was held on this application on June 18, 2013, after due notice by publication in *The City Record*, and then to decision July 16, 2013; 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 citing the following concerns: (1) the proposed narrow street does not allow for on-street parking and the off-street parking is insufficient; (2) the house on Amboy Road should be removed to allow the private street to be widened to full width and eliminate the need for a curb cut on Amboy as it is a busy arterial; (3) the No Parking rules will not be enforced; and (4) the Fire Department should not have accepted a street with such a narrow width in the interest of safety; and

WHEREAS, the subject site is located at Amboy Road on Serena Court, within an R3X zoning district within the Special South Richmond District; and

WHEREAS, on October 7, 2010, the Fire Department approved a site plan with the following conditions (1) that home numbers 19, 20, and 21 Serena Court must be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17- 2B of the New York City Building Code; and (2) that no parking be permitted on the private street as indicated on signs throughout the development that read "No Parking- Fire Access Road"; and

WHEREAS, the width of the private road will be 34 feet from curb to curb and all sidewalks along the it will be four feet wide in accordance with ZR § 26-24; and

WHEREAS, the Department of City Planning has granted necessary approvals for future subdivision, provisions for arterials, removal of trees, school seats, and for modifications of existing topography; the applicant represents that approvals are current except for the school seats approval which must be renewed; and

WHEREAS, the Department of Environmental Conservation has granted approval for construction of the homes with garages, driveways and drywells, and a sanitary sewer line which discharges within an existing sanitary sewer on Amboy Road, which have expired and are required to be renewed; and

WHEREAS, the Board has considered the Community Board's concerns and responds that (1) as to the sufficiency of parking, the applicant must comply with all Zoning Resolution requirements; (2) the homes on Amboy Road are not part of the GCL § 36 application before the Board; (3) the requirement for No Parking signs is a condition of the Board's approval; and (4) the Board relies on the Fire Department's expertise in its determination that the site plan with the noted conditions results in a site that sufficiently addresses public safety concerns; 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 April 10, 2013, acting on Department of Buildings Application Nos. 520074945, 520074990, 520074954, 520074981, 520074972, 520074963, 520075007, 520080313, 520125070, 520125052, 520125089, 520075418, 520075409, 520075338, 520075365, 520075356, 520075347, 520125061, 520067588, 520067294, and 520067301, 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 June 11, 2013 " - (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) only;

THAT the site and roadway will conform with the BSA-approved plans;

THAT any changes to the site plan associated with the Department of City Planning and Department of Environmental Conservation approval renewal process are subject to the Board's review and approval;

THAT the homes noted as 19, 20, and 21 Serena Court will be fully sprinklered;

THAT signs stating "No Parking-Fire Access Road" will be posted along the street throughout the development;

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 July 16, 2013.

67-13-A
APPLICANT – Bryan Cave LLC, for ESS-PRISAII LLC, owner; OTR 945 Zerega LLC, lessee.
SUBJECT – Application February 12, 2013 – Appeal challenging Department of Buildings' determination that the existing roof sign is not entitled to non-conforming use status. M1-1 zoning district.
PREMISES AFFECTED – 945 Zerega Avenue, Zerega Avenue between Quimby Avenue and Bruckner Boulevard, Block 3700, Lot 31, Borough of Bronx.
COMMUNITY BOARD #9BX
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 September 10, 2013, at 10 A.M., for decision, hearing closed.

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 September 24, 2013, at 10 A.M., for continued hearing.

87-13-A
APPLICANT – Bryan Cave LLP, for 176 Canal Corp., owner .OTR Media Group ; lessee
SUBJECT – Application March 6, 2013 – Appeal challenging Department of Buildings' determination that the existing sign is not entitled to non-conforming use status. C6-1G zoning district
PREMISES AFFECTED – 174 Canal Street, Canal Street between Elizabeth and Mott Streets, Block 201, Lot 13, Borough of Manhattan.
COMMUNITY BOARD #3M
ACTION OF THE BOARD – Laid over to September 17, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

113-12-BZ
APPLICANT – Mitchell S. Ross, Esq., for St. Paul CongHa-Sang R.C. Church, owners.
SUBJECT – Application April 23, 2012 – Variance (§72-21) to permit a proposed church (*St. Paul's Church*), contrary to front wall height (§§24-521 & 24-51). R2A zoning district.
PREMISES AFFECTED – 32-05 Parsons Boulevard, northeast corner of Parsons Boulevard and 32nd Avenue, Block 4789, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 4, 2012, acting on Department of Buildings Application No. 420475024 reads, in pertinent part:

> Proposed parapet exceeds maximum height, contrary to ZR 24-51; sky exposure plane to be measured from height above front yard line of non-disturbed natural grade level, per ZR 24-31; proposed street wall front height and related structure are contrary to ZR 24-521 and 24-51; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R2A zoning district, a one-story and cellar building to be occupied on both levels by a house of worship for a church (Use Group 4), which does not comply with the underlying zoning regulations for permitted obstructions and sky exposure plane, contrary to ZR §§ 24-51 and 24-521; and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, with a continued hearing on June 11, 2013, and then to decision on July 16, 2013; 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, this application is being brought on behalf of Saint Paul's Catholic Church, a non-profit religious entity (the "Church"); and

WHEREAS, the subject site is located on the southeast corner of the intersection of 32nd Avenue and Parsons Boulevard, within an R2A zoning district; and

WHEREAS, the site has 150 feet of frontage along 32nd Avenue, 85 feet of frontage along Parsons Boulevard, and a total lot area of approximately 14,661 sq. ft.; and

WHEREAS, the applicant proposes to construct a one-

story community facility building ("Worship Center") with a floor area of 7,083 sq. ft. (0.48 FAR), a wall height of 25'-0", a building height of 34'-6", and roof parapet spanning the full width of the building with a height of 9'-6", which: (1) is in excess of the maximum parapet height permitted per ZR § 24-51 (4'-0"); and (2) due to its width, eclipses the required one-to-one sky exposure plane required per ZR § 24-521; and

WHEREAS, the applicant represents that, other than the proposed parapet, the Worship Center complies in all respects with the applicable use and bulk regulations; however, because the proposed parapet wall does not comply, the subject variance is requested; and

WHEREAS, the applicant states that the Worship Center will contain 16 religious study and consultation rooms, two administrative offices, a choir practice room, and a chapel, and will be used by parishioners and Church staff for religious education, private spiritual meditation, and religious seminars; and

WHEREAS, as to the finding under ZR § 72-21(a), that there are unique physical conditions which create practical difficulties or unnecessary hardship in complying with the underlying zoning regulations, 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 the ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, nevertheless, the applicant states that the site has a unique sloping condition, which creates a practical difficulty and an unnecessary hardship in complying with the Zoning Resolution; and

WHEREAS, in particular, the applicant states that the Worship Center will have its main entrance on Parsons Boulevard and that the site slopes in an easterly direction away from Parsons Boulevard along 32nd Avenue, resulting in a significantly lower elevation at the entrance (32.45 feet) than at the rear of the building (44.25 feet); and

WHEREAS, the applicant states that such slope causes necessary but unsightly roof structures and mechanicals to be more visible from the entrance than would be the case in a non-sloping site; and

WHEREAS, the applicant asserts that the proposed parapet would obscure the unsightly roof structures and mechanicals; as such, there is a direct nexus between the unique physical condition (sloping site) and the requested variances (a more robust parapet than is permitted as-of-right); and

WHEREAS, the applicant represents that the following are the Church's programmatic needs necessitating the requested variances: (1) to locate the Worship Center in the subject neighborhood, in close proximity to the Church's main building and rectory in order to accommodate the size of the congregation and allow for future growth; and (2) to maximize all usable space within an as-of-right building whose appearance reflects the sacred nature of its use and is compatible with the surrounding neighborhood; and

WHEREAS, the applicant states that the Worship Center's location in close proximity to the Church's main building and rectory will allow the buildings to function together, which will maximize the amount of space that can be devoted to the Church's various religious activities; and

WHEREAS, the applicant states that, having selected the site based on its location and proximity, the Church sought to construct an as-of-right building that would accommodate its growing congregation and programmatic needs; and

WHEREAS, the applicant represents that the Church has the largest congregation in the Brooklyn-Queens Archdiocese, with more than 6,000 parishioners; and

WHEREAS, the applicant notes that it could have justified a significantly larger building based on its programmatic needs as a religious institution, but instead chose to design a building that would be harmonious with the neighborhood character (many of its congregants reside nearby); and

WHEREAS, the applicant states that, owing to such constraints, it endeavored to maximize program space, which led to the placement of required egress stairs at the northwestern and eastern ends of the building, which in turn resulted in stair bulkheads on the roof near the street walls; a location which the Church considers undesirable for a scared space; and

WHEREAS, thus, in order to maintain an entrance that reflects the staid, sacred nature of the worship space within, the proposed parapet wall was necessary to shield observers from the stair bulkheads and other unsightly mechanical equipment, which are associated with more utilitarian structures; and

WHEREAS, the applicant submitted as-of-right plans reflecting a parapet wall in compliance with the height and sky-exposure plane requirements of the Zoning Resolution; and

WHEREAS, the applicant represents that under the scenario, in order to maintain an aesthetically proper front façade i.e., one that is free of unsightly roof obstructions, the stairs would have to be relocated further away from the street; in addition, a completely-enclosed egress hallway would be required to comply with the egress requirements of the Building Code, which would result in a loss of 1,709 sq. ft. of program space; and

WHEREAS, as noted above, 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 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 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, as to the finding under ZR § 72-21(c), 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 district; and

WHEREAS, the applicant further states that the proposed building fits completely within the permitted building envelope at the site and that, aside from the proposed parapet wall variances, complies with all other zoning regulations, including front yard, rear yard, side yards, lot coverage, and parking; and

WHEREAS, the applicant notes that the Worship Center has a lower height than two nearby buildings: the Church's main building on the adjacent lot, with a steeple rise well above the Worship Center; and a six-story multiple dwelling located directly east of the Church's main building and diagonal to the Worship Space; and

WHEREAS, the applicant also states that the proposed parapet creates an attractive, unbroken streetscape along Parsons Boulevard, which is compatible with other buildings on the block and in the vicinity; 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, as to the finding under ZR § 72-21(d), the applicant states that 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

WHEREAS, as to the finding under ZR § 72-21(e) requiring that the variance be the minimum necessary to afford relief, as noted above, the Worship Center complies in all respects with the applicable bulk parameters except those relating to a portion of the parapet wall on the Parsons Boulevard exposure; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Church the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; 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, a one-story and cellar building to be occupied on both levels by a house of worship for a church (Use Group 4), which does not comply with the underlying zoning regulations for permitted obstructions and sky exposure plane, contrary to ZR §§ 24-51 and 24-521, *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 March 18, 2013" – Twelve (12) sheets and "Received June 27, 2013" – Four (4) sheets; and *on further condition*:

THAT the building parameters will be: a maximum floor area of 7,083 sq. ft. (0.48 FAR); a maximum wall height of 25'-0"; a maximum building height of 34'-6", as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT the above conditions 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;

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

THAT construction shall 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, July 16, 2013.

293-12-BZ
CEQR #13-BSA-043K
APPLICANT – Eric Palatnik, P.C., for Mr. and Mrs. Angelo Colantuono, owners.
SUBJECT – Application October 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(a)) regulations. R3X zoning district.
PREMISES AFFECTED – 1245 83rd Street, north side of 83rd Street, between 12th Avenue and 13th Avenue, Block 6302, Lot 60, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 14, 2012 acting on Department of Buildings Application No. 320479950, 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 0.50;
2. Proposed plans are contrary to ZR 23-461(a) in that the proposed side yard is less than 5'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3X zoning district, the proposed enlargement of a two-family home, which does not comply with the zoning requirements for floor area ratio ("FAR") and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, with continued hearings on May 14, 2013 and June 18, 2013, and then to decision on July 16, 2013; 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 disapproval of this application based on the following: (1) the proposed floor area is significantly higher than nearby homes; and (2) the shape of the truncated roof and location of the street wall are not in keeping with the character of the neighborhood; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, expressing concerns similar to those articulated by Community Board 10; and

WHEREAS, the subject site is located on the north side of 83rd Street, between 12th Avenue and 13th Avenue, within an R3X zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft. and is occupied by a two-family home with a floor area of 3,255 sq. ft. (0.54 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 of 3,255 sq. ft. (0.54 FAR) to 5,791 sq. ft. (0.95 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to maintain its existing non-complying side yard, which has a width of 4'-10" and reduce its complying side yard from a width of 15'-10" to a width of 10'-10"; 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 notes that the proposal complies in all other respects with the Zoning Resolution; in addition, the existing, complying building height is being reduced from 34;-0" to 32'-4" and the non-complying perimeter wall height of 21'-4" is being reduced to a complying height of 21'-0"; the applicant states that these adjustments are more in keeping with the streetscape than the building as it presently exists; 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, at hearing the Board directed the applicant to submit a neighborhood study to support this representation; and

WHEREAS, in response, the applicant submitted a study of the 84 single-family homes within 400 feet of the site; based on the study, 16 homes (or 19 percent of the homes studied) have an FAR of 1.0 or greater; and

WHEREAS, accordingly, 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 Declaration 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 R3X zoning district, the proposed enlargement of a two-family home, which does not comply with the zoning requirements for floor area ratio ("FAR") and side yards, contrary to ZR §§ 23-141 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 July 12, 2013"- (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: two dwelling units,
a maximum floor area of 5,791 sq. ft. (0.95 FAR), side yards

with minimum widths of 4'-10" and 10'-10", a maximum building height of 32'-4", and a perimeter wall height of 21'-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, July 16, 2013.

54-13-BZ
CEQR #12-BSA-089K
APPLICANT – Sheldon Lobel, P.C., for Ricky Novick, owner.
SUBJECT – Application January 31, 2013 – Variance (§72-21) for the enlargement of existing single-family residence, contrary to lot coverage and open space (§23-141), minimum required side yards (§113-543), and side yards (§23-461a) regulations. R5/OPSD zoning district.
PREMISES AFFECTED – 1338 East 5th Street, western side of East 5th Street between Avenue L and Avenue M, Block 6540, Lot 23, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 13, 2013, and acting on Department of Buildings Application No. 320329471 reads, in pertinent part:

Proposed side yards are contrary to ZR 113-543, 23-461(a), pertaining to R4A

Proposed parking space is not permitted in front yard pursuant to ZR 113-54; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing single-family detached home that does not provide the required side yards and provides parking within the required front yard, contrary to ZR §§ 23-461, 113-543, and 113-54; and

WHEREAS, a public hearing was held on this application on May 14, 2013, after due notice by publication in *The City Record*, with a continued hearing on June 11, 2013, and then to decision on July 16, 2013; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East Fifth Street between Avenue L and Avenue M; and

WHEREAS, the site is located within an R5 district within the Special Ocean Parkway District and has approximately 41 feet of frontage along East Fifth Street; and

WHEREAS, the site is a triangular lot ranging in lot width from approximately 41 feet at the front lot line to 9.38 feet at the rear lot line; the lot depth ranges from 104.9 feet to 100 feet; the site has a lot area of approximately 2,521 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story, detached, single-family home with approximately 2,135.40 sq. ft. of floor area (0.85 FAR); and

WHEREAS, the applicant notes that DOB permits for an as-of-right enlargement of the building have been obtained and construction has commenced but not yet been completed; and

WHEREAS, the applicant proposes to enlarge the existing first and second floor of the building contrary to the side yard and front yard requirements and increase the floor area from 2,135.40 sq. ft. (0.85 FAR) to 2,454,88 sq. ft. (0.97 FAR) (a maximum of 3,781.50 sq. ft. (1.50 FAR) is permitted); and

WHEREAS, specifically, the applicant proposes one side yard with a width of 1'-4" and one side yard with a width of 4'-0" (two side yards of no less than two feet each and ten feet total, with a minimum distance of eight feet between buildings is required, per ZR § 113-543); and a parking space within the required front yard (parking is not permitted within the front yard, per ZR § 113-54); the applicant notes that the proposed enlargement complies in all other respects with the applicable bulk regulations; and

WHEREAS, because the proposed enlargement does not comply with the R5/Special Ocean Parkway District regulations, a variance is requested; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations: the lot size and shape; limited width; and limited potential floor area; and

WHEREAS, the applicant states that the lot is triangular in shape, which limits the development of the site to a triangular building due to compliance with the side yard and accessory parking requirements; and

WHEREAS, the applicant submitted a deed chain showing that the lot shape is a historic condition, which has existed since at least 1928; and

WHEREAS, the applicant represents that a triangular building has constrained and inefficient floorplates,

inadequate shared living space, and impedes realization of the maximum available FAR; and

WHEREAS, the applicant represents that the limited width of the lot—which, as noted above, is less than ten feet at the rear lot line—would result in a building that tapers to a width of approximately 5'-6" at the rear, which is too narrow to accommodate usable living space; and

WHEREAS, the applicant notes that the triangularity of the lot and its narrow width are atypical on the subject block, where the average lot is rectangular in shape with an average width of 21'-6"; and since many homes are semi-detached and share driveways, the average building on the block has a building width of 17'-5"; and

WHEREAS, the applicant further notes that the only other triangular lot on the block is adjacent to the subject lot but is substantially larger, with approximately 3,900 sq. ft. of lot area, which is nearly 1,400 sq. ft. more than the subject site; and

WHEREAS, the applicant states that the shape and width of the lot reduce the potential building floor area well below what is permitted on the site and common on the block; specifically, the applicant states that it can only build 2,275 sq. ft. of floor area as-of-right, but homes in the neighborhood with average-sized, rectangular lots typically can build up to 2,600 sq. ft. as-of-right; and

WHEREAS, the applicant explored the feasibility of enlarging the building as-of-right i.e., with complying side yards and a parking space within the side lot ribbon, and determined that it would result in an increase in floor area of approximately 140 sq. ft. (70 sq. ft. on each story), which the applicant deemed impractical given the cost of construction; and

WHEREAS, accordingly, the applicant asserts that an as-of-right enlargement is infeasible; 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 Board agrees that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; 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 proposal essentially maintains existing distance between the subject building and the adjacent building to the south and will maintain a distance of greater than 20 feet from the adjacent building to the north; and

WHEREAS, the applicant states that the enlargement will occur in the rear of the building and will not be visible from East Fifth Street; and

WHEREAS, the applicant also notes that the proposed building is well within the maximum height and maximum permitted FAR in the district; thus, the impact of the enlargement on the surrounding community from a bulk perspective is both minimal and harmonious with the neighborhood character; and

WHEREAS, as to the parking space within the front yard, the applicant notes while the space is within the front yard, it is not located in front of the home, but on the side of the home where the side yard intersects with the front yard; as such, in terms of appearance it is comparable to parking spaces in the surrounding neighborhood; 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 lot size and shape; and

WHEREAS, the applicant represents 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

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, within an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing single-family detached home that does not provide the required side yards and provides parking within the required front yard, contrary to ZR §§ 23-461, 113-543, and 113-54; *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 31, 2013" - (10) and "May 28, 2013"-(2) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: two stories, a maximum floor area of 2,454,88 sq. ft. (0.97 FAR), side yards with minimum widths of 1'-4" and 4'-0", and one accessory off-street parking space within the front yard, 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) only;

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

THAT significant construction shall 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, July 16, 2013.

91-13-BZ
CEQR #13-BSA-113M
APPLICANT – Eric Palatnik, P.C., for ELAD LLC, owner; Spa Castle Premier 57, Inc., lessee.
SUBJECT – Application March 19, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Spa Castle*) to be located in a 57-story mixed use building. C5-3,C5-2.5(MiD) zoning district.
PREMISES AFFECTED – 115 East 57th Street, north side, between Park and Lexington Avenues, Block 1312, Lot 7501, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 6, 2013, acting on Department of Buildings Application No. 121524733, reads in pertinent part:

> Proposed use as a Physical Culture Establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C5-3 zoning district and partially within a C5-2.5 zoning district within the Special Midtown District, the operation of a physical culture establishment ("PCE") on portions of the seventh, eighth, and ninth stories of a 57-story mixed commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 11, 2013, after due notice by publication in *The City Record*, and then to decision on July 16, 2013; 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, recommends approval of the application; and

WHEREAS, the subject site is an irregular lot with 112 feet of frontage along East 58th Street between Park Avenue and Lexington Avenue and 60 feet of frontage along East 57th Street between Park Avenue and Lexington Avenue, with a total lot area of approximately 17,272 sq. ft.; and

WHEREAS, the site is located partially within a C5-3 zoning district and partially within a C5-2.5 zoning district within the Special Midtown District and is occupied by a 57-story mixed commercial and residential building with approximately 453,533 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy approximately 12,485 sq. ft. of floor area on the seventh story, 12,921 sq. ft. of floor area on the eighth story, and 9,629 sq. ft. of floor area on the ninth story, for a total PCE floor area of 35,035 sq. ft.; the PCE will also feature an outdoor pool and deck at the ninth story; and

WHEREAS, the PCE is operated as "Spa Castle Premiere 57"; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant notes that the Board previously granted a special permit for the legalization of a PCE at the site on May 2, 2000, under BSA Cal. No. 1-00-BZ; the term of that grant was for ten years and expired on January 3, 2010; and

WHEREAS, the applicant represents that the hours of operation for the proposed PCE are 24 hours per day, seven days per week; however, the hours of operation for the outdoor pool will be seven days per week, 10:00 a.m. to 11:00 p.m.; and

WHEREAS, the Board notes that pursuant to ZR § 73-36(b), in certain commercial districts, a PCE may be located on the roof of a commercial building or the commercial portion of a mixed building, provided that such use is incidental to the PCE located within the same building, open and unobstructed to the sky, and located not less than 23 feet above curb level; and

WHEREAS, in addition, the PCE operator and the owner of the building must jointly bring the application for the outdoor PCE use, and in authorizing such use, the Board must prescribe appropriate controls to minimize adverse impacts on the surrounding area; and

WHEREAS, at hearing, the Board expressed concern about the proposed bar, lack of landscaping around the pool area, and potential adverse effects of the outdoor use upon surrounding uses, including the proposed 24-hour operation; and

WHEREAS, in response, the applicant eliminated the bar, amended the plans to include landscaping around the pool area, confirmed that there were no residential uses immediately adjacent to the outdoor portion of the PCE, and agreed to limit the hours of the outdoor space, as noted above; 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 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 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 also finds that the proposed PCE is consistent with the purposes and provisions of the Special Midtown District, in accordance with ZR § 81-13; 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. 13BSA113M, dated March 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 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 partially within a C5-3 zoning district and partially within a C5-2.5 zoning district within the Special Midtown District, the operation of a PCE on portions of the seventh, eighth, and ninth stories, and ninth story roof, of a 57-story mixed commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 27, 2013" – Six (6) sheets and *on further condition*:

THAT the term of this grant will expire on July 16, 2023;

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 hours of operation of the outdoor space will not exceed 10:00 a.m. to 11:00 p.m.;

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

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

THAT the PCE will comply with Local Law 58/87, 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 the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 16, 2013.

104-13-BZ
CEQR #13-BSA-124K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Gates Avenue Properties, LLC, owner; Blink Gates, Inc., lessee.

SUBJECT – Application April 16, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink*) within a portion of an existing five-story commercial building. C2-4 (R6A) zoning district.

PREMISES AFFECTED – 1002 Gates Avenue, 62' east of intersection of Ralph Avenue and Gates Avenue, Block 1480, Lot 10, 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 Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 11, 2013, acting on Department of Buildings Application No. 301605680, reads in pertinent part:

> Proposed use as a Physical Culture Establishment in C2-4 zoning district is contrary to ZR 32-10 and requires a special permit from 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 located within an R6A (C2-4)

zoning district the operation of a physical culture establishment ("PCE") on a portion of the first story of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 11, 2013, after due notice by publication in *The City Record*, and then to decision on July 16, 2013; 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, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is an irregular lot, with 88 feet of frontage along Gates Avenue between Ralph Avenue and Broadway and 50 feet of frontage along Monroe Avenue between Ralph Avenue and Broadway, with a total lot area of approximately 16,650 sq. ft.; and

WHEREAS, the site is located in an R6A (C2-4) zoning district and is occupied by a five-story commercial building with approximately 33,300 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy approximately 14,278 sq. ft. of floor area on the first story; and

WHEREAS, the PCE will be operated as "Blink Fitness"; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant represents that the hours of operation for the proposed 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, 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 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 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. 13BSA124K, dated April 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 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 an R6A (C2-4) zoning district the operation of a PCE on a portion of the first 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 May 21, 2013" – Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on July 16, 2023;

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 hours of operation of 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.;

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

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

THAT the PCE will comply with Local Law 58/87, 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 the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 16, 2013.

301-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Jam Realty of Bayside LLC, owner.

SUBJECT – Application October 22, 2012 – Special permit (§73-52) to allow a 25 foot extension of an existing commercial use into a residential zoning district, and §73-63 to allow the enlargement of a legal non-complying building. C2-2(R4) and R2A zoning districts.

PREMISES AFFECTED – 213-11/19 35th Avenue, Block 6112, Lot 47, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to August 13, 2013, at 10 A.M., for continued hearing.

83-13-BZ

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 – Laid over to August 13, 2013, at 10 A.M., for continued hearing.

109-13-BZ

APPLICANT – Goldman Harris LLC, for William Achenbaum, owner; 2nd Round KO, LLC, lessee.

SUBJECT – Application April 22, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*UFC Gym*). C5-5 (Special Lower Manhattan) zoning district.

PREMISES AFFECTED – 80 John Street, Lot bounded by John Street to the north, Platt Street to south, and Gold Street to the west, Block 68, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to August 20, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on May 14, 2013, under Calendar No. 12-13-BZ and printed in Volume 98, Bulletin No. 20, is hereby corrected to read as follows:

12-13-BZ
CEQR #13-BSA-084K
APPLICANT – Law Office of Fredrick A. Becker, for Rosette Zeitoune and David Zeitoune, owners.
SUBJECT – Application January 22, 2013 – Special Permit (§73-622) for the enlargement of a single family home, contrary to side yards (§23-461) and rear yard (§23-47) regulations. R5/Ocean Parkway Special zoning district.
PREMISES AFFECTED – 2057 Ocean Parkway, east side of Ocean Parkway between Avenue T and Avenue U, Block 7109, Lot 66, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 21, 2012, acting on Department of Buildings Application No. 320696984 reads, in pertinent part:

The proposed enlargement of the existing one-family residence in an R5 zoning district:

1. Creates non-compliance with respect to the side yard by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
2. Creates non-compliance with respect to the 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 and 73-03, to permit, within an R5 zoning district in the Special Ocean Parkway District, the proposed enlargement 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 April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; 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 east side of Ocean Parkway, between Avenue T and Avenue U; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 3,015 sq. ft. (0.60 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 3,015 sq. ft. (0.60 FAR), to 6,083 sq. ft. (1.22 FAR); the maximum floor area permitted is 6,250 sq. ft. (1.25 FAR); and

WHEREAS, the applicant proposes to increase the width of the non-complying side yard from 1'-3 ¼" to 2'-3" along the north lot line and provide a side yard with a width of 8'-0" along the south lot line; 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 proposes a rear yard with a depth of 20 feet; the minimum required rear yard depth is 30 feet; and

WHEREAS, additionally, the applicant proposes to maintain the existing non-complying front yard depth of 22'-1 ¼"; a front yard with a minimum depth of 30'-0" is required pursuant to the Special Ocean Parkway District regulations; and

WHEREAS, the Board directed the applicant to establish that the front yard depth is a pre-existing non-complying condition in the Special Ocean Parkway District; and

WHEREAS, in response, the applicant provided a 1930 Sanborn map which reflects that the front yard pre-dates the Zoning Resolution and the establishment of the Special Ocean Parkway District on January 20, 1977; 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, within an R5 zoning district in the Special Ocean Parkway District, the proposed enlargement 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 April 29, 2013"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 6,083 sq. ft. (1.22 FAR) a side yard with a minimum width of 2'-3" along the north lot line, a side yard with a minimum width of 8'-0" along the south lot line, and a rear yard with a minimum depth of 20 feet, 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, May 14, 2013.

***The resolution has been revised to correct the DOB decision date which read:** *"…May 14, 2013"* **now reads:** *"December 21, 2012"*. **Corrected in Bulletin No. 29, Vol. 98, dated July 24, 2013**.

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217-13-A
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219-13-BZ
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M1-1 zoning district. M1-1 district.

221-13-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

AUGUST 20, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 20, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

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

199-00-BZ
APPLICANT – Alfonso Duarte, P.E., for EN PING C/O Baker, Esq., owner; KAZ Enterprises Inc., lessee.
SUBJECT – Application March 28, 2013 – Extension of Term of a previously granted Special Permit (§73-244) for the continued operation of an Eating and Drinking Establishment (Club Atlantis) without restrictions on entertainment (UG12A) which expired on March 13, 2013.
C2-3/R6 zoning district.
PREMISES AFFECTED – 76-19 Roosevelt Avenue, northwest corner of Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.
COMMUNITY BOARD #3Q

220-07-BZ
APPLICANT – Eric Palatnik, P.C., for Kornst Holdings, LLC, owner.
SUBJECT – Application July 11, 2013 – Extension of Time to Complete Construction of a previously granted Variance (ZR 72-21) for the construction of a new four story residential building containing four dwelling units which expires on November 10, 2013. M1-1 zoning district.
PREMISES AFFECTED – 847 Kent Avenue, East side of Kent Avenue, between Park Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.
COMMUNITY BOARD #3BK

APPEALS CALENDAR

126-13-A
APPLICANT – Sheldon Lobel, PC, for Woodmere Development LLC, owner.
SUBJECT – Application April 30, 2013 – Appeal from a Determination by New York City Department of Buildings that a rear yard is required at the boundary of a block coinciding with a railroad right-of-way located at or above ground level. R7B Zoning District.
PREMISES AFFECTED – 65-70 Austin Street, 65th Road and 66th Avenue, Block 3104, Lot 101, Borough of Queens.
COMMUNITY BOARD # 6Q

134-13-A
APPLICANT – Bryan Cave, for Covenant House, owner.
SUBJECT – Application May 9, 2013 – Appeal of DOB determination regarding the right to maintain an existing advertising sign. C2-8 HY zoning district.
PREMISES AFFECTED – 538 10th Avenue aka 460 West 41st Street, Tenth Avenue between 41st and 42nd Streets, Block 1050, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #4M

166-13-A
APPLICANT – Sheldon Lobel, PC, for Whitney Museum of American Art, owner.
SUBJECT – Application May 21, 2013 – Construction Code Determination by the Department of Buildings regarding the interpretation of Building Code Sections 28-117, 28-102,4,3 and C2-116.0 in order to determine whether a public assembly permit is required for those portions of the art museum at the premises which were build pursuant to the 1938 Building Code and which have not been altered since being built in 1966. C5-1/R8B zoning districts.
PREMISES AFFECTED – 945 Madison Avenue, southeast intersection of Madison Avenue and East 75th Street, Block 1389, Lot 50, Borough of Manhattan.
COMMUNITY BOARD #8M

227-13-A
APPLICANT – St. Ann's Warehouse by Chris Tomlan, for Brooklyn Bridge Park Development Corp., owner; St. Ann's Warehouse, lessee.
SUBJECT – Application July 26, 2013 – Variance pursuant to the NYC Building Code (Appendix G, Section G304.1.2) to allow for the redevelopment of an historic structure (*Tobacco Warehouse*) within Brooklyn Bridge Park to be located below the flood zone. M3-1 zoning district.
PREMISES AFFECTED – 45 Water Street, (*Tobacco Warehouse*) north of Water Street between New Dock Street and Old Dock Street, Block 26, Lot 1, Borough of Brooklyn.

CALENDAR

COMMUNITY BOARD #2BK

ZONING CALENDAR

279-12-BZ
APPLICANT – Akerman Senterfitt LLP, for Bacele Realty, owner.
SUBJECT – Application September 20, 2012 – Variance (§72-21) to permit a Use Group 6 bank in a residential zone, contrary to ZR 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

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 residential (UG 2) building contrary to use regulations, ZR §42-00. M1-1& R7A/C2-4.
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

97-13-BZ
APPLICANT – Lewis E. Garfinkel, for Elky Ogorek Willner, owner.
SUBJECT – Application April 8, 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). R3-2 zoning district.
PREMISES AFFECTED – 1848 East 24th Street, west side of East 24th St, 380' south of Avenue R, Block 6829, Lot 26, Borough of Brooklyn.
COMMUNITY BOARD #15BK

161-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Bennco Properties, LLC, owner; Soul Cycle West 19th street, lessee.
SUBJECT – Application May 28, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Soul Cycle*) within a portion of an existing building. C6-4A zoning district.
PREMISES AFFECTED – 8 West 19th Street, south side of W. 19th Street, 160' west of intersection of W. 19th Street and 5th Avenue, Block 820, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #5M

211-13-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for NYC Department of Citywide Administrative Services, owner; Civic Center Community Group Broadway LLC, lessee.
SUBJECT – Application July 9, 2013 – Re-instatement (§11-411) of a previously approved variance, which permitted the use of the cellar and basement levels of a 12-story building as a parking garage, which expired in 1971; Amendment to permit a change to the curb-cut configuration; Waiver of the rules. C6-4A zoning district.
PREMISES AFFECTED – 346 Broadway, Block bounded by Broadway, Leonard and Lafayette Streets & Catherine Lane, Block 170, Lot 6 Manhattan,
COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JULY 23, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

27-05-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owners.
SUBJECT – Application February 4, 2013 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on April 18, 2011; Amendment to permit the legalization of site layout and operational changes; Waiver of the Rules. C2-4/R6 zoning district.
PREMISES AFFECTED – 91-11 Roosevelt Avenue, north side of Roosevelt Avenue between 91st and 92nd Street, Block 1479, Lot 38, Borough of Queens.
COMMUNITY BOARD #3Q
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 13, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to September 10, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

10-10-A
APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.
SUBJECT – Application September 5, 2012 – Reopening for a court remand to review the validity of the permit at issue in a prior vested rights application.
PREMISES AFFECTED – 1882 East 12th Street, west side of East 12th Street approx. 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Appeal granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the underlying case is an appeal requesting a Board determination that the owner of the site has obtained the right to complete construction of a three-story building under the common law doctrine of vested rights; and

WHEREAS, on January 25, 2010, the Applicant filed an application with the Board seeking recognition of a right to continue construction under the common law doctrine of vested rights; and

WHEREAS, on October 5, 2010, under the subject calendar number, the Board found that a vested right to continue construction under Department of Buildings ("DOB") Permit Application No. 302049441 ("the Permit") had accrued to the owner under the common law; and

WHEREAS, on November 10, 2010, the adjacent neighbors, represented by counsel (hereinafter, "the Opposition"), appealed the Board's determination in New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules; and

WHEREAS, by decision and order in Bibi Lieberman 1999 Revocable Trust v. City of New York, dated September 5, 2012, Supreme Court, Kings County, Justice Lewis voided the Board's decision, and "remanded to the BSA for a full review of the questions presented, including whether the Permit issued by the DOB was legally sufficient to be the foundation of the common law vested right to continue construction"; and

WHEREAS, a public hearing was held on this application on February 12, 2013, after due notice by publication in *The City Record*, with continued hearings on April 9, 2013 and May 21, 2013, and then to decision on July 23, 2013; 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, recommended disapproval of the original vested rights application; and

WHEREAS, United States Congressman Michael Grimm, New York State Senator Tony Avella, and New York State Assemblyman Steven Cymbrowitz submitted written testimony in opposition to the application; and

WHEREAS, the Madison Marine Homecrest Civic Association and the Manhattan Beach Community Group provided testimony in opposition to the application; and

WHEREAS, a representative of the owner of the subject site ("the Applicant") appeared and made submissions in support of DOB's finding that the Permit was valid; and

WHEREAS, the Opposition appeared and made submissions in opposition to DOB's finding that the Permit was valid; and

WHEREAS, certain members of the surrounding community provided testimony in opposition to the application; and

WHEREAS, DOB appeared and made submissions regarding the validity of the Permit; and

BACKGROUND

WHEREAS, the Applicant proposes to develop the subject site with a three-story residential building; the subject site was formerly located within an R6 zoning district, however, on February 15, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, the Applicant represents that the development complies with the former R6 district parameters, but does not comply with the R4-1 district parameters with respect to floor area ratio, height, and front yard depth; and

WHEREAS, as a threshold matter, a valid permit must have been issued prior to the Rezoning Date; and

WHEREAS, the Applicant states that on December 13, 2005, DOB issued the Permit, authorizing construction of a five-story and cellar residential building at the site; and

WHEREAS, the Applicant states that on February 7, 2006, DOB issued a post approval amendment ("PAA") to the Permit authorizing the addition of a sixth floor to the proposed residential building at the site; the applicant represents that the six-story building complied with the R6 zoning district regulations in effect at the time the PAA was issued; and

WHEREAS, the Applicant states that on April 13, 2009, DOB issued a PAA to the Permit authorizing the reduction of the proposed building to a three-story residential building and solarium; the three-story building complied with the R6 zoning and it utilized all of the work completed at the site prior to the Rezoning Date; and

WHEREAS, the Applicant notes that, as compared to the six-story building, the proposed three-story building represents a reduction in floor area from 7,515 sq. ft. (3.0 FAR) to 4,038 sq. ft. (1.61 FAR), a reduction in wall height from 62'-1" to 42'-10 ½", and a reduction in total height from 62'-1" to 53'-10 ¾"; therefore, the proposed three-story building reduces the degree of non-compliance with the current R4-1 zoning district, with respect to the floor area and height of the building; and

WHEREAS, on January 25, 2010, the Applicant filed an application with the Board seeking recognition of a right to continue construction under the common law doctrine of vested rights; and

WHEREAS, DOB submitted letters dated April 20, 2010, May 6, 2010, and October 1, 2010 to confirm for the Board that the Permit was lawfully issued prior to the Rezoning Date; and

WHEREAS, based on these letters, which reflect the permit-issuing agency's confirmation that it validly issued the Permit, the Board found that the Permit was validly issued and therefore a basis on which to seek a vested right to continue construction; and

WHEREAS, on October 5, 2010, the Board voted in favor of a resolution granting a vested right to continue construction; and

WHEREAS, subsequent to the Board's vote, on October 25, 2010, the Opposition emailed a complaint to DOB alleging that the walls and roof of the subject building were removed and the foundation was enlarged; and

WHEREAS, in response to the Opposition's October 25th email, DOB inspected the site and confirmed that such work had taken place; consequently, by letter dated November 15, 2010, DOB advised the Opposition that due to the extent of the removal work, an application for a New Building Permit ("NB") rather than an Alteration Type-1 Permit ("ALT") permit should have been filed, but that the error in application type was "administrative" and "did not render the Permit invalid"; and

WHEREAS, on November 10, 2010, the Opposition appealed the Board's determination in New York State Supreme Court; and

WHEREAS, on September 5, 2012, Justice Lewis remanded the matter to the Board for a review of its decision and a determination on the validity of the Permit; and

THE OPPOSITION'S POSITION REGARDING THE PERMIT

WHEREAS, the Opposition contends that the Permit was not validly issued, and thus cannot form the basis for a vested right to continue construction; and

WHEREAS, specifically, the Opposition asserts that the Permit was invalid when issued because the Permit should have been filed as an NB application rather than an ALT application, per DOB Technical Policy and Procedure Notice ("TPPN") No. 1/02; and

WHEREAS, the Opposition asserts that the Permit should have been filed, per TPPN 1/02, as an NB application, rather than an ALT application, and that such failure renders the permit invalid; and

WHEREAS, the Opposition states that under TPPN 1/02, an NB application must be filed instead of an ALT application when: (a) more than 50 percent of the area of exterior walls is removed; (b) all floors at or above grade and the roof are demolished; and (c) the foundation system is altered or enlarged; and

WHEREAS, the Opposition contends that during the course of construction under the Permit, greater than 50 percent of the exterior walls were removed, all floors at or above grade and the roof were removed and the foundation

was altered and enlarged; the Opposition submitted photographs in support of this assertion; and

WHEREAS, the Opposition states that because the limits of the TPPN were exceeded, an NB application was required and the applicant was no longer permitted to rely on the Permit for vesting purposes; and

WHEREAS, the Opposition also contends that: (1) the Permit application did not contain complete plans and specifications authorizing the entire construction and not merely a part thereof, per ZR § 11-31; (2) the Permit lacked certain forms that are required by DOB to accompany an NB application, including a Builder's Pavement Plan ("BPP"), a site connection proposal on forms SD1 and SD2, Technical Reports of Inspection ("controlled inspections") for underpinning, shoring and bracing, on forms TR1 and TR2; (3) the Permit did not contain underpinning plans and specifications, as required by New York City Administrative Code ("AC") §§ 27-715 and 27-724, demolition plans or sprinkler plans; and (4) the plans submitted with the Permit suffer from a lack of "construction detailing information," including building sections, wall sections, stair detailing and materials used, contrary to AC § 27-157; and

WHEREAS, the Opposition asserts that the Permit application did not contain complete plans and specifications authorizing the entire construction and not merely a part thereof in accordance with ZR § 11-31, which in pertinent part provides that

> [a] lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof; and

WHEREAS, the Opposition states that because the Permit did not include underpinning, demolition or sprinkler plans, forms SD1 and SD2 regarding the house connection, forms TR1 and TR2 regarding the underpinning, bracing, and shoring, and a BPP, the plans generally lacked sufficient detail under AC § 27-157, and the plans were not approved by DOB in accordance with ZR § 11-30; and

WHEREAS, the Opposition also states that the failure to file an NB application was not an administrative irregularity; rather, the Opposition, asserts that such failure necessarily results in a failure to submit numerous additional required items, including forms SD1 and SD2 regarding the house connection, forms TR1 and TR2 regarding the underpinning, bracing, and shoring, and a BPP; and

WHEREAS, the Opposition asserts that the absence of the SD1 and SD2, the BPP and the TR1s and TR2s for underpinning, bracing, and shoring, rendered the Permit invalid; the Opposition also notes that such items should have been included with the Permit according to a Required Items Guide published by DOB and dated July 16, 2006; and

WHEREAS, further, the Opposition contends that once it became clear that an NB Application was required for the scope of work performed at the site, demolition, underpinning and sprinkler plans also became required; and

WHEREAS, as such, the Opposition states that the absence of demolition, underpinning and sprinkler plans rendered the Permit invalid; and

WHEREAS, in addition, the Opposition contends that the Permit suffers from an overriding lack of completeness and detailing in violation of AC § 27-157, and asserts that the question before the Board is not only whether the Permit is valid, but also whether, if DOB had known about the various alleged deficiencies, would DOB have issued the Permit in the first place; in support of this theory of the case, the Opposition emphasizes the fact that the Permit application was filed under professional certification (pursuant to AC § 27-143.2 and 1 RCNY § 21-01); and

WHEREAS, the Opposition also contends that DOB has departed from its prior determinations of what constitutes a valid permit; and

WHEREAS, specifically, the Opposition asserts that DOB applied a different standard in BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard, Queens); in that case, DOB considered an ALT permit invalid because based on its scope of work, a demolition permit was required, but never obtained; and

WHEREAS, the Opposition states that the failure to file an NB application is analogous to the failure to file a demolition application in BSA Cal. No. 121-10-A and that DOB's determination that the Permit is valid in this case is an arbitrary failure to adhere to the precedent it set in BSA Cal. No. 121-10-A; and

WHEREAS, the Opposition also asserts that the Permit's failure to contain an SD1 and SD2 rendered the permit invalid in accordance with BSA Cal. No. 145-12-A (339 West 29th Street, Manhattan); in that case, DOB considered a permit invalid because it was issued without a required discretionary approval from another agency, namely, the Landmarks Preservation Commission ("LPC"); and

WHEREAS, the Opposition states that because the SD1 and SD2 must be approved by the Department of Environmental Protection ("DEP"), they are analogous to the LPC permit in BSA Cal. No. 145-12-A, and that DOB's determination that the Permit is valid in this case is an arbitrary failure to adhere to the precedent it set in BSA Cal. No. 145-12-A; and

WHEREAS, finally, the Opposition asserts that the Permit contains additional Building Code non-compliances, including: (1) lack of access to the required stair enclosure from the second, fourth and sixth stories, contrary to AC § 27-366 (the original plans were for a six-story building); (2) a private elevator, contrary to AC § 27-356(d); (3) exterior wall assemblies including wood studs, contrary to AC Title 27, Table 3-4; (4) insufficient furnace room ventilation, contrary to AC § 27-424; (5) the creation of a shaft without sufficient fire rating, contrary to AC Title 27, Table 3-4; and (6) rooms designed and arranged to be habitable but lacking required light and ventilation, contrary to AC §§ 27-733, 27-734, 27-749 and 27-750; and

DOB'S POSITION REGARDING THE PERMIT

WHEREAS, DOB contends that the Permit was validly issued, and contained only administrative irregularities; and

WHEREAS, DOB states that the Permit did not initially propose work that was required to be filed under an NB application pursuant to TPPN 1/02, however, the ALT limits of the TPPN were exceeded at the site and the requirement for an NB application was triggered; and

WHEREAS, DOB states that the Permit did not initially in 2005, or in subsequent amendments filed in 2006, 2008 and 2009 propose work that was required to be filed under an NB application pursuant to TPPN 1/02; and

WHEREAS, however, DOB states that during the course of construction, the ALT limits of the TPPN were exceeded and the requirement for an NB application was triggered; DOB notes that it determined that an NB application should have been filed in November 2010; and

WHEREAS, DOB asserts that the subsequent requirement for the NB application due to the scope of work performed at the site is an administrative irregularity that did not render the Permit invalid; and

WHEREAS, DOB notes that the Administrative Code does not specify whether an NB application or an ALT application is appropriate where an existing building is to be enlarged by removing portions of the building, adding new construction materials, and reusing existing building elements; and

WHEREAS, accordingly, DOB asserts that the failure to file an NB instead of an ALT is not a substantial deviation from the law and therefore not a basis for finding that the Permit was invalid when issued; and

WHEREAS, DOB also notes that whether it requires retroactive compliance with the TPPN i.e., the filing of an NB application to replace an erroneous ALT application, depends on whether work has commenced under the ALT permit; where work has commenced, DOB allows the work to continue under the ALT permit and requires that items typically received prior to (NB) permit be submitted prior to the issuance of a temporary certificate of occupancy; where work has not commenced, DOB requires the ALT application to be withdrawn and replaced with an NB application; and

WHEREAS, as to the balance of the Opposition's arguments regarding the Permit, DOB asserts that: (1) since this application seeks recognition of a vested right under the common law, the statutory definition of "valid permit" set forth in ZR § 11-31 is not relevant; however, if it were, the Permit is considered complete within the meaning of the Zoning Resolution because the Permit application documents provided the minimum information required by the AC § 27-157 and were sufficient to allow DOB to conduct a meaningful review of the proposal; (2) the Permit's lack of certain forms associated with an NB application did not render the Permit invalid; (3) the Permit's lack of underpinning, demolition, or sprinkler plans did not render the Permit invalid; and (4) DOB's determination in the instant matter is distinguishable from its prior determinations in BSA Cal. Nos. 121-10-A and 145-12-A; and

WHEREAS, DOB contends that since this application seeks recognition of a vested right under the common law, the statutory definition of "valid permit" set forth in ZR § 11-31 is not relevant; and

WHEREAS, DOB states that, even if the Zoning Resolution "valid permit" definition applies, the Permit is considered valid because its application documents contained the information required by the AC § 27-157, which provides that applications for alteration permits shall be accompanied by "such architectural, structural, and mechanical plans as may be necessary to indicate the nature and extent of the proposed alteration work and its compliance with [the Administrative Code] and other applicable laws and regulations"; and

WHEREAS, DOB contends that to satisfy ZR § 11-31 and AC § 27-157, it requires, at a minimum, plans and specifications that are sufficiently complete to allow a meaningful review of the proposal; and

WHEREAS, further, DOB asserts that neither the Zoning Resolution, nor the Administrative Code provide that an application is incomplete if it contains minor errors; and

WHEREAS, DOB also notes that, per ZR § 11-31, "in case of dispute as to whether an application includes 'complete plans and specifications' as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met"; and

WHEREAS, DOB asserts that the Permit's lack of forms associated with an NB application (SD1 and SD2, BPP and TR1s and TR2s for underpinning, shoring, and bracing) did not render the Permit invalid; and

WHEREAS, specifically, DOB states the SD1 and SD2 (which DOB refers to as the "Site Connection Proposal" or "SCP") are required pursuant to AC § 27-901(e) to demonstrate that the water supply and sewage system for a new or altered building is connected to the public system and pursuant to AC § 27-901(k) to demonstrate proper disposal of storm water; and

WHEREAS, DOB asserts that the submission of an SCP after the issuance of the Permit but before the issuance of a temporary certificate of occupancy is a minor error that did not render the Permit invalid; DOB also notes that, upon learning that an NB application should have been filed (based on the scope of work performed at the site), it notified the Applicant that the SCP would be required; and

WHEREAS, as to the BPP, DOB states that a BPP is required pursuant to AC § 27-204 to demonstrate that the sidewalk in front of a new or altered building is suitably improved; and

WHEREAS, DOB asserts that, per AC § 28-204, the BPP must be approved before a certificate of occupancy is issued; as such, the submission of the BPP after the issuance of the Permit did not render the permit invalid; DOB also notes that, upon learning that an NB application should have been filed (based on the scope of work performed at the site), it notified the Applicant that the BPP would be required; and

WHEREAS, DOB states that underpinning, shoring, and bracing controlled inspections were not required, per

AC § 27-724, because according to the construction documents for the Permit, the proposed underpinning and braced excavation surfaces were less than 10 feet below grade; accordingly, forms TR1 and TR2—which identify the professional responsible for performing the controlled inspections—were not required, and the absence of such forms did not render the Permit invalid; and

WHEREAS, DOB also states that, contrary to the Opposition's assertion, underpinning plans were not required for the proposed construction; rather, the plans complied with the requirements governing excavation and shoring; and

WHEREAS, specifically, DOB asserts that pursuant to AC § 27-715, "where support of adjacent structures or properties is required, such support may be provided by underpinning, sheeting, bracing or by other means acceptable to the Department," and that the "typical shoring plan" shown on Foundation Plan and Wall Types Sheet A-1 (approved April 2, 2009) shows supported excavation at a depth of eight feet; and

WHEREAS, as to the Opposition's assertion that a demolition application was required once it became apparent that an NB application should have been filed, DOB asserts that it does not require a demolition application when it discovers that alteration thresholds are exceeded after the commencement of work; instead, DOB requires that the ALT application is amended to show the extent of the removal work; and

WHEREAS, DOB notes that because it did not require a demolition application, it also did not require the Applicant to file certain items (an inspection report from the DOB Building Enforcement Safety Team, utility cutoffs, and extermination certifications) that accompany a demolition application; and

WHEREAS, DOB asserts that the failure to file such items did not render the Permit invalid; DOB also notes that a registered design professional took responsibility for the safety of the removal work at the site, as required by 1 RCNY § 16-01; and

WHEREAS, as to the Opposition's contention that a sprinkler application was required in connection with the Permit, DOB states that the Administrative Code does not require sprinkler plans to be included with a permit application; as such, the absence of sprinkler plans did not render the Permit invalid; and

WHEREAS, DOB asserts that its determination in the instant matter is distinguishable from its prior determinations in BSA Cal. Nos. 121-10-A and 145-12-A; and

WHEREAS, DOB states that the instant appeal is unlike BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard, Queens); in that case, DOB found that an alteration permit was invalid because it proposed construction of a commercial building within a portion of a parcel occupied by a residential building without showing that the residence was to be demolished and without having obtained a demolition permit; because it would have been impossible to construct the commercial building without the removal of the residence, the alteration permit was invalid; and

WHEREAS, DOB states that, in contrast to the plans and construction documents for the Francis Lewis Boulevard ALT permit, the construction documents and plans for the Permit showed the existing conditions; thus, the former was invalid and the latter was valid; and

WHEREAS, DOB states that the instant appeal is also distinguishable from BSA Cal. No. 145-12-A (339 West 29th Street, Manhattan); in that case, DOB determined that the permit was invalid because it lacked a discretionary approval from LPC, which was required by AC § 25-305(b)(1) to have been secured prior to DOB's issuance of the permit; as noted above, the Opposition asserts that the Permit is similarly flawed as it lacked forms SD1 and SD2 (Site Connection Proposal), which require DEP approval, and should similarly be considered invalid; and

WHEREAS, in response, DOB asserts that although as a matter of policy it requires the Site Connection Proposal to be filed along with the NB application, the Site Connection Proposal is not a code-mandated, pre-DOB permit discretionary approval; as such, DOB considers the absence of the Site Connection Proposal in the Permit a minor error, which does not render the Permit invalid; and

WHEREAS, at hearing, the Opposition questioned what standards DOB applies in determining whether a permit is valid; and

WHEREAS, in response, DOB states that it considers on a case-by-case basis whether errors contained in construction documents are so substantial as to render the permit invalid or instead are curable irregularities and that in each case, DOB compares the extent of the error against the scope of work; and

WHEREAS, DOB asserts that there is a "high threshold" for defects that render a permit invalid, citing: BSA Cal No. 242-09-A (75 First Avenue, Manhattan) (permit authorizing a street wall 82 feet higher than the 100-foot maximum was invalid); and BSA Cal. No. 193-09-A (78-46 79th Place, Queens) (permit authorizing a front yard eight feet shorter than the required 18 feet was invalid); and

WHEREAS, DOB also notes that case law supports the notion that only substantial defects render a permit invalid; and

WHEREAS, specifically, DOB cites to Matter of Menachem Realty Inc. v. Srinivasan, 60 AD3d 854 [2nd Dept 2009], in which DOB determined that a permit issued for the construction of a new building was not valid because it failed to demonstrate compliance with required plantings and an accessible ramp and the Board denied the vested rights application (BSA Cal. No. 85-06-BZY; 1623 Avenue P, Brooklyn); the Supreme Court reversed the Board's decision and the Appellate Division affirmed; and

WHEREAS, DOB also contends that Matter of GRA V, LLC v Srinivasan, 55 AD3d 58 [1st Dept 2008], revd 12 NY3d 863 [2009] is consistent with its determination of validity in the instant matter; in GRA V, LLC, DOB determined that a permit was invalid because it contained a front yard with a 1'-9" error and the Board denied the vested

rights application (BSA Cal. No. 17-05-A; 3333 Giles Place, Bronx); notwithstanding that the Supreme Court and Appellate Division affirmed the denial, while the case was pending before the Court of Appeals, DOB acknowledged that its position on permit validity had evolved since the commencement of the case to accept cures of similar defects in other cases after a zoning amendment; accordingly, DOB determined the permit to be valid and it formed the basis for the Board's ultimate grant of the common law vested rights application; and

WHEREAS, accordingly, DOB states that the relevant case law supports its determination that the Permit was valid because it contained only minor, curable errors and administrative irregularities; and

THE APPLICANT'S POSITION REGARDING THE PERMIT

WHEREAS, the Applicant concurs in DOB's arguments regarding the validity of the Permit and also submitted an affidavit from a former DOB commissioner, which indicated that the Permit was properly filed as an ALT application in that it complied with TPPN 1/02 (as amended by TPPN 1/05); and

WHEREAS, the Applicant also notes that the Opposition's reliance on the July 10, 2006 Required Items Guide (as evidence of the Permit's defectiveness) is misplaced, because the guide was issued approximately seven months after the Permit was first issued on December 12, 2005; and

WHEREAS, finally, the Applicant states that although the Permit application was filed under professional certification initially, it has been subjected to numerous audits over the years and its validity has consistently been reaffirmed by DOB; and

THE BOARD'S POSITION REGARDING THE PERMIT

WHEREAS, the Board has reviewed the record and agrees with DOB and the Applicant that the Permit was validly issued; and

WHEREAS, the Board finds that whether an application was required to have been filed as an NB application or an ALT application is an administrative matter that is not indicative of the permit's overall validity; and

WHEREAS, the Board notes that DOB is the permit-issuing agency, with the expertise and authority to review plans and construction documents, to approve or deny applications, and to issue interpretations of the Building Code, Zoning Resolution, New York State Multiple Dwelling Law, and other applicable laws, rules, and regulations governing development of property within the City of New York; accordingly, in a vested rights application, the Board requests that DOB confirm that the permit it already issued pursuant to these requirements was valid; DOB's expertise in examining plans and construction documents is well-established and entitled to substantial deference, as the Appellate Division explained in Perrotta v. City of New York, Dep't of Bldgs., 107 A.D.2d 320, 324, 486 N.Y.S.2d 941, 944-45 [1st Dept 1985] aff'd sub nom. Perrotta v. City of New York, 66 N.Y.2d 859, 489 N.E.2d 255 (1985),

> [a] determination as to whether [there can be] vested rights under [a] building permit must, of necessity, involve *an examination of the validity of the permit*, as well as compliance with technical provisions of the Zoning Resolution, and this is *clearly an appropriate inquiry for agency expertise*. (emphasis added); and

WHEREAS, the Board notes that during the course of the initial vested rights application, DOB confirmed the Permit's validity on four separate occasions in 2010 alone; therefore, the Board accepted DOB's letters as evidence that it, the permit-issuing agency, made a reasoned determination that the Permit was valid and did not request further information on the rationale underlying the determination; however, in light of the Court's remand, the Board directed DOB to provide the responses to the Opposition's specific assertions rejecting the validity claim and to explain how the Permit status is justified1; and

WHEREAS, as to the Opposition's assertion that the Board failed to consider the requirements of the TPPN, the Board notes that its October 5, 2010 resolution *pre-dated* DOB's inspection and November 15, 2010 letter to the Opposition confirming that an NB application was required for the scope of work performed at the site; as such, the extent to which construction work deviated from that allowed by DOB under an ALT application pursuant to the TPPN could not have been (and was not) considered by the Board in its decision to grant the application; and

WHEREAS, however, now that the November 15, 2010 letter is before the Board, the Board finds that whether an application has been filed on the proper form is not dispositive as to whether such permit was valid, because the Board agrees with DOB that whether an application is filed as an NB or ALT is not determined by the Administrative Code but rather is an administrative determination that is by statute (New York City Charter § 645(b)(2) and AC §§ 27-110 and 27-139) and case law (Perrotta, 107 A.D.2d 320, 324) within the purview of DOB; consequently, the Board finds that DOB's application forms/types are not relevant to its analysis of vesting criteria, particularly if DOB has determined that the error does not render the permit invalid; and

WHEREAS, the Board notes that while DOB's policy may be embodied in the form of a TPPN, DOB has the authority to deviate from the requirements of a TPPN where appropriate; and

WHEREAS, the Board also finds that it is reasonable for DOB to require retroactive compliance with the TPPN only where work has not commenced; the Board notes that in the instant matter, DOB discovered that the NB limits of the TPPN were triggered nearly five years after the initial issuance of the Permit; and

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1 The Board also notes that, at hearing, the Opposition mischaracterized the Court's decision, alleging that the Court ruled that the Board "failed to follow its own precedent." The Court made no such ruling.

WHEREAS, as to whether, as the Opposition asserts, DOB should have required the filing of a demolition application once it determined that an NB application should have been filed – and that the failure to file such demolition application rendered the Permit invalid, the Board disagrees; indeed, as with all requirements deriving from the triggering of the NB application, the Board finds that invalidating the Permit based on its non-compliances with the code requirements and DOB's policies and procedures relating to NB applications ignores the fact that the Permit was filed as an ALT and complied as an ALT, with minor errors; and

WHEREAS, finally, the Board disagrees with the Opposition that the appropriate inquiry for this remand is whether the Permit would have been issued in the first instance if the Permit application had not been filed under professional certification and if DOB had been aware of the Permit's irregularities; and

WHEREAS, the Board rejects this characterization of the issue, primarily on the basis that it is speculative – it is simply not possible to determine whether the Permit application, as originally filed, would have been approved by a DOB plan examiner; of more importance to the Board is that DOB audited the Permit application multiple times and found that it contained no errors that would render it invalid; accordingly, that the application was professionally-certified (a common and established practice for design professionals in the city) is inconsequential; and

WHEREAS, as to the Opposition's remaining arguments regarding the validity of the Permit, the Board finds that: (1) the Permit was validly issued under both the statutory standard set forth in ZR § 11-31 and the common law standard; (2) the Permit application's lack of various forms and plans did not render it invalid; (3) the Opposition did not obtain final determinations for additional alleged Building Code non-compliances and such alleged non-compliances are beyond the scope of this application; and (4) the Board's precedent and case law are consistent with the determination that the Permit was valid; and

WHEREAS, the Board finds that the Permit was lawfully issued under both the common law and under ZR § 11-31, which is more specific as to requirements; and

WHEREAS, the Boards finds that the Permit was complete within the meaning of ZR § 11-31 because the Permit application documents provided the information required by AC § 27-157 and were sufficient to allow DOB to conduct a meaningful review of the proposal; and

WHEREAS, the Board disagrees with DOB's assertion that the statutory definition of "lawfully issued building permit" set forth in ZR § 11-31 is irrelevant to this application; DOB originally recognized that the permit had vested under ZR § 11-331 because the Applicant had completed foundation work prior to the Rezoning Date; in doing so, it necessarily made a finding that the Permit was valid in accordance with ZR § 11-31; and

WHEREAS, the Board also recognizes, as DOB notes, ZR § 11-31(a) specifically provides that in case of dispute as to whether an application includes complete plans and specifications, DOB shall determine whether such requirement has been met; finally, the Board notes that under the common law, a permit may vest even if the underlying application did not include "complete plans and specifications" as required for a lawfully-issued permit according to ZR § 11-31; and

WHEREAS, as to the missing items that the Opposition asserts are grounds for finding that the Permit was invalid, the Board agrees with DOB that the Administrative Code does not require the submission of a Site Connection Plan (SD1 and SD2) and a BPP prior to the issuance of a Permit; as such, that the Permit application did not contain these items did not render it invalid; and

WHEREAS, similarly, the Board agrees with DOB that since the Permit application proposed excavation of less than ten feet below grade, the Administrative Code did not require the submission of controlled inspection forms (TR1s and TR2s) for underpinning, shoring, and bracing, and the Permit's lack of such documents did not render it invalid; and

WHEREAS, the Board also finds that the Permit's lack of demolition, sprinkler and underpinning plans does not render the Permit invalid; demolition plans were not required because the Permit was filed as an ALT and showed the existing conditions, sprinkler plans are not required under either AC § 27-157 (which governs NB applications) or AC § 27-162 (which governs ALT applications), and underpinning plans were not required because, as DOB states, the plans included with the Permit show "shoring details," which, per AC § 27-715, DOB found acceptable; and

WHEREAS, as to the additional alleged Building Code non-compliances identified by the Opposition, the Board notes that the Opposition failed to submit final determinations from DOB regarding such alleged non-compliances; accordingly, these issues are not properly before the Board within the context of the subject appeal; and

WHEREAS, therefore, the Board acknowledges the Opposition's assertions about the Permit's alleged Building Code infirmities insofar as they are allegations of the Permit's incompleteness; however, the Board has not analyzed or reached a determination on any of them individually, in the absence of a final determination from DOB; and

COMMON LAW VESTED RIGHTS FINDINGS

WHEREAS, turning to the Board's precedent and relevant case law, the Board agrees with DOB and the Applicant that its determination in the instant matter is distinguishable from its prior determinations in BSA Cal. Nos. 121-10-A and 145-12-A and consistent with Matter of Menachem Realty Inc. v. Srinivasan, 60 AD3d 854 [2nd Dept 2009] and Matter of GRA V, LLC v Srinivasan, 55 AD3d 58 [1st Dept 2008], revd 12 NY3d 863 [2009]; and

WHEREAS, the Board finds the instant appeal distinguishable from BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard, Queens) on the ground that the Permit in the instant matter indisputably showed the existing conditions and proposed work that could have been

performed given those conditions and the invalid Francis Lewis Boulevard permit did not; thus, the Permit proposed work that could have been executed and the Francis Lewis Boulevard permit did not; and

WHEREAS, the Board finds the instant appeal distinguishable from BSA Cal. No. 145-12-A (339 West 29th Street, Manhattan); specifically, the Board finds persuasive DOB's distinction between the lack of approval from LPC that is required by the Administrative Code prior to the issuance of a DOB permit and the lack of an approval from DEP that DOB, as a matter of policy, requests prior to permit; the Board agrees with DOB that the former renders a permit invalid and the latter does not; and

WHEREAS, as to the case law, both Menachem Realty Inc. and GRA V, LLC support the notion that the threshold for finding a permit invalid is high; in both cases, the permits contained Zoning Resolution non-compliances, which were (in Menachem Realty Inc.) found to be and (in GRA V, LLC) acknowledged by DOB as, errors that did not render the permit invalid, notwithstanding that DOB has no authority to waive the Zoning Resolution; in contrast, in the instant matter, there are no Zoning Resolution non-compliances in the Permit application; and

WHEREAS, based on the foregoing, the Board is persuaded that DOB had reasonable bases for its determination that the Permit was validly issued; and

WHEREAS, as a consequence, the Board finds that the Permit was validly issued; and

WHEREAS, to the extent that Justice Lewis in the context of the remand voided the Board's October 5, 2010 decision, the Board turns to the remaining findings for the recognition of a vested right to continue construction under the common law; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained permits for the development and had completed foundation work, such that the right to continue construction was vested by DOB pursuant to ZR § 11-331; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the Applicant states that construction was not completed within two years of the Rezoning Date; and

WHEREAS, accordingly, the Applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the Applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 before the deadline of January 13, 2008 and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, the Board notes that a common law vested right to continue construction generally exists where: (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, the Board notes that the parties did not submit any new evidence regarding substantial construction, substantial expenditures or serious loss; as such, the Board's determination on those findings has not been disturbed and it reiterates its findings from its October 5, 2010 decision with respect to those elements; and

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that 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, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 to substantial construction, the Board notes that DOB determined that the Applicant had completed foundation work prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the Applicant states that as of February 15, 2008, the Applicant completed excavation, footings, and the entire foundation of the building, including foundation bracing and strapping and underpinning of the existing foundation; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the Applicant submitted the following evidence: photographs of the site; construction contracts, a construction schedule, copies of cancelled checks, and invoices; and

WHEREAS, the Board notes that it has not considered any work performed subsequent to February 15, 2008 and the Applicant represents that its analysis is based on work performed up to that date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work was substantial enough to meet the guideposts established by case law; 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; accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the Applicant states that the owner has expended $158,390.56 or 14 percent, including hard and soft costs and irrevocable commitments, out of $1,168,251.50 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the Applicant has submitted construction contracts, copies of cancelled checks, and invoices; and

WHEREAS, the Opposition argues that the Board should consider the expenditures as a percentage of the total construction costs for the six-story building rather than the proposed three-story building, because the plans approved at the time of the Rezoning Date were for the six-story building; and

WHEREAS, the Board notes that the fact that DOB vested the project under ZR § 11-331 based on plans approved for the six-story building does not preclude the applicant from changing the scope of the project to the proposed three-story building; and

WHEREAS, as noted above, the proposed three-story building decreases the degree of non-compliance with the current R4-1 zoning district as to floor area and height; and

WHEREAS, the Applicant represents that the proposed three-story building utilizes all of the work completed prior to February 15, 2008; and

WHEREAS, accordingly, the Board is not persuaded by the Opposition's argument that the expenditures should be considered in light of the six-story building, given that the Applicant is permitted to change the scope of the project to the proposed three-story building; and

WHEREAS, the Opposition also contends that there are inconsistencies with respect to the total construction costs represented by the Applicant; and

WHEREAS, specifically, the Opposition states that the construction cost of the original five-story proposal listed on the Permit was $200,000, but that the construction contract submitted in connection with the six-story building approved under the PAA estimated a construction cost in excess of $1,740,000, and that the estimated construction cost for the proposed three-story building is $1,168,251.50; and

WHEREAS, in response, the Applicant represents that the estimated cost of the six-story building and the proposed three-story building are accurate, and states that at the time the initial application was filed at DOB the cost of construction was underestimated, and the costs would have been adjusted upon completion of the job by filing a PW3 form indicating the actual construction costs; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself for a project of this size, and when compared against the total 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 considers 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 if vesting were not permitted, it would result in the inability to develop approximately 1,780 sq. ft., or approximately 44 percent, of the proposed residential floor area of the three-story building; and

WHEREAS, the Opposition argues that the Applicant has failed to provide evidence to support the purported loss that it will incur if vesting were not permitted, and has not explained what portion of the approved three-story building will have to be reduced or redesigned to create a conforming building, and

WHEREAS, in response, the Applicant states that if required to construct pursuant to the current R4-1 district regulations, it would limit the size of the building to a complying floor area of 1,882 sq. ft., with a potential 376 sq. ft. increase under the attic rule, which would be a significant reduction from the originally approved floor area of 7,515 sq. ft. and the currently proposed floor area of 4,038 sq. ft.; and

WHEREAS, the Applicant further states that a complying home would require the street wall to be reduced from the proposed 43'-10 ½" to 25'-0", and the maximum building height would have to be reduced from 53'-10 ¾" to 35'-0"; and

WHEREAS, the Applicant further states that the inability to construct under the prior zoning regulations would require the owner to re-design the home; and

WHEREAS, the Board agrees that the need to re-design, the expense of demolition and reconstruction, and the actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

CONCLUSION

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and 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 had accrued to the owner.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 302049441-01-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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 23, 2013.

345-12-A
APPLICANT – Barrry Mallin, Esq./Mallin & Cha, P.C., for 150 Charles Street Holdings LLC c/o Withroff Group, owners.
SUBJECT – Application December 21, 2012 – Appeal challenging DOB's determination that developer is in compliance with §15-41 (Enlargement of Converted Buildings). C6-2 zoning district.
PREMISES AFFECTED – 303 West Tenth Street aka 150 Charles Street, West Tenth, Charles Street, Washington and West Streets, Block 636, Lot 70, Borough of Manhattan
COMMUNITY BOARD #2M
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 Montanez 5
THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Final Determination letter dated December 5, 2012 by the Manhattan Borough Commissioner of the NYC Department of Buildings ("DOB") (the "Final Determination") with respect to DOB Application No. 104869509; and

WHEREAS, the Final Determination states, in pertinent part:

> The Department is in receipt of your correspondence dated August 13, 2012 in which you claim that the permit issued in connection with Alteration No. 104869509 is unlawful on the basis that the existing building was demolished and is no longer eligible to rely on a City Planning Commission (CPC) authorization per New York City Zoning Resolution Section 15-41 to facilitate the enlargement and conversion of the building for residential use.
>
> The application for construction document approval is consistent with the Department's policy regarding the type of application that must be filed for work involving the demolition of exterior building walls (see Technical Policy and Procedure Notice #1/02, amended by TPPN #1/05). TPPNs #1/02 & 1/05 allow the proposed work to be filed as an alteration of an existing building, instead of as the demolition and construction of a new building, because not more than 50% of the existing building's walls are removed. As such the permit may properly rely on the CPC authorization under ZR 1[5]-[4]1; and

WHEREAS, a public hearing was held on this appeal on May 21, 2013, after due notice by publication in *The City Record*, and then to decision on July 23, 2013; 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 appeal was brought on behalf of neighbors of the area surrounding the site who were represented by counsel (the "Appellant") and who provided their own individual written and oral testimony in support of the appeal; and

WHEREAS, individual members of the community also, through written and oral testimony expressed opposition to the potential impact of the building's massing, increased traffic, absence of open space, effect on light air, and views, and other site conditions and in support of the appeal

WHEREAS, DOB provided written and oral testimony in opposition to the appeal; and

WHEREAS, representatives of the owner (the "Owner") provided written and oral testimony in opposition to the appeal; and

WHEREAS, the appeal involves a site at 303 West Tenth Street/150 Charles Street, historically occupied by a through-block full lot coverage four-story warehouse building (with 3.8 FAR) bounded by West Tenth Street, Charles Street, Washington Street, and West Street with 257'-9" of frontage on Charles Street and 237'-4" of frontage on West Tenth Street; and

WHEREAS, the site is within a C1-7 zoning district which allows a maximum residential FAR of 6.02; and

WHEREAS, the proposal reflects a building with a four-story base with an 11-story stepped for a total of 15 stories that would be approximately 178 feet in height; and

WHEREAS, the proposed total floor area is 280,209 sq. ft. (5.9 FAR); and

WHEREAS, the proposal was approved pursuant to a City Planning Commission (CPC) authorization as provided by ZR § 15-41 (Enlargement of Converted Buildings); and

WHEREAS, the appeal seeks the reversal of DOB's determination that the Owner is in compliance with ZR § 15-41 and that the associated building permit is valid; and

PROCEDURAL HISTORY

WHEREAS, on September 19, 2007, CPC approved the enlargement and conversion of an existing four-story manufacturing building and a new 11-story tower pursuant to an authorization in accordance with ZR § 15-41; and

WHEREAS, ZR § 15-41 was added to the Zoning Resolution by text amendment, approved by CPC in conjunction with the authorization, and adopted by the City Council on October 17, 2007; and

WHEREAS, ZR § 15-41 authorizes certain zoning waivers (including open space and height factor requirements) in connection with enlargements of residential conversions of non-residential buildings and applicable to buildings converted to residential use pursuant to the Zoning Resolution's Article I, Chapter 5; and

WHEREAS, the parameters of ZR § 15-41 include:

> Enlargements of Converted Buildings
>
> In all #Commercial# and #Residence Districts#, for #enlargements# of #buildings converted# to #residences#, the City Planning Commission may authorize:
>
> (a) a waiver of the requirements of Section 15-12 (Open Space Equivalent) for the existing portion of the #building#

#converted# to #residences#; and

(b) the maximum #floor area ratio# permitted pursuant to Section 23-142 for the applicable district without regard for #height factor# or #open space ratio# requirements; and

WHEREAS, the citywide text amendment modified ZR § 15-41 to allow for a waiver of the open space requirements in ZR § 15-12 (Open Space Equivalent) for the portion of the building being converted to residential use; and to allow the maximum FAR to be achieved on the site irrespective of the site meeting its required height factor or open space requirements; and

WHEREAS, on April 25, 2011, CPC approved the renewal of the authorization without any changes to the approved plans or the requirements shown on those plans; and

WHEREAS, on April 18, 2013, CPC approved the renewal of the authorization to allow certain changes in the landscaping design for the open space areas; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that by demolishing as much of the building as it did, the Owner has forfeited its right to the zoning approval granted under ZR § 15-41 since ZR § 15-41 requires that the existing building be preserved and enlarged; and

WHEREAS, the Appellant makes the following primary arguments: (1) as noted in its Final Determination, DOB's reliance on the TPPN is misplaced as the Zoning Resolution is the prevailing authority; (2) the Owner has misrepresented/altered its plans so that more than 50 percent of the walls have been removed; (3) the project is contrary to the public policy and intent of ZR § 15-41; and (4) the building is incompatible with neighborhood character; and

WHEREAS, the Appellant asserts that DOB's rationale for permitted the construction to continue, as expressed in its Final Determination, is misplaced as DOB relied on its TPPNs rather than on zoning, while the TPPNs are only departmental guidelines; and

WHEREAS, the Appellant notes that the Final Determination focuses on the type of application that must be filed for permits pursuant to the TPPNs and not on the Zoning Resolution definition of building or the public policy underlying the enactment of the amendment to ZR § 15-41; and

WHEREAS, the Appellant asserts that the question is not whether the Owner complied with its own internal policy per the TPPNs but whether it complied with the Zoning Resolution; and

WHEREAS, the Appellant asserts that if there is any conflict between the Zoning Resolution and DOB policy notices, the Zoning Resolution must prevail; and

WHEREAS, the Appellant cites to the Zoning Resolution definition of (1) building, which states that it has one or more floors and a roof and at least one primary exit and (2) enlargement which is an addition to the floor area of an existing building and that, accordingly, the construction does not meet the requirement for enlarging an existing building notwithstanding the guidance in the TPPNs; and

WHEREAS, as to the wall condition, the Appellant provided photographs which reflect the current conditions of framing of the north and south walls without any bricks, mortar, doors, or windows, which it asserts is insufficient to meet the Zoning Resolution criteria for enlargement of an existing building; and

WHEREAS, the Appellant asserts that the Owner does not plan to build atop the existing building as it represented it would in its application CPC because no existing building remains; and

WHEREAS, as to the plans, the Appellant asserts that there are discrepancies between the plan sheets concerning how much of the building was to be retained; specifically, the Appellant questions the inclusion of plan sheet AF-005 in the submission to the Board because it asserts that the plan reflects the retention of portions of the building as originally described in the CPC application and not what actually has been retained; and

WHEREAS, the Appellant asserts that the Owner shows on plan sheet AF-005 that approximately 30 feet of depth of the existing building along both streets (Charles and West Tenth) would be retained; each of those sections was approximately 250 feet long by 30 feet wide and four stories; and

WHEREAS, the Appellant asserts that the level of demolition exceeds that shown on the plans and that only approximately 15 percent of the original walls remains; and

WHEREAS, further, the Appellant asserts that it appears that CPC has not been informed of the changes to the original proposal; and

WHEREAS, as to the meaning of ZR § 15-41, the Appellant asserts that the building is contrary to public policy and the intent of the provision in several ways; and

WHEREAS, first, the Appellant asserts that the Owner erroneously identifies the goal of ZR § 15-41 as to preserve the "urban form" rather than the actual building, but that such position is not supported by the Zoning Resolution; and

WHEREAS, instead, the Appellant asserts that ZR § 15-41 is clear with its use of the term "existing building" and the purpose as a "preservation tool"; and

WHEREAS, specifically, the Appellant asserts that (1) ZR § 15-41 requires the preservation and enlargement of an existing building; and (2) the Owner represented that it would preserve the existing building; and

WHEREAS, the Appellant asserts that DOB is circumventing required procedures that undermine ZR § 15-41 by granting an approval for construction which reflects modifications that have not been submitted to the community boards and involved agencies; and

WHEREAS, the Appellant asserts that the Owner's changes are subject to public review, just as the original plans were and DOB cannot grant permit approvals to the Owner for plans that are contrary to those submitted to the community board and CPC; and

WHEREAS, the Appellant and other community members in opposition to the project assert that the as-of-right taller and narrower tower surrounded by smaller buildings is

more consistent with the neighborhood character which they identify as reflecting taller buildings surrounded by smaller buildings and such design better preserves views and access to light and air than the proposed; and

WHEREAS, the Appellant also asserts that a proto-type as-of-right building would be only three stories higher than the current proposal and would provide air, view, and public space; and

WHEREAS, the Appellant disfavors the proposed private open space, primarily above a height of 40 feet, as opposed to public open space at grade which it represents would be provided with the as-of-right alternative; and

WHEREAS, the Appellant raised additional concerns about the diminishment of property value in the surrounding area, the potential for increased vulnerability to flooding in the area due to the proposed design and its effect on drainage, increased traffic, exhaust, and noise; and

WHEREAS, accordingly, the Appellant requests the reversal of DOB's determination and revocation of the building permits for failure to comply with the requirements of ZR § 15-41; and

DOB'S POSITION

WHEREAS, in response to the Appellant, DOB states that (1) the plans it reviewed and approved are consistent with CPC approvals; (2) the Owner has provided sufficient information regarding its plan revisions and has maintained a sufficient amount of the building; (3) the Appellant misreads the intent of ZR § 15-41; and (4) it does not rely on the TPPN; and

WHEREAS, DOB maintains that the plans associated with the permit are consistent with the CPC-approved plans associated with the authorization and therefore there is not any basis to revoke the permit; and

WHEREAS, DOB asserts that the Zoning Resolution does not require DOB to review or concur with CPC's determination that the project is entitled to an authorization under ZR § 15-41, rather that its role with regard to whether a permit may rely on CPC's authorization is to issue a permit consistent with that authorization; and

WHEREAS, further, DOB asserts that the Zoning Resolution does not give DOB authority to approve or reject CPC's grant, to question whether the grant of the authorization is appropriate for a project, or to reevaluate CPC's decision to regard the project as an "enlarged building;" and

WHEREAS, as to the extent of the demolition, DOB states that the removal work allowed under the permit is consistent with CPC's authorization as CPC's authorization does not require that a certain percentage of the existing building remain intact or specify that a particular amount of existing construction materials must be preserved; further, the authorization application to the CPC states that the warehouse's fourth floor would be removed and approximately 43,304 sq. ft. of floor area would be removed in order to create a common courtyard; and

WHEREAS, DOB notes that CPC's report, dated September 19, 2007, acknowledges the Owner's plan to remove the portion of the fourth story of the existing building and the 43,304 sq. ft. of floor area from the interior portion of the existing warehouse to create a common courtyard and open space available to residents, thus, CPC understood that the proposal included removal of parts of the original warehouse and it granted the authorization to enlarge and convert the building without imposing any limits on how much of the warehouse could be removed; and

WHEREAS, DOB states that contrary to the Appellant's assertion, ZR § 15-41's use of the defined terms "enlargement" and "building" do not preclude the removal of floors and roof from the original building during the course of permitted work; as Article I Chapter 5 establishes standards for changing non-residential floor area to residences but does not regulate conditions during the transition to residences nor does it require that a certain portion of the former building be retained in the completed building; and

WHEREAS, specifically, DOB asserts that Article I Chapter 5 (Residential Conversions within Existing Buildings) does not define the term "existing building" but the applicability provision ZR § 15-01 provides that the chapter controls conversions in buildings erected prior to December 15, 1961 that are located in Manhattan Community District 1 through 6, which includes the subject building, a former warehouse built in 1938; and

WHEREAS, DOB concludes that for the purpose of applying ZR § 15-41, where the original building's massing is preserved in the new design and bulk is added, the building is enlarged regardless of whether a new roof and new floors are installed in the structure; similarly, a damaged or destroyed building that does not meet the definition of "building" due to the extent of damage sustained may still rely on ZR § 54-40 (Damage or Destruction in Non-Complying Buildings) as a "non-complying building" that may be permissibly reconstructed provided it does not create a new non-compliance or increase the degree of non-compliance with applicable bulk regulations; and

WHEREAS, DOB asserts that sections like ZR § 54-40 use defined terms as a practical matter to refer to a structure before and after their provisions are utilized and do not expressly require that the structure always satisfy the requirements of the "building" definition or that it preserve floors so as to maintain "floor area" at all times; and

WHEREAS, DOB finds that an alteration permit is appropriate in this instance because less than 50 percent of the area of exterior walls was removed; DOB states that plan sheet AF-005, titled "Alteration of Existing Warehouse" and approved by the Department in connection with the application on September 29, 2011, shows approximately 450 linear feet of the east and west walls of the existing warehouse will be removed and 495 linear feet of the north and south exterior walls of the existing warehouse structure, with the exception of exterior windows, doors and the smaller setback at the fourth story, will remain intact; and

WHEREAS, as to the Appellant's assertion that the

Owner misrepresented to CPC the scope of the removal work by amending plan sheet AF-005, the Owner submitted revised drawings superseding the original AF-005 and an AI1: Additional Information form submitted with the permit application, which states: "Changes include demolition of remaining interior floor slabs, loading dock beam extensions and end bays spandrel beams and replacement of existing brick walls at street facades and property lines;" and

WHEREAS, DOB notes that it approved the amendment on September 29, 2011 while CPC had initially approved the proposal to remove portions of the existing warehouse on September 19, 2007, it renewed the grant on April 25, 2011, and it approved a modification to the authorization affecting the open space design and the massing of the building envelope on April 18, 2013; and

WHEREAS, accordingly, DOB states that CPC reviewed and continued to approve the project after plan sheet AF-005 was revised; and

WHEREAS, as to the intent of ZR § 15-41, DOB asserts that CPC's report reflects a consideration of the building form rather than the conservation of original construction materials; and

WHEREAS, specifically, DOB cites to CPC's report which states that the grant under ZR § 15-41 acts as a preservation tool by allowing the retention of the massing of the existing warehouse with high lot coverage and high street wall characteristics of the former industrial neighborhood and the CPC's finding in the report include that the building form resulting from use of the authorization would appropriately result in a building far more in context than an as-of-right tower constructed pursuant to height factor regulations; and

WHEREAS, DOB notes that the CPC was concerned that the enlarged building retains the existing streetwall and this is reflected in the construction documents showing that the north and south streetwalls are not removed; and

WHEREAS, DOB asserts that it is not obligated to make an independent assessment that a CPC authorization is warranted for this project; and

WHEREAS, as to the text, DOB notes that in the absence of ZR § 15-41, a new as-of-right building could be designed according to the maximum open space ratio and maximum floor area ratio according to the building's height factor as set forth in ZR § 23-142; and

WHEREAS, DOB asserts that the purpose of ZR § 15-41 is to provide a means for an alternative design that allows available floor area to be used together with the original building's high lot coverage and street wall configuration and that CPC's findings include a determination that the building's scale is compatible with the surrounding neighborhood and that the enlarged building will not adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air; and

WHEREAS, DOB asserts that ZR § 15-41 also authorizes CPC to prescribe additional conditions and safeguards to minimize adverse effects on the character of the surrounding area; ZR § 15-41's purpose is to make possible conversions and enlargements that are in accord with the surrounding neighborhood; and

WHEREAS, DOB concludes that the CPC properly evaluated the proposed plan for the completed enlarged building, made the required findings, and deemed the authorization appropriate; and

WHEREAS, DOB rejects the Appellant's assertion that DOB's permit is improper because it undermines the purpose of ZR § 15-41 to preserve an existing building because conservation of improvements is not the text's goal; and

WHEREAS, DOB asserts that the purpose of ZR § 15-00 includes allowing owners to increase a return on investment in existing buildings by authorizing conversions without requiring conformance with Article II, providing locations and space for commercial and manufacturing uses and providing new housing at an appropriate density, none of the goals describe the protection of improvements or architectural features of a special character or historical or aesthetic interest; and

WHEREAS, DOB states that, per CPC's report dated September 19, 2007 (at pages 9-10), the term "preservation" as used in ZR § 15-41 refers to an existing building's massing, not its construction materials; and

WHEREAS, DOB states that an enlarged building that keeps an existing configuration that is compatible with the character of the surrounding neighborhood achieves the goal of ZR § 15-41; and

WHEREAS, further, DOB states that in approving the subject proposal, CPC noted that the enlarged building retains the warehouse's high lot coverage and street wall and appropriately results in a building with the characteristics of the former industrial neighborhood; and

WHEREAS, accordingly, DOB finds that CPC's authorization and the Permit, issued consistently with the authorization, further the intent of the text; and

WHEREAS, DOB finds that the Appellant objects to CPC's authorization rather than DOB's permit and DOB defers to CPC; and

WHEREAS, DOB asserts that the scope of the removal work is not a basis to declare the permit invalid, since the removal work was contemplated in the authorization and does not contravene any section of the Zoning Resolution; and

WHEREAS, DOB represents that notwithstanding the Final Determination, it does not rely on TPPN 1/02 to allow the proposed construction work to be filed as a permit application to alter a building rather than as an application to construct a new building to determine whether the permit may use CPC's authorization; and

WHEREAS, DOB states that the proposed work does not need to qualify as an alteration type application in order to be considered eligible for an enlargement authorization under ZR § 15-41 and the TPPN does not provide any guidance on the applicability of zoning regulations governing existing buildings; and

WHEREAS, DOB asserts that the 2005 amendment to the TPPN removed the paragraph that allowed DOB to grant exceptions where the classification of a permit as a "new building" when it would adversely affect its status under the

ZR provisions governing existing buildings; this paragraph was removed because the TPPN was being misinterpreted as a guide for applying the Zoning Resolution when it was only intended for classifying work for administrative purposes; and

WHEREAS, DOB states that the analysis of whether the permit is consistent with the Zoning Resolution must be based on the regulations of the Zoning Resolution and is not dependent on the administrative classification of the application for construction document approval; and

WHEREAS, DOB states that the purpose of the TPPN is to inform DOB's assessment of whether a new building or alteration permit is required; and

WHEREAS, DOB contends that its obligations relating to the permit were properly carried out; namely, to confirm that the building is a building that may be converted subject to the provisions of Article I Chapter 5, and that the construction documents conform to the authorization; ZR § 15-41 does not require that any amount of the former building be retained in the completed building nor does CPC's authorization require that a certain percentage of the existing building remain intact in the finished construction; and

WHEREAS, accordingly, DOB states that the Appellant fails to present a basis to determine that DOB issued the alteration permit contrary to the Zoning Resolution; and

WHEREAS, DOB notes that the Department of City Planning has not advised DOB that the permit exceeded the terms of the Commission's authorization; and

WHEREAS, DOB also notes that CPC approved the proposal to remove portions of the existing warehouse when it issued the authorization on September 19, 2007, when it renewed the grant on April 25, 2011, and when it approved a modification to the authorization affecting the open space design and the massing of the building envelope on April 18, 2013; and

THE OWNER'S RESPONSE

WHEREAS, the Owner agrees with DOB that the permit should not be disturbed and that the proposal was reviewed and approved appropriately first by CPC and then by DOB; and

WHEREAS, the Owner agrees with DOB that the relevant question is whether it acted in accordance with the authorization in issuing the Permit; and

WHEREAS, the Owner asserts that its application to DOB and its resulting construction conditions are consistent with CPC approvals and thus there is not any basis to disturb the permit; and

WHEREAS, the Owner asserts that the Appellant's contention that the existing building ceased to be a "building" once portions of the original warehouse were removed such that the Owner forfeited the right to use ZR § 15-41 is unfounded; and

WHEREAS, the Owner asserts that DOB determined that the building was properly filed as an alteration and enlargement in compliance with the standards of the TPPNs and did not require an NB application under this standard in a written determination dated June 11, 2007; DOB also approved the repair and replacement of the bricks in the exterior walls during construction of the building, in an amendment to the existing building permit issued on September 29, 2011; and

WHEREAS, the Owner agrees with the Appellant that the Zoning Resolution, not DOB's policy guidance, is the proper source for the determination of the meaning of ZR § 15-41; however, the Appellant's interpretation of the meaning of ZR § 15-41 and its application to this case is incorrect; and

WHEREAS, the Owner asserts that ZR § 15-41 is absent a requirement to preserve a particular amount of the original fabric of a building in order to obtain the authorization; rather, the findings concern the scale of the building and the quality of its landscaping improvements that must be provided after the building is constructed and do not concern the preservation of the existing fabric of the building to be retained; and

WHEREAS, specifically, the Owner notes that in order to grant this authorization, ZR § 15-41 requires that CPC make the following findings:

(1) the enlarged building is compatible with the scale of the surrounding area;
(2) open areas are provided on the zoning lot that are of sufficient size to serve the residents of the building. Such open areas, which may be located on rooftops, courtyards, or other areas on the zoning lot, shall be accessible to and usable by all residents of the building, and have appropriate access, circulation, seating, lighting and paving;
(3) the site plan includes superior landscaping for all open areas on the zoning lot, including the planting of street trees; and
(4) the enlarged building will not adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air; and

WHEREAS, the Owner notes that the Zoning Resolution does not include a definition of "existing building" or otherwise establish any standard for how much of the fabric of an existing building must be retained for the purposes of ZR § 15-41; and

WHEREAS, the Owner asserts that the Zoning Resolution's definition of "building" only describes a finished structure and does not relate to one in stages of construction; and

WHEREAS, accordingly, the Owner asserts that in the case of this authorization, the CPC approval was clearly directed at achieving and recreating an urban form, with a building built along the street line that would recall the original warehouse form and contain superior landscaping; the authorization did not require any specific quantum of the original building fabric to be retained, as long as the resulting design and massing complied with the approved drawings; and

WHEREAS, the Owner asserts that the plans it submitted to DOB and DCP on November 8, 2007 did not include any representations as to the amount of the building that would be retained or its exact appearance; instead, they

show the size and dimensions of the building's open space areas, the landscaping details that were the basis for the CPC's finding that the building would include "superior landscaping," and the overall massing of the final building; and

WHEREAS, the Owner asserts that the nature of the approved plans and the CPC approval also make clear that substantial changes to the original building were explicitly contemplated by the authorization; and

WHEREAS, the Owner asserts that in its revised plans it provided a description of the numerous changes to the streetwall and façade of the warehouse building; and

WHEREAS, the Owner notes that it provided a plan sheet to DOB which illustrates the area of the walls to be repaired and replaced to a degree in excess of 50 percent of the original walls; and

WHEREAS, the Owner states that DOB's approval of a simultaneous repair and replacement of the bricks and windows, which results in the current condition, was reasonable and proper, and consistent with its long-standing practice; and

WHEREAS, the Owner adds that there were certain significant infirmities of the walls including insufficient load requirements per the Building Code and obsolete windows that did not meet the noise attenuation requirements set forth in the authorization; and

WHEREAS, the Owner contends that the Appellant's assertions of misrepresentation are unfounded as it has properly represented all of its changes and gone through all required channels of approval, as DOB agrees; and

WHEREAS, specifically, the Owner states that it filed the 2011 version of plan sheet AF-005 with DOB (explicitly as an amendment of the existing building permit and the earlier 2007 plan) in order to seek DOB approval for the repair and replacement of the exterior bricks and windows; the Owner states that DOB initially approved the plans for compliance with TPPN #1/02, based on the percentage of the walls to the retained, on June 11, 2007; and

WHEREAS, the Owner states that subsequently, on September 29, 2011, DOB approved the repair and replacement of the bricks and windows within the walls, to occur simultaneously with the construction of the Building; DOB has confirms that it approved the 2011 version which demonstrates that less than 50 percent of the exterior walls of the building were removed, such that the proposed building was properly filed as an alteration, in accordance with DOB TPPN #1/02, because the drawing shows that 450 linear feet of the exterior walls of the original warehouse were removed and 495 linear feet of the exterior walls remained; and

CONCLUSION

WHEREAS, the Board notes that the subject of the appeal is narrow and that is whether DOB has a basis to determine that the permit it granted for work approved by a CPC authorization is unlawful; and

WHEREAS, the Board finds that any questions about the validity of CPC's 2007 approval are not appropriately before it; and

WHEREAS, the Board agrees with DOB and the Owner that DOB's permit issuance was appropriate based on plans that were consistent with the CPC authorization absent any showing from the Appellant that the DOB plans are inconsistent with the CPC-approved plans in any relevant way; and

WHEREAS, the Board agrees with DOB that its role with regard to whether a permit may rely on CPC's authorization is to issue a permit consistent with that authorization and that (1) the Zoning Resolution does not require DOB to review or concur with CPC's determination that the project is entitled to an authorization under ZR § 15-41; (2) the Zoning Resolution does not give DOB authority to approve or reject CPC's grant, to question whether the grant of the authorization is appropriate for a project, or to reevaluate CPC's decision to consider the project as an "enlarged building;" and (3) it is not appropriate for DOB to make an independent assessment as to whether a CPC authorization is warranted; and

WHEREAS, accordingly, the Board agrees that DOB's obligations to confirm that the building is a building that may be converted subject to the provisions of Article I Chapter 5 and that the construction documents conform to the authorization were properly carried out; and

WHEREAS, the Board notes that ZR § 15-41 does not require that any amount of the former building be retained in the completed building nor does CPC's authorization require that a certain percentage of the existing building remain intact in the finished construction; and

WHEREAS, the Board notes that DOB relied on the TPPNs in its approvals and in its Final Determination, but, in the course of the subject appeal correctly shifted the focus of the authority back to CPC, the approving body with sole jurisdiction pursuant to grant authorizations pursuant to ZR § 15-41; and

WHEREAS, the Board does not find that it is necessary to engage in an analysis of the definition of building and whether more than 50 percent of the floor area of the warehouse building has been retained; and

WHEREAS, the Board agrees that nowhere in CPC's extensive analysis did it specify what portion of existing buildings must remain; and

WHEREAS, the Board agrees with DOB that CPC's authorization was based on many factors with, per the text, an emphasis on aesthetics and compatibility with the existing built context, but not the preservation of the historic building materials; and

WHEREAS, the Board is not a reviewing body to question CPC's decision making and deliberative review of the project; however, the Board notes that the project went through a public review process and that all amendments were reviewed by CPC and DOB; and

WHEREAS, the Board notes that the Appellant does not cite to any required process or rule that CPC erroneously avoided in its initial or subsequent review; and

WHEREAS, further, the Board notes that CPC is aware

of the status of the project; the Department of City Planning received a copy of the subject appeal application (which includes photographs of the condition of the site), and has as recently as April 2013 reviewed and approved the project and has not made any assertion that there is any non-compliance with its authorization; and

WHEREAS, the Board agrees with DOB and the Owner that DOB has followed its duties under the City Charter and the Zoning Resolution to implement the zoning approvals for this building; and

WHEREAS, the Board also agrees with DOB and the Owner that DOB issued the Permit to construct the building, as approved pursuant to the authorization and as shown on the approved plans and that in the absence of a requirement in the authorization to retain a specific amount of the original building, the authorization is satisfied if the building is constructed in accordance with the approved plans; and

WHEREAS, the Board finds that there was not any basis for DOB to impose any requirements for the retention of the original building fabric, because no such requirements were indicated on the approved plans or required by ZR § 15-41; and

WHEREAS, the Board notes that, instead, DOB determined in its Final Determination that, because the proposed work could be filed as an alteration and enlargement, "the permit may properly rely on the CPC authorization;" and

WHEREAS, as reflected in the Final Determination, DOB determined only that the Owner's retention of 50 percent of the original walls was sufficient to allow the permit to rely on ZR § 15-41 rather than that it was necessary to do so in order to comply with the authorization, or that compliance with the TPPN is substituted for compliance with the authorization; and

WHEREAS, the Board finds that compliance with the authorization is determined by reference to the approval and the requirements of the plans, which contain specification for the massing, open spaces, landscaping, and façade details of the final building, but do not include requirements for the retention of any amount of the original fabric of the building; and

WHEREAS, the Board concludes that DOB has the authority to allow reasonable and customary construction means and methods in the implementation of its permits, and its accepted means of replacing building components in kind; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated December 5, 2012, which states that the Permit may rely on CPC's authorization, is hereby denied.

Adopted by the Board of Standards and Appeals, July 23, 2013.

190-13-A

APPLICANT – Zygmunt Staszweski, for The Breezy Point Cooperative, Inc., owner; Tracey McEachern, lessees.

SUBJECT – Application June 27, 2013 – Proposed reconstruction of a single-family dwelling in the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law, and the proposed upgrade of an existing septic system contrary to DOB policy. R4 zoning district.

PREMISES AFFECTED –107 Arcadia Walk, East of Arcadia Walk 106' South Rockaway Point Boulevard, Block 16350, Lot p/o 400, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 19, 2013, acting on Department of Buildings ("DOB") Application No. 420847757, reads in pertinent part:

A1- The proposed enlargement is on a site where the building and lot are located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3 Section 35 of the General City Law;

A2- The proposed upgrade of the private disposal system is contrary to the Department of Buildings policy; 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 the same date; and

WHEREAS, by letter dated July 1, 2013, the Fire Department states that it has reviewed the subject proposal and has no objections; the Fire Department also states that it requires that DOB-approved drawings indicate that the building will be fully sprinklered; and

WHEREAS, the record reflects that the applicant has provided a site plan indicating that the building will be fully sprinklered and smoke alarms will be interconnected to the existing hard-wired electrical system; and

WHEREAS, by letter dated July 2, 2013, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated July 5, 2013, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency'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 July June 19, 2013, acting on DOB Application No. 420847757, 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 shall substantially conform to the drawing filed with the application marked "Received June 27, 2013"- one (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) only;

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;

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

THAT the Department of Buildings must ensure compliance 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 23, 2013.

89-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 13, 2013, at 10 A.M., for decision, hearing closed.

92-07-A thru 94-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 13, 2013, at 10 A.M., for decision, hearing closed.

95-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to August 13, 2013, at 10 A.M., for decision, hearing closed.

245-12-A & 246-12-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. Application seeking a determination that the owner of the property has acquired a common law vested right to complete construction under the prior R7-2 zoning. 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

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 September 10, 2013, at 10 A.M., for decision, hearing closed.

220-10-BZY
APPLICANT – Goldman Harris LLC, Orchard Hotel LLC,c/o Maverick Real Estate Partners, vendee ,DAB Group LLC, owner.
SUBJECT – Application March 11, 2013 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a previous vested rights approval, which expires on March 15, 2013. Prior zoning district C6-1. C4-4A zoning district.
PREMISES AFFECTED – 77, 79, 81 Rivington Street, a/k/a 139 , 141 Orchard Street , northern p/o block bounded by Orchard Street to the east, Rivington Street to the north, Allen Street to the west, and Delancy Street to the south, Block 415, Lot 61-63, 66, 67, Borough of Manhattan.
COMMUNITY BOARD #3M
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 20, 2013, at 10 A.M., for decision, hearing closed.

272-12-A
APPLICANT – Michael Cetera, for Aaron Minkowicz, owner.
SUBJECT – Application September 6, 2012 – Appeal challenging Department of Buildings' determination that an existing non-conforming single family home may not be enlarged per §52-22. R2 zoning district.
PREMISES AFFECTED – 1278 Carroll Street, between Brooklyn Avenue and Carroll Avenue, Block 1291, Lot 19, 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 September 17, 2013, at 10 A.M., for decision, hearing closed.

317-12-A
APPLICANT – Eric Palatnik, P.C., for 4040 Management, LLC, owner.
SUBJECT – Application November 29, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior M1-3D zoning district regulations. M1-2/R5B zoning district.
PREMISES AFFECTED – 40-40 27th Street, between 40th Avenue and 41st Avenue, Block 406, Lot 40, 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 20, 2013, at 10 A.M., for decision, hearing closed.

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
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 20, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

242-12-BZ
CEQR #13-BSA-014K
APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Toldos Yehuda*), contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.
PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, 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 Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 5, 2012, acting on Department of Buildings Application No. 320476285 reads, in pertinent part:

1. Proposed plans are contrary to ZR §43-43 in that the proposed total height (of front wall) above the street line exceeds the maximum.
2. Proposed plans are contrary to ZR § 43-43 in that the proposed initial setback distance is less than the maximum required.
3. Proposed plans are contrary to ZR § 43-43 in that the proposed sky exposure plane fails to meet the minimum ratio required.
4. Proposed plans are contrary to ZR § 43-26 and ZR § 43-302 in that the proposed rear yard (open area along the rear lot line) is less than the minimum required.
5. Proposed plans are contrary to ZR § 44-21 in that the required parking is not provided; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an M1-1 zoning district, the construction of a three-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for front wall height, setback, sky exposure plane, rear yard, open area along a rear lot line, and parking, contrary to ZR §§ 43-43, 43-26, 43-302, and 44-21; and

WHEREAS, a public hearing was held on this application on January 15, 2013, after due notice by publication in *The City Record*, with a continued hearing on February 26, 2013, and then to decision on July 23, 2013; 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, Brooklyn, recommends approval of the application; and

WHEREAS, the adjacent property owner testified in support of the application; and

WHEREAS, this application is being brought on behalf of Congregation Toldos Yehuda (the "Synagogue"); and

WHEREAS, the subject site is a rectangular interior lot with 80 feet of frontage along 61st Street between 16th Avenue and 17th Avenue in an M1-1 zoning district; and

WHEREAS, the subject site has a lot area of 8,000 sq. ft. and is currently occupied by a one-story manufacturing building with 6,080 sq. ft. of floor area (0.76 FAR); and

WHEREAS, the applicant proposes to construct a new building with the following parameters: a complying floor area of 18,543.3 sq. ft. (2.32 FAR); three stories and a maximum front wall height of 50'-0" (a maximum front wall height of 35'-0", or three stories, whichever is less, is permitted); no setback of the street wall (a setback at 20'-0" and a 1:1 sky exposure plane are required); no rear yard on the first and second floor (a minimum of 20'-0" is required); no open area along the rear lot line (an open area of 30'-0" along the rear lot line is required); no parking spaces (a minimum of 25 parking spaces are required); and

WHEREAS, the proposal provides for the following uses: (1) a worship area, bathrooms, showers, a dressing room, a laundry room, electric, storage and mechanical rooms, lobbies and a mikvah at the cellar level; (2) men's sanctuary, men's bathroom, a coffee room, office, and coat area at the first story; (3) women's sanctuary, women's bathrooms, storage, and a lobby at the second story; and (4) a library, book storage room, conference room, office, men's bathroom, and a hallway at the third story; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate a congregation with a desire to expand that currently consists of approximately 75 individuals on a daily basis, 205 men and 60 women on the Sabbath, and 300 men and 200 women on high holidays; (2) to provide separate worship and study spaces for male and female congregants; (3) to provide the necessary space for offering weekly classes for adults and teenagers and holding cultural program; and (4) to satisfy the religious requirement that members of the congregation be within walking distance of the synagogue; and

WHEREAS, the applicant states that the as-of-right building would have a total floor area of 12,481 sq. ft. (1.56 FAR), 5,565 sq. ft. of floor area on the first story, only 3,910 sq. ft. of floor area on the second story (because much of the second story would remain open to the sanctuary below) and only 3,005.8 sq. ft. of floor area on the third story; and

WHEREAS, the applicant states that the as-of-right building would allow for a men's sanctuary on the first story that would hold approximately 205 persons and a women's sanctuary on the second story that would hold approximately 78 persons, and would require the elimination of the library on the third story; in contrast, the proposal would allow for 368 persons in the main sanctuary and 191 persons in the women's sanctuary; and

WHEREAS, the applicant states that the height and setback waivers permit: (1) the double-height ceiling of the first story main sanctuary which is necessary to create a space for worship and respect and an adequate ceiling height for the second floor women's balcony; and (2) the library on the third story, which will help the Synagogue participate in a publishing fund; and

WHEREAS, the applicant states that the waiver of the required open area along the rear lot line and rear yard allows the Synagogue to build to a size that will accommodate current and projected numbers of congregants; the applicant also notes that the existing building at the site has no open area along the rear lot line; and

WHEREAS, the applicant states that the parking waiver is necessary because providing the required parking would render the site wholly inadequate to support the proposed building and such parking spaces are not necessary because congregants must live within walking distance of their synagogue and must walk to the synagogue on the Sabbath and on high holidays; and

WHEREAS, the applicant states that 50 percent of the congregation lives within a three-quarter-mile radius of the site, which is less than the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship, but still a significant portion of the congregation; and

WHEREAS, the applicant states that the Synagogue has occupied three stories of a nearby 6,300 sq. ft. building as a place of worship for approximately 14 years, and such space is wholly inadequate to accommodate the congregation, especially on high holidays, when the congregation is forced to rent separate space; 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 studying and meeting, and a library for publishing books and recordings; 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, 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 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, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed use is permitted in the subject M1-1 district; and

WHEREAS, the applicant states that, although the subject block is split between manufacturing and residence districts, of the approximately 38 developed lots, 33 maintain residential uses, with one lot (lot 39) developed with a four-story, 72,000 sq. ft. Yeshiva building (Yeshiva Novominsk), and there are additional educational, religious and health institutions in the immediate area; and

WHEREAS, as to bulk, the applicant notes that the proposed FAR is less than the maximum permitted as of right for a community facility in the M1-1 district; and

WHEREAS, as to front wall height, the applicant performed a study of neighboring buildings, which reflects that there are eight nearby buildings that are between 40'-0" and 50-'0" in height; accordingly, the proposed building height (50'-0") is compatible with the surrounding neighborhood; and

WHEREAS, the applicant notes that a rezoning of a nearby block from M1-1 to R6A adopted by the City Planning Commission on January 20, 2013 is likely to result in the construction of nearby buildings that are similar in height and FAR to the proposed building; and

WHEREAS, as to yards, the applicant notes that the existing building on the site has no rear yard and while the first two stories of the proposed building will not provide the required 30-foot open area, the third story will set back from the rear lot line 30'-0"; the applicant also notes that the lots abutting the rear of the building maintain a 30-foot rear yard and that if the building were not along a district boundary line but rather in a residence district, a complying community facility building would be permitted in the required year yard up to a height of one story or 23 feet; further, the applicant notes that the existing building extends to the rear lot line; and

WHEREAS, as to parking, the applicant represents that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, in addition, the applicant submitted a parking and traffic study that concluded that the proposal would not significantly or adversely impact parking or traffic in the area; and

WHEREAS, specifically, the study found that out of approximately 850 legal parking spaces within a ¼-mile radius, there was an average of 85 available spaces during the morning and 150 available spaces during the evening for parking; and

WHEREAS, further, as noted above, the applicant represents that 50 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, during the hearing process, the Board directed the applicant to review the design of the rear of the building to determine if it could be shortened; and

WHEREAS, in response, the applicant modified the design to provide a 30'-0" rear setback (open area) at the third story; 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. 13BSA014K, dated August 2, 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, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the June 2013 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 March 2013 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, DEP reviewed the results of the August 2012 noise assessment and based on the measured ambient noise levels at the project site, no potential noise impacts 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 in an M1-1 zoning district, the construction of a three-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for front wall height, setback, sky exposure plane, open area along a rear lot line, and parking, contrary to ZR §§ 43-43, 43-26, 43-302, and 44-21; *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 July 11, 2013" – Fourteen (14) sheets; and *on further condition*:

THAT the building parameters will be: a floor area of 18,543.3 sq. ft. (2.32 FAR); no minimum required rear yard or open area for the first and second stories to a height of 28'-0"; three stories; a maximum building height of 50'-0" and 41'-0" at the rear, as illustrated on the BSA-approved plans;

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

THAT any change in control or ownership of the building shall 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 shall take place onsite;

THAT the above conditions 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;

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

THAT construction shall 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, July 23, 2013.

5-13-BZ
CEQR #13-BSA-078Q
APPLICANT – Goldman Harris LLC, for Queens College Special Projects Fund, Inc., owners.
SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of an education center (UG 3A) in connection with an existing community facility (*Louie Armstrong House Museum*), contrary to lot coverage (§24-11/24-12), front yard (§24-34), side yard (§24-35), side yard setback (§24-551), and planting strips (§24-06/26-42). R5 zoning district.
PREMISES AFFECTED – 34-47 107th Street, eastern side of 107th Street, midblock between 34th and 37th Avenues, Block 1749, Lot 66, 67, Borough of Queens.
COMMUNITY BOARD #3Q
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated January 8, 2013, acting on Department of Buildings Application No. 420605660 reads, in pertinent part:

1. Proposed lot coverage exceeds maximum permitted, contrary to ZR ZR 24-11 and 24-12;
2. Proposed front yard is less than minimum required, contrary to ZR 24-34;
3. Required side yards are not provided, contrary to ZR 24-35(a);
4. As per ZR 24-55, the proposed mechanical bulkhead is not a permitted obstruction within a required side setback, contrary to ZR 24-551;
5. Required planting strip in accordance with ZR 26-42 is not provided, contrary to ZR 24-06; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, the construction of a two-story building to be occupied by a community facility (Use Group 3), which does not comply with the underlying zoning district regulations for lot coverage, front yard, side yards, side setback and planting strip, contrary to ZR §§ 24-11, 24-12, 24-34, 24-35, 24-55, 24-551, 26-42, and 24-06; and

WHEREAS, a public hearing was held on this application on June 18, 2013, after due notice by publication in *The City Record*, and then to decision on July 23, 2013; 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, Queens, recommends approval of the application; and

WHEREAS, a representative of Queens College, City University of New York ("Queens College" or "the School"), provided testimony in support of this application; and

WHEREAS, this application is being brought on behalf of the Queens College Special Projects Fund, Inc. ("the applicant"), an affiliate of Queens College, which owns the subject site; and

WHEREAS, the subject site is located on the east side of 107th Street, between 34th Avenue and 37th Avenue, within an R5 zoning district; and

WHEREAS, the site is a zoning lot that comprises tax lots 66 and 67, with 60 feet of frontage along 107th Street, a lot depth of 95 feet, and a lot area of 5,700 sq. ft.; and

WHEREAS, the site is currently vacant; the applicant notes that across the street from the site (at 34-56 107th Street) is the Louis Armstrong House Museum ("the Museum"), which is operated by the applicant; and

WHEREAS, the applicant proposes to construct a two-story building to be occupied as an Education Center for the Museum ("Education Center") with a complying floor area of 9,046 sq. ft. (1.59 FAR) (the maximum permitted floor area is 11,400 (2.00 FAR) and a complying total height of 31'-3" (the maximum permitted total height is 35'-0"); and

WHEREAS, in addition, the Education Center will include the following non-compliances: lot coverage of 57 percent (the maximum permitted lot coverage is 55 percent); a; a front yard with a depth of 5'-0" (a front yard with a minimum depth of 10'-0" is required); two side yards with widths of 0'-1⅞" (two side yards with minimum widths of 8'-0" each are required); a non-permitted obstruction (a sound enclosure for the mechanical bulkhead) within the side setback, which reduces the setback to 16'-3" (a side setback of 22'-6" is required); and no planting strip (a minimum of 0'-6" of planting is required); and

WHEREAS, the Education Center will provide for the following uses: (1) educational space for the Museum and Queens College; (2) Museum visitor reception; (3) a state-of-the art, climate-controlled research, storage, and archive space; (4) a 73-seat auditorium; (5) an exhibit gallery and (6) accessory offices; and

WHEREAS, the applicant represents that the Museum is an affiliate of Queens College and a registered public charity administered by the applicant pursuant to a long-term license agreement with the New York City Department of Cultural Affairs, which owns the Museum site; and

WHEREAS, the applicant notes that Queens College handles all administrative functions for the Museum, including personnel, security, technical support, and design services; the applicant notes that the director of the Museum and all Museum staff members are employed by Queens College; the applicant also notes that scholars outside the School benefit from the collections; and

WHEREAS, as to the educational nature of the Museum, the applicant represents that Queens College professors and students use the Museum's research collections as part of their curriculum for courses on jazz history, library studies and English; in addition, the Museum offers internships to Queens College students who are interested in musicology, library science and other related fields; and

WHEREAS, additionally, the applicant notes that approximately 25 percent of the annual visitorship of the museum is from New York City public and private elementary and high schools; and

WHEREAS, consistent with ZR § 72-21(a), the applicant articulated the following primary programmatic needs, which necessitate the requested variances: (1) to locate near the Museum (which is substantially undersized given its use), so that the buildings can function together; and (2) to provide additional space for the School's educational programming related to the Museum; and

WHEREAS, the applicant represents that the School has a programmatic need to locate the Education Center as near to the Museum as possible; and

WHEREAS, the applicant states that the Museum has experienced unexpected growth in the number of visitors to the Museum since its opening in 2003, and that it will soon be

unable to accommodate the number of visitors interested in the Museum's collections and tours; and

WHEREAS, the applicant notes that the Museum is located in a converted single-family dwelling with only 2,500 sq. ft. of floor area, which, as a tribute to Louis Armstrong and his legacy, maintains its original character and size; and

WHEREAS, the applicant also notes that the Museum building has been designated as an individual landmark by the New York City Landmarks Preservation Commission ("LPC"); as such, the Museum's ability to expand to accommodate its increased popularity is constrained; and

WHEREAS, the applicant represents that the Museum can only accommodate a maximum of 24 visitors at one time, and that such limited space results in patrons and groups (often school children) being forced to congregate outdoors; as a result, tours are often cancelled or rescheduled due to inclement weather; and

WHEREAS, the applicant states that locating the Education Center at the site will alleviate the overcrowding on the Museum premises and surrounding properties; and

WHEREAS, in addition, the applicant states that allowing the Education Center to be constructed with the requested variances will further the School's educational objectives at the Museum and allow for additional programs and future growth; and

WHEREAS, the applicant represents that the proposal will allow the Museum to provide a wider range of educational experiences to a greater number of Museum visitors and Queens College students; and

WHEREAS, the applicant notes that the proposal will permit the number of visitors who can occupy the first floor of the Education Center (approximately 160) to match the typical size of the school group that visits the Museum on a daily basis; and

WHEREAS, the applicant also states that the Museum lacks adequate space for the conservation of sound recordings, photographs, manuscripts, letters, films, artwork, and textiles; the proposal addresses this need by providing space for workstations devoted exclusively to conservation; and

WHEREAS, the applicant represents that the Education Center presents the only option for Queens College to continue to fulfill its educational mission through the Museum and meet the demands of its growing patronage; and

WHEREAS, the applicant submitted as-of-right plans which reflected that a complying building would result in a narrower lobby and an auditorium which would be too small to accommodate large groups, which would, in turn, eliminate the ability of the School to host lectures, concerts, and cultural events at the Museum; and

WHEREAS, in addition, the applicant represents that an as-of-right building would require a reduction in the size of the exhibit gallery by 60 percent, which would prevent the use of state-of-the art materials and displays, and the elimination of archive space for the Museum's collections, which would result in the Museum maintaining its current, inefficient and disconnected system of off-site storage at Queens College; and

WHEREAS, the applicant also states that providing a complying front yard at the second story would both eliminate a contextual feature of the building (a second-story terrace is commonplace throughout the neighborhood), and weaken the Education Center's spatial and visual connection to the Museum; and

WHEREAS, finally, the applicant states that without the requested variances, the proposed exhibit gallery would be reduced from 28 feet to 12 feet in width and the Museum store—which would sell books, CDs, DVDs, and other educational materials central to the academic mission of Queens College—would have to be eliminated entirely; 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, accordingly, based upon the above, the Board finds that the programmatic needs of the School, 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the proposed building would be in keeping with the character of the surrounding neighborhood; and

WHEREAS, the applicant notes that the proposed use and FAR are permitted as-of-right within the R5 zoning district; the applicant also represents that the scale and design of the Education Center is compatible with nearby residential buildings, in that most feature second-story terraces or bay windows set back from the street and undersized side and front yards; and

WHEREAS, the applicant states that the proposed front yard is similar to neighboring front yards, which are predominantly non-complying due to a rezoning that changed the district from R6B to R5; the applicant represents that a complying front yard with complying plantings would create a "missing tooth" in the streetscape of the block and alter the essential character of the neighborhood more than the proposed design; and

WHEREAS, as for the proposed side yards, the

applicant represents that narrow side yard widths are commonplace throughout the neighborhood, including the directly adjacent neighbor to the Education Center's north (34-45 107th Street), which has a side yard width abutting the site of 2'-4¾" and the Education Center's neighbor directly to the south (34-53 107th Street), which has a side yard width abutting the site of 3'-11"; as such, the proposed side yards are contextual; and

WHEREAS, the applicant states that the proposed non-permitted obstruction within the side setback—the sound-attenuating enclosure for the rooftop mechanical bulkhead—is necessary to minimize impact of noise upon the surrounding residence; and

WHEREAS, the applicant also notes that the Museum places a strong emphasis on community outreach, including neighborhood involvement in its management, and block residents have routinely held seats on the Museum's advisory board since 1994; 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, in accordance with ZR § 72-21(d), the hardship was not self-created and that no development that would meet the programmatic needs of the School 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, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs, pursuant to ZR § 72-21(e); and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined 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, 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. 13BSA078Q, dated April 10, 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, and 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 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 to permit, on a site within an R5 zoning district, the construction of a two-story building to be occupied by a community facility (Use Group 3), which does not comply with the underlying zoning district regulations for lot coverage, front yard, side yards, side setback, and plantings for community facilities, contrary to ZR §§ 24-11, 24-12, 24-34, 24-35, 24-55, 24-551, 26-42, and 24-06, *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 9, 2013" – thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building will be in accordance with the approved plans and be limited to: a maximum floor area of 9,046 sq. ft. (1.59 FAR); a maximum lot coverage of 57 percent; a maximum total height of 31'-3"; a minimum front yard depth of 5'-0"; two side yards with minimum widths of 0'-1⅞"; a minimum side setback of 16'-3", as reflected on the BSA-approved plans;

THAT the sound attenuation measures in the proposed building will be maintained 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 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, July 23, 2013.

99-13-BZ
CEQR #13-BSA-119Q
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mehran Equities Ltd., owner; Blink Steinway Street, Inc., lessee.
SUBJECT – Application April 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink*) within a two-story commercial building. C4-2A zoning district.
PREMISES AFFECTED – 32-27 Steinway Street, 200' south of intersection of Steinway and Broadway, Block 676, Lot 35, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 1, 2013, acting on Department of Buildings Application No. 420824424, reads in pertinent part:

Proposed Physical Culture Establishment in a C4-2A 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 located within a C4-2A zoning district, the operation of a physical culture establishment ("PCE") in the cellar, 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 June 18, 2013, after due notice by publication in *The City Record*, and then to decision on July 23, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by 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 Steinway Street between Broadway and 34th Avenue, within a C4-2A zoning district; and

WHEREAS, the site has 100 feet of frontage along Steinway Street and a total lot area of 9,000 sq. ft.; and

WHEREAS, the site is occupied by a two-story commercial building with approximately 16,000 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy the entire building, with approximately 8,000 sq. ft. of floor space in the cellar (to be used for accessory storage with no patron access), 8,000 sq. ft. of floor area on the first story, and 8,000 sq. ft. of floor area on the second story; and

WHEREAS, the PCE will be operated as Blink; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed 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, 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA119Q, dated April 5, 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 C4-2A zoning district, the operation of a PCE in the cellar, 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 July 3, 2013" – Five (5) sheets and *on further condition*:

THAT the term of this grant will expire on July 23, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

Adopted by the Board of Standards and Appeals, July 23, 2013.

102-13-BZ
CEQR #13-BSA-122M

APPLICANT – Law Office of Fredrick A. Becker, for 28-30 Avenue A LLC, owner; TSI Avenue A LLC dba New York Sports Club, lessee.

SUBJECT – Application April 11, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*New York Sports Club*) within a five-story commercial building. C2-5 (R7A/R8B) zoning district.

PREMISES AFFECTED – 28-30 Avenue A, East side of Avenue A, 79.5" north of East 2nd Street, Block 398, Lot 2, Borough of Manhattan.

COMMUNITY BOARD #3M

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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 9, 2013, acting on Department of Buildings Application No. 121511417, reads in pertinent part:

> Proposed Physical Culture Establishment at the first through fifth floors is not permitted as-of-right in C2-5 district within R7A and R8B zoning districts and is contrary to ZR 32-31 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C2-5 (R7A) zoning district and partially within an R8B zoning district, the operation of a physical culture establishment ("PCE") on portions of the first through fifth stories of a five-story commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on June 18, 2013, after due notice by publication in *The City Record*, and then to decision on July 23, 2013; and

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

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Avenue A between East Second Street and East Third Street, partially within a C2-5 (R7A) zoning district and partially within an R8B zoning district; and

WHEREAS, the site has 44 feet of frontage along Avenue A, a lot depth of 120 feet, and a total lot area of 5,280 sq. ft.; and

WHEREAS, the site is occupied by a five-story commercial building with approximately 25,285 sq. ft. of floor area (4.79 FAR); and

WHEREAS, the applicant notes that because 20 feet of the lot's 120-foot depth extends beyond the C2-5 (R7A) district into the R8B district, and because the lot existed as a lot of record as of December 15, 1961, per ZR § 77-11, the use regulations applicable in the C2-5 (R7A) district may apply in the R8B portion; therefore, commercial uses permitted in a C2-5 district are permitted throughout the lot; and

WHEREAS, the proposed PCE will be located on the second through fifth stories, with an entrance on a portion of the first story, with a total PCE floor area of 20,905 sq. ft. (3.96 FAR); and

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

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be Monday through Thursday, from 5:30 a.m. to 11:00 p.m., Friday from 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.; 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 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 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA122M, dated April 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 partially within a C2-5 (R7A) zoning district and partially within an R8B zoning district, the operation of a PCE on portions of the first through fifth stories of a five-story commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 20, 2013" – Six (6) sheets and *on further condition*:

THAT the term of this grant will expire on July 23, 2023;

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 all massages must be performed by New York State licensed massage therapists;

THAT the signage shall comply with C2-5 district regulations, except as otherwise permitted by DOB;

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

Adopted by the Board of Standards and Appeals, July 23, 2013.

35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for adjourned hearing.

16-12-BZ

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 – Laid over to September 10, 2013, at 10 A.M., for deferred decision.

50-12-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.
COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to August 20, 2013, at 10 A.M., for adjourned hearing.

59-12-BZ/60-12-A
APPLICANT – Mitchell S. Ross, Esq., for Ian Schindler, owner.
SUBJECT – Application March 15, 2012 – Variance (§72-21) to allow the enlargement of an existing home, contrary to front yard (§23-45) regulations.
Proposed construction is also located within a mapped but unbuilt portion of a street, contrary to General City Law Section 35. R1-2 zoning district.
PREMISES AFFECTED – 240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue, Block 8103, Lot 25, Borough of Queens.
COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to August 20, 2013, at 10 A.M., for deferred decision.

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 September 10, 2013, at 10 A.M., for continued hearing.

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 October 8, 2013, at 10 A.M., for continued hearing.

199-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.
SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.
PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to September 10, 2013, at 10 A.M., for continued hearing.

259-12-BZ
APPLICANT – Davidoff Hutcher & Citron LLP, for 5239 LLC, owner.
SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the development of a single-family house, contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district.
PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, Borough of Bronx.
COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to September 10, 2013, at 10 A.M., for continued hearing.

86-13-BZ
APPLICANT – Eric Palatnik, P.C., for Yefim Portnov, owner.
SUBJECT – Application March 6, 2013 – Special Permit (§73-621) to allow the enlargement of an existing single-family home, contrary to open space ratio and floor area (§23-141) regulations. R2 zoning district.
PREMISES AFFECTED – 65-43 171st Street, between 65th Avenue and 67th Avenue, Block 6912, Lot 14, 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 August 20, 2013, at 10 A.M., for decision, hearing closed.

101-13-BZ

APPLICANT – Dennis D. Dell'Angelo, for Meira N. Sussman, owner.

SUBJECT – Application April 10, 2013 – Special Permit (§73-622) to allow the enlargement of an existing single family home, contrary to open space and floor area (§23-141), side yards (§23-461), and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1271 East 23rd Street, East side 190’ north of Avenue "M", Block 7641, Lot 15, 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 August 20, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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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

SEPTEMBER 10, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 10, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

699-46-BZ
APPLICANT – Eric Palatnik, P.C., for Gurcharan Singh, owner.
SUBJECT – Application September 17, 2012 – Amendment (§11-412) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory contrary to residential zoning regulations. The amendment seeks to reconfigure the existing building; convert existing service bays to convenience store, increase the number of pump islands; permit a drive-thru to the proposed convenience store. R3X zoning district.
PREMISES AFFECTED – 224-01 North Conduit Avenue, between 224th Street and 225th Street, Block 13088, Lot 44, Borough of Queens.
COMMUNITY BOARD #13Q

723-84-BZ
APPLICANT – Gerald J. Caliendo, RA, AIA, for Alameda Project Partners Ltd/Cristine Briguglio, owners.
SUBJECT – Application June 6, 2013 – Extension of term of a previously approved variance (§72-21) which permitted the occupancy of a portion of the first floor of the building to be used as a medical office, which expired on October 30, 2012. R1-2 zoning district.
PREMISES AFFECTED – 241-02 Northern Boulevard, southeast corner of intersection Northern Boulevard and Alameda Avenue, Block 8178, Lot 1, Borough of Queens.
COMMUNITY BOARD #11Q

161-99-BZ & 162-99-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Banner Garage LLC, owner; TSI East 76 LLC dba New York Sports Club, lessee.
SUBJECT – Application January 25, 2012 – Extension of the term of a previously granted Special Permit (§73-36) which permitted the operation of a physical culture establishment (PCE) health club which expired on June 28, 2010; Amendment to permit a change in the hours of operation; Extension of time to obtain a Certificate of Occupancy which expired on June 28, 2004; Waiver of the Rules. C2-5 (R8B) zoning district.
PREMISES AFFECTED – 349 & 353 East 76th Street, northerly side of East 76th Street between 2nd Avenue and 1st Avenue, Block 1451, Lot 4 & 16, Borough of Manhattan.
COMMUNITY BOARD #8M

APPEALS CALENDAR

66-13-A
APPLICANT – OTR Media Group, Inc., for Wall & Associates, owner; OTR 161 Street, LLC, lessee.
SUBJECT – Application February 13, 2013 – Appeal challenging Department of Buildings' determination that pursuant to ZR Section 122-20 no advertising signs are permitted regardless of its non-conforming use status. R8/C1-4 Grand Concourse Preservation.
PREMISES AFFECTED – 111 E. 161 Street, between Gerard and Walton Avenues, Block 2476, Lot 57, Borough of Bronx.
COMMUNITY BOARD #4BX

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 Permit No. 120174658 on the basis that a lawful commercial use had not been established and the use as a restaurant has been discontinued since 2007. R6 Zoning District.

PREMISES AFFECTED – 86 Bedford Avenue, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.
COMMUNITY BOARD #2M

ZONING CALENDAR

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) for the construction of a mixed-use building containing residential and community facility uses, that don't have frontage on a legally mapped street contrary to General City Law Section 36. C8-1/R3-2 Zoning Districts.
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

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 religious based educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback, sky exposure plane (slope), and wall height. 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

120-13-BZ
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 #1SI

129-13-BZ
APPLICANT – Lewis E. Garfinkel, for Tammy Greenwald, owner.
SUBJECT – Application May 7, 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(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1010 East 22nd Street, west side of East 22nd Street, 264' south of Avenue I, Block 7585, Lot 61, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, AUGUST 13, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

102-95-BZ
APPLICANT – Law Office of Fredrick A. Becker, for 50 West Realty Company LP, owner; Renegades Associates/dba Splash Bar, lessee.
SUBJECT – Application April 22, 2013 – Extension of Term of a Special Permit (§73-244) for the continued operation of a UG12 Easting/Drinking Establishment (*Splash*) which expired on March 5, 2013; Amendment to modify the interior of the establishment. C6-4A zoning district.
PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street between 5th Avenue and 6th Avenue, Block 818, Lot 78, Borough of Manhattan.
COMMUNITY BOARD #5M
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
Adopted by the Board of Standards and Appeals, August 13, 2013.

27-05-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owners.
SUBJECT – Application February 4, 2013 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on April 18, 2011; Amendment to permit the legalization of site layout and operational changes; Waiver of the Rules. C2-4/R6 zoning district.
PREMISES AFFECTED – 91-11 Roosevelt Avenue, north side of Roosevelt Avenue between 91st and 92nd Street, Block 1479, Lot 38, Borough of Queens.
COMMUNITY BOARD #3Q
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 5
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 use of an automotive service station, which expired on April 18, 2011, and an amendment to legalize deviations from the previously-approved plans, change the hours of operation of the automobile repair shop, and permit the rental of two vehicles from the station; and
WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, with continued hearings on June 4, 2013, June 18, 2013, and July 23, 1013, and then to decision on August 13, 2013; 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 3, Queens, recommends approval of this application; and
WHEREAS, the subject site is a rectangular lot that spans the full width of the north side of Roosevelt Avenue between 91st Street and 92nd Street, within a C2-4 (R6) zoning district; and
WHEREAS, the Board has exercised jurisdiction over the subject site since November 12, 1941 when, under BSA Cal. No. 361-37-BZ, the Board, pursuant to 1916 Zoning Resolution § 7h, granted a use variance to permit the transient parking and storage of more than five automobiles in a business use district for a term of two years; and
WHEREAS, on April 18, 1961, the Board approved an amendment to the grant allowing, in addition to the parking and storage of automobiles, the construction and maintenance of a gasoline service station, auto laundry, lubritorium, office, sale of auto accessories, and minor auto repairs with hand tools only, for a term of 20 years; and
WHEREAS, subsequently, the grant was extended and amended by the Board at various times, and expired on April 18, 2001; and
WHEREAS, most recently, on November 29, 2005, under the subject calendar number, the Board reinstated the prior grant pursuant to ZR § 11-411 for a term of ten years, to expire on April 18, 2011; and
WHEREAS, the applicant now requests an additional extension of the term, and an amendment to legalize deviations from the previously-approved plans, change the hours of operation of the auto repair shop, and permit the rental of two vehicles from the site; and
WHEREAS, as to the deviations from the previously-approved plans, the applicant seeks to legalize a modification to the number and configuration of parking spaces; the applicant notes that it modified the site to accommodate the installation of a remediation shed, which the New York State Department of Environmental Conservation required in connection with DEC Spill No. 98-08815; and
WHEREAS, as to the proposed change in the hours of operation of the auto repair shop, the applicant seeks an

expansion from Monday through Friday, from 6:00 a.m. to 6:00 p.m. and Saturday, from 6:00 a.m. to 6:00 p.m. to Monday through Saturday, from 7:00 a.m. to 7:00 p.m. and Sunday, from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, as to the rental of vehicles from the site, the applicant seeks to legalize its current practice of renting two U-Haul vans or small trucks on an hourly basis seven days per week between the hours of 7:00 a.m. and 7:00 p.m.; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term and pursuant to ZR § 11-412, the Board may permit amendments; and

WHEREAS, at hearing, the Board directed the applicant to address the following site conditions: (1) inadequate landscaping along the 91st Street frontage; (2) bent bollards along the northwest lot line; and (3) damaged sidewalks along the Roosevelt Avenue frontage; in addition, the Board instructed the applicant to explore the feasibility of removing the curb cut on 91st Street; and

WHEREAS, in response, the applicant provided photographs reflecting improved landscaping and repaired bollards; the applicant also submitted: (1) a statement indicating that it intends to eventually replace the existing bollards with concrete bollards; and (2) a sidewalk replacement plan, which will be implemented upon the renewal of the term of the grant; and

WHEREAS, as to the 91st Street curb cut, the applicant's engineer prepared tanker truck circulation diagrams showing the existing circulation plan (using the 91st Street curb cut) and a modified circulation plan (without the 91st Street curb cut); based on the diagram, the applicant represents that maneuvering will become unduly burdensome without the 91st Street curb cut; the applicant also notes that removal of the curb cut would require the relocation of a manhole that is partially located within the curb cut and partially within the street, and that such relocation must be coordinated with the Department of Environmental Protection; finally, the applicant notes that the curb cut was approved by the Board and has operated for more than 25 years without incident; and

WHEREAS, accordingly, the Board agrees with the applicant that it is infeasible to remove the 91st Street curb cut and it may remain; and

WHEREAS, based upon the above, the Board finds, pursuant to ZR §§ 11-411 and 11-412, that the requested extension of term and amendments 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 29, 2005, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the prior expiration, to change the hours of operation, and to allow rental of commercial vehicles from the site, *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, 2013'-(5) sheets; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on April 18, 2021;

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

THAT signage will comply with C1 district regulations;

THAT a maximum of two commercial vans or trucks may be stored at the site for rental on a daily basis;

THAT the hours of operation for auto repair will be limited to Monday through Saturday, from 7:00 a.m. to 7:00 p.m. and Sunday, from 8:00 a.m. to 6:00 p.m;

THAT the hours of operation for commercial vehicle rental will be limited to seven days per week, from 7:00 a.m. and 7:00 p.m.;

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

THAT a new certificate of occupancy will be obtained by August 13, 2014;

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

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) and/or configuration(s) not related to the relief granted."

(DOB Application No. 420344755)

Adopted by the Board of Standards and Appeals, August 13, 2013.

45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.

SUBJECT – Application June 10, 2013 – Extension Time to Complete Construction of Variance (§72-21) to construct a new four-story, 81 unit age restricted residential facility which expired on May 19, 2013. M1-1 (Area M), SRD & SGMD zoning district.

PREMISES AFFECTED – 55 Androvette Street, North side of Androvette Street at the corner of Manley Street, Block 7407, Lot 1, 80, 82 (tentative 1), 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 Montanez 5

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 of a three-story residential building (Use Group 2); and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in *The City Record*, and then to decision on August 13, 2013;

and

WHEREAS, the site is located on the northwest corner of the intersection of Androvette Street and Manley Street, within an M1-1 zoning district within Special Area M of the Special South Richmond Development District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 2009 when, under the subject calendar number, the Board granted a use variance to permit the construction of a three-story residential building (Use Group 2) in a manufacturing district; and

WHEREAS, substantial construction was to be completed by May 19, 2013, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that since the date of the grant, it has obtained necessary approvals from the New York State Department of Environmental Conservation, the Department of Environmental Protection, and the City Planning Commission; however, construction has been delayed due to financing issues arising out of the recession; and

WHEREAS, thus, the applicant requests an extension of time to 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 May 19, 2009, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction for a term of four years, to expire on May 19, 2017; *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 shall be completed by May 19, 2017;

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

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) 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. 510006814)

Adopted by the Board of Standards and Appeals August 13, 2013.

615-57-BZ
APPLICANT – Sheldon Lobel, P.C. for Cumberland farms,INC., owner.
SUBJECT – Application May 10, 2013 – Extension of Term (§11-411) of a previously granted variance for the continued operation of a (UG 16B) automotive service station (*Gulf*) with accessory uses, which expired on June 5, 2013. C1-3/R5B zoning district.
PREMISES AFFECTED – 154-11 Horace Harding Expressway, Located on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place. Block 6731, Lot 1. Borough of Queens.
COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to September 10, 2013, at 10 A.M., for adjourned hearing.

378-04-BZ
APPLICANT – Sheldon Lobel, PC, for Krzysztof Ruthkoski, owner.
SUBJECT – Application May 16, 2013 – Extension of Time to Complete Construction of a previously granted variance (§72-21) for the construction of a four-story residential building with an accessory four-car garage, which expired on December 11, 2011 and an Amendment to reduce the scope and non-compliance of the approval; waiver of the Rules. M1-1 zoning district.
PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection formed by Kingsland Avenue and Richardson Street, Block 2849, Lot 1, 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 September 10, 2013, at 10 A.M., for decision, hearing closed.

107-11-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Yeshiva Bais Yitzchok, owners.
SUBJECT – Application March 8, 2013 – Amendment of a previously granted variance (§72-21) to waive bulk regulations for the enlargement of a synagogue and rabbi's residence (*Congregation Yeshiva Bais Yitzchok*); amendment classifies the enlargement as a new building, which requires a waiver of parking regulations (§25-31). R4-1 zoning district.
PREMISES AFFECTED – 1643 East 21st Street, east side of 21st Street, between Avenue O and Avenue P, Block 6768, Lot 84, 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 September 10, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

89-07-A
APPLICANT – Eric Palatnik, P.C., for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 3, 2007, acting on Department of Buildings Application Nos. 500866057, 500866128, 500866119, 500866100, and 500866093 reads in pertinent part:

> Proposed development within the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with continued hearings on October 30, 2012, January 8, 2013, February 26, 2013, June 4, 2013 and July 23, 2013, and then to decision August 13, 2013; 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, Staten Island, recommends disapproval of this application; and

WHEREAS, this application was filed in 2007 to allow the construction of six three-story, two-family dwellings and one two-story, one-family dwelling in the bed of Thornycroft Avenue, a mapped street, portions of which are unbuilt; and

WHEREAS, the subject site is located north of Oakdale Street west of the mapped but unbuilt portion of Thornycroft Avenue, within an R3-2 zoning district within the Special South Richmond Development District; and

WHEREAS, the applicant notes that by letter dated April 29, 2010, it advised the Board that, due to the construction of a baseball field on the corner of Thornycroft Avenue and Oakdale Street and the improvement of sidewalks and curb cuts along Thornycroft Avenue for a distance of 200 feet from Oakdale Street, the original proposal was no longer feasible; accordingly, the application was amended to eliminate two of the seven homes to be constructed in the bed of the street; and

WHEREAS, accordingly, the applicant withdrew BSA Cal. Nos. 90-07-A and 91-07-A (concerning 460 and 464 Thornycroft Avenue); and

WHEREAS, further, the applicant represents that its prosecution of this application has been delayed at various times due to its attempts to resolve outstanding issues related to the Department of Environmental Protection ("DEP"), Department of Transportation ("DOT"), and the Fire Department; and

WHEREAS, by letter dated June 5, 2007, the DEP states that: (1) there is an existing watercourse crossing the property; (2) there are no existing sewers or watermains in Thornycroft Avenue between Oakdale Street and St. Alban's Place; (3) Amended Drainage Plan No. D-2-2, sheet 2 of 9 calls for a future 12-inch diameter sanitary sewer and a 48-inch diameter sewer in the bed of Thornycroft Avenue between Oakdale Street and St. Alban's Place; and (4) it requires the applicant to submit a survey/plan showing the width of the widening portion of Thornycroft Avenue between Oakdale Street and St. Alban's Place, and the location and width of the existing watercourse; and

WHEREAS, following a series of letters between the applicant and DEP regarding its initial requirements and requests, including an exchange that resulted in DEP's acknowledgment that a watercourse does not cross the property, DEP issued a letter, dated March 26, 2012, providing that it has reviewed the applicant's Builders Pavement Plan, which shows Thornycroft Avenue with a width of 34'-0", which will be available for the installation, maintenance, and/or reconstruction of any future sewers, and therefore has no further objections to the proposed application; and

WHEREAS, by letter dated August 17, 2007, the DOT states in part that the proposed site plan does not reflect any provisions for a cul-de-sac or turnaround at the dead end of Thornycroft Avenue; as such, the developer would be required to construct half the mapped width of Thornycroft Avenue plus five feet for the entire length of the unopened portion of Thornycroft Avenue and construct curbs and sidewalks for the entire length of the property abutting Oakdale Street and Winchester Avenue, following the same width and alignment as currently exists; and

WHEREAS, subsequently, by letter dated December 16, 2010, DOT states that it has reviewed the revised proposal and has no objections; however, by letter dated September 12,

2012, DOT requested a title search to determine ownership of a portion of Thornycroft Avenue that the applicant proposes to improve; and

WHEREAS, by letter dated June 18, 2013, DOT states that the New York City Law Department has conducted a title search and determined that the City has title to such portion of Thornycroft Avenue; however, DOT also states that the improvement of Thornycroft Avenue is not presently included in DOT's Capital Improvement Program; and

WHEREAS, by letter dated July 22, 2013, the Fire Department states that it has reviewed the site plan, including the turn-around, and has no objection to it, provided that the following note is added to the site plan: "No parking in any part of the turn-around"; and

WHEREAS, in response, the applicant submitted an amended site plan including the note requested 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 decision of the Staten Island Borough Commissioner, dated March 3, 2007, acting on Department of Buildings Application Nos. 500866057, 500866128, 500866119, 500866100, 500866093 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 shall substantially conform to the drawing filed with the application marked "Received August 9, 2013" (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 signs be posted stating that there is "No parking in any part of the turn-around";

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 shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

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

Adopted by the Board of Standards and Appeals, August 13, 2013.

92-07-A thru 94-07-A

APPLICANT – Eric Palatnik, P.C., for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 3, 2007, acting on Department of Buildings Application Nos. 500866057, 500866128, 500866119, 500866100, and 500866093 reads in pertinent part:

> Proposed development within the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with continued hearings on October 30, 2012, January 8, 2013, February 26, 2013, June 4, 2013 and July 23, 2013, and then to decision August 13, 2013; 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, Staten Island, recommends disapproval of this application; and

WHEREAS, this application was filed in 2007 to allow the construction of six three-story, two-family dwellings and one two-story, one-family dwelling in the bed of Thornycroft Avenue, a mapped street, portions of which are unbuilt; and

WHEREAS, the subject site is located north of Oakdale Street west of the mapped but unbuilt portion of Thornycroft Avenue, within an R3-2 zoning district within the Special South Richmond Development District; and

WHEREAS, the applicant notes that by letter dated April 29, 2010, it advised the Board that, due to the construction of a baseball field on the corner of Thornycroft Avenue and Oakdale Street and the improvement of sidewalks and curb cuts along Thornycroft Avenue for a distance of 200 feet from Oakdale Street, the original proposal was no longer feasible; accordingly, the application was amended to eliminate two of the seven homes to be constructed in the bed

of the street; and

WHEREAS, accordingly, the applicant withdrew BSA Cal. Nos. 90-07-A and 91-07-A (concerning 460 and 464 Thornycroft Avenue); and

WHEREAS, further, the applicant represents that its prosecution of this application has been delayed at various times due to its attempts to resolve outstanding issues related to the Department of Environmental Protection ("DEP"), Department of Transportation ("DOT"), and the Fire Department; and

WHEREAS, by letter dated June 5, 2007, the DEP states that: (1) there is an existing watercourse crossing the property; (2) there are no existing sewers or watermains in Thornycroft Avenue between Oakdale Street and St. Alban's Place; (3) Amended Drainage Plan No. D-2-2, sheet 2 of 9 calls for a future 12-inch diameter sanitary sewer and a 48-inch diameter sewer in the bed of Thornycroft Avenue between Oakdale Street and St. Alban's Place; and (4) it requires the applicant to submit a survey/plan showing the width of the widening portion of Thornycroft Avenue between Oakdale Street and St. Alban's Place, and the location and width of the existing watercourse; and

WHEREAS, following a series of letters between the applicant and DEP regarding its initial requirements and requests, including an exchange that resulted in DEP's acknowledgment that a watercourse does not cross the property, DEP issued a letter, dated March 26, 2012, providing that it has reviewed the applicant's Builders Pavement Plan, which shows Thornycroft Avenue with a width of 34'-0", which will be available for the installation, maintenance, and/or reconstruction of any future sewers, and therefore has no further objections to the proposed application; and

WHEREAS, by letter dated August 17, 2007, the DOT states in part that the proposed site plan does not reflect any provisions for a cul-de-sac or turnaround at the dead end of Thornycroft Avenue; as such, the developer would be required to construct half the mapped width of Thornycroft Avenue plus five feet for the entire length of the unopened portion of Thornycroft Avenue and construct curbs and sidewalks for the entire length of the property abutting Oakdale Street and Winchester Avenue, following the same width and alignment as currently exists; and

WHEREAS, subsequently, by letter dated December 16, 2010, DOT states that it has reviewed the revised proposal and has no objections; however, by letter dated September 12, 2012, DOT requested a title search to determine ownership of a portion of Thornycroft Avenue that the applicant proposes to improve; and

WHEREAS, by letter dated June 18, 2013, DOT states that the New York City Law Department has conducted a title search and determined that the City has title to such portion of Thornycroft Avenue; however, DOT also states that the improvement of Thornycroft Avenue is not presently included in DOT's Capital Improvement Program; and

WHEREAS, by letter dated July 22, 2013, the Fire Department states that it has reviewed the site plan, including the turn-around, and has no objection to it, provided that the following note is added to the site plan: "No parking in any part of the turn-around"; and

WHEREAS, in response, the applicant submitted an amended site plan including the note requested 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 decision of the Staten Island Borough Commissioner, dated March 3, 2007, acting on Department of Buildings Application Nos. 500866057, 500866128, 500866119, 500866100, 500866093 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 shall substantially conform to the drawing filed with the application marked "Received August 9, 2013" (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 signs be posted stating that there is "No parking in any part of the turn-around";

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 shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

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

Adopted by the Board of Standards and Appeals, August 13, 2013.

95-07-A

APPLICANT – Eric Palatnik, P.C., for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, 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 Montanez 5

Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 3, 2007, acting on Department of Buildings Application Nos. 500866057, 500866128, 500866119, 500866100, and 500866093 reads in pertinent part:

> Proposed development within the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with continued hearings on October 30, 2012, January 8, 2013, February 26, 2013, June 4, 2013 and July 23, 2013, and then to decision August 13, 2013; 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, Staten Island, recommends disapproval of this application; and

WHEREAS, this application was filed in 2007 to allow the construction of six three-story, two-family dwellings and one two-story, one-family dwelling in the bed of Thornycroft Avenue, a mapped street, portions of which are unbuilt; and

WHEREAS, the subject site is located north of Oakdale Street west of the mapped but unbuilt portion of Thornycroft Avenue, within an R3-2 zoning district within the Special South Richmond Development District; and

WHEREAS, the applicant notes that by letter dated April 29, 2010, it advised the Board that, due to the construction of a baseball field on the corner of Thornycroft Avenue and Oakdale Street and the improvement of sidewalks and curb cuts along Thornycroft Avenue for a distance of 200 feet from Oakdale Street, the original proposal was no longer feasible; accordingly, the application was amended to eliminate two of the seven homes to be constructed in the bed of the street; and

WHEREAS, accordingly, the applicant withdrew BSA Cal. Nos. 90-07-A and 91-07-A (concerning 460 and 464 Thornycroft Avenue); and

WHEREAS, further, the applicant represents that its prosecution of this application has been delayed at various times due to its attempts to resolve outstanding issues related to the Department of Environmental Protection ("DEP"), Department of Transportation ("DOT"), and the Fire Department; and

WHEREAS, by letter dated June 5, 2007, the DEP states that: (1) there is an existing watercourse crossing the property; (2) there are no existing sewers or watermains in Thornycroft Avenue between Oakdale Street and St. Alban's Place; (3) Amended Drainage Plan No. D-2-2, sheet 2 of 9 calls for a future 12-inch diameter sanitary sewer and a 48-inch diameter sewer in the bed of Thornycroft Avenue between Oakdale Street and St. Alban's Place; and (4) it requires the applicant to submit a survey/plan showing the width of the widening portion of Thornycroft Avenue between Oakdale Street and St. Alban's Place, and the location and width of the existing watercourse; and

WHEREAS, following a series of letters between the applicant and DEP regarding its initial requirements and requests, including an exchange that resulted in DEP's acknowledgment that a watercourse does not cross the property, DEP issued a letter, dated March 26, 2012, providing that it has reviewed the applicant's Builders Pavement Plan, which shows Thornycroft Avenue with a width of 34'-0", which will be available for the installation, maintenance, and/or reconstruction of any future sewers, and therefore has no further objections to the proposed application; and

WHEREAS, by letter dated August 17, 2007, the DOT states in part that the proposed site plan does not reflect any provisions for a cul-de-sac or turnaround at the dead end of Thornycroft Avenue; as such, the developer would be required to construct half the mapped width of Thornycroft Avenue plus five feet for the entire length of the unopened portion of Thornycroft Avenue and construct curbs and sidewalks for the entire length of the property abutting Oakdale Street and Winchester Avenue, following the same width and alignment as currently exists; and

WHEREAS, subsequently, by letter dated December 16, 2010, DOT states that it has reviewed the revised proposal and has no objections; however, by letter dated September 12, 2012, DOT requested a title search to determine ownership of a portion of Thornycroft Avenue that the applicant proposes to improve; and

WHEREAS, by letter dated June 18, 2013, DOT states that the New York City Law Department has conducted a title search and determined that the City has title to such portion of Thornycroft Avenue; however, DOT also states that the improvement of Thornycroft Avenue is not presently included in DOT's Capital Improvement Program; and

WHEREAS, by letter dated July 22, 2013, the Fire Department states that it has reviewed the site plan, including the turn-around, and has no objection to it, provided that the following note is added to the site plan: "No parking in any part of the turn-around"; and

WHEREAS, in response, the applicant submitted an amended site plan including the note requested 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 decision of the Staten Island Borough Commissioner, dated March 3, 2007, acting on Department of Buildings Application Nos. 500866057, 500866128, 500866119, 500866100, 500866093 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 shall substantially conform to the drawing filed with the application marked "Received August 9, 2013" (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 signs be posted stating that there is "No parking in any part of the turn-around";

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 shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

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

Adopted by the Board of Standards and Appeals, August 13, 2013.

268-12-A thru 271-12-A

APPLICANT – Eric Palatnik, P.C., for Mr. Frank Naso, owner.

SUBJECT – Application September 6, 2012 – Proposed construction of a single family semi-detached building not fronting a mapped street, contrary to General City Law Section 36. R3-1 zoning district.

PREMISES AFFECTED – 8/10/16/18 Pavillion Hill Terrace, corner of Homer Street and Swan Street, Block 569, Lot 318, 317, 316, 285, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, August 13, 2013.

308-12-A

APPLICANT – Francis R. Angelino, Esq., for LIC Acorn Development LLC, owner.

SUBJECT – Application November 8, 2012 – Request that the owner has a common law vested right to continue construction and obtain a Certificate of Occupancy under the prior M1-3 zoning district. M1-2/R5D zoning district.

PREMISES AFFECTED – 39-27 29th Street, east side 29th Street, between 39th and 40th Avenues, Block 399, Lot 9, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

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 five-story commercial building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on June 4, 2013, after due notice by publication in *The City Record*, with a continued hearing on July 9, 2013, and then to decision on August 13, 2013; 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 this application; and

WHEREAS, the site is located on the east side of 29th Street, between 39th Avenue and 40th Avenue; and

WHEREAS, the site has a lot area of 2,556.8 sq. ft. and approximately 26 feet of frontage along 29th Street; and

WHEREAS, the applicant proposes a change of use and an enlargement of the existing two-story manufacturing building at the site; the proposal would result in a five-story building with a sixth-story penthouse with 11,287.65 sq. ft. of floor area (4.41 FAR) occupied by offices (Use Group 6) (the "Building"); and

WHEREAS, the subject site is currently located within an M1-2/R5B zoning district within the Special Long Island City Mixed Use District, but was formerly located within an M1-3D zoning district; and

WHEREAS, the Building complies in all respects with the former M1-3D zoning district parameters; and

WHEREAS, however, on October 7, 2008 (the "Enactment Date"), the City Council voted to adopt the Dutch Kills Rezoning, which rezoned the site to M1-2/R5B; and

WHEREAS, as a result of the rezoning, the Building does not comply with the district parameters regarding maximum floor area; 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, the applicant states that New Building Permit No. 410113657-01-AL (the "Permit") was issued to the owner by the Department of Buildings ("DOB") on July 24, 2008; and

WHEREAS, by letter dated July 3, 2013, DOB confirmed that the Permit was lawfully issued; and

WHEREAS, the applicant notes that ZR § 11-31(c)(1) classifies the construction authorized under the Permit as a "minor development"; and

WHEREAS, the applicant notes that, per ZR §§ 11-331 and 11-332, where all work on foundations for a minor development has been completed prior to the effective date of an applicable amendment to the Zoning Resolution, work may

continue for two years, and if after two years, construction has not been completed and a certificate of occupancy has not been issued, the permit shall automatically lapse and the right to continue construction shall terminate; and

WHEREAS, the applicant states that, as of the Enactment Date, the entire foundation for the Building was completed; and

WHEREAS, accordingly, the applicant states, on November 18, 2008, DOB recognized the owner's right to continue construction under the Permit for two years from the Enactment Date (October 7, 2010), pursuant to ZR § 11-331; and

WHEREAS, however, as of October 7, 2010, construction was not complete and a certificate of occupancy had not been issued; therefore, on that date the Permit lapsed by operation of law; and

WHEREAS, the applicant notes that it did not, pursuant to ZR § 11-332, seek renewal of the Permit from the Board within 30 days of such lapse; and

WHEREAS, accordingly, the applicant now seeks to proceed pursuant to the common law doctrine of vested rights; and

WHEREAS, the Board notes that when work proceeds under a valid 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 to substantial construction, the applicant states that prior to October 7, 2008, the owner had completed the following work: interior demolition, excavation, underpinning, the entire foundation, and the setting of base plates for structural columns; further, between October 7, 2008 and October 7, 2010 (the date that the Permit lapsed), the applicant states that the following was completed: completion of base plates, structural columns, installation of all floor beams and columns, installation of all decking, pouring of concrete on all floors, installation of roof beams, decking and bulkhead, installation of HVAC duct work on all floors, some installation of electrical conduits on each floor, installation of exterior façade in the enlargement, including windows, and some demolition of the exterior façade in the existing portion of the building, and some installation of insulation; and

WHEREAS, the applicant represents that the Building is approximately 50 percent complete; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: invoices, concrete delivery slips, construction contracts, plans highlighting the work completed, and photographs of the site showing certain aspects of the completed work; 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, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant periods; 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 states that since the Enactment Date, when DOB recognized that the Permit had vested by operation of law, the owner has expended $731,738.25, including hard and soft costs and irrevocable commitments, out of $1,172,738.87 budgeted for the entire project; the applicant also notes that since the lapse of the Permit on October 7, 2010, an additional $157,292.56 has been expended in soft costs and obligations owed; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, thus, the expenditures to date represent approximately 75 percent of the projected total cost; 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 if the owner is not permitted to vest the Building under the former M1-3D zoning and must comply with the M1-2/R5B zoning, the maximum permitted floor area ratio would be reduced from 5.0 FAR to 2.0 FAR, representing a loss of 7,670.4 sq. ft., which is approximately 60 percent of the development; and

WHEREAS, the applicant also notes that the owner planned to initially occupy a portion of the Building upon completion and lease the remainder, and eventually use the entire Building for its growing business; therefore, if the Building must be reduced in size to comply with the M1-2/R5B zoning, not only will the owner have insufficient space to accommodate its growing business, but it will also be deprived of significant rental income in the years before it requires the entire space; and

WHEREAS, the applicant also states that because construction is nearly 50 percent complete, its contractor estimates that redesigning, demolishing and rebuilding portions of the Building to bring it into compliance will cost an estimated $825,000; and

WHEREAS, the Board agrees with the applicant that that the owner would incur substantial additional costs in reconstructing the Building to comply with the current zoning; and

WHEREAS, the Board also agrees with the applicant that the reduction in the floor area and dwelling units results in a significant decrease in the market value of the Building; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building has accrued to the owner of the premises.

Therefore it is Resolved that this application made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 410113657-01-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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 13, 2013.

200-10-A. 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, PC, for William Davies LLC, owner.

SUBJECT – Application June 21, 2013 – Extension of time to complete construction and obtain a Certificate of Occupancy of a previous vested rights approval, which expires on June 21, 2013. Prior zoning district R5. R4-1 zoning district.

PREMISES AFFECTED – 1359, 1365, 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lot 15, 13, 12 Borough of Queens.

COMMUNITY BOARD #14Q

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 September 10, 2013, at 10 A.M., for decision, hearing closed.

157-12-A

APPLICANT – Sheldon Lobel, P.C., for John F. Westerfield, owner; Welmar Westerfield, lessee.

SUBJECT – Application May 21, 2012 – Appeal challenging Department of Buildings' determination that the subject property not be developed as an "existing small lot" pursuant to ZR §23-33 as it does not meet the definition of ZR §12-10. R1-2 zoning district.

PREMISES AFFECTED – 184-27 Hovenden Road, Block 9967, Lot 58, 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 September 24, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to September 24, 2013, at 10 A.M., for continued hearing.

75-13-A

APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by llya 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

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 September 17, 2013, at 10 A.M., for decision, hearing closed.

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 September 24, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

195-12-BZ

CEQR #12-BSA-145Q

APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. 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 Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, a reinstatement, an extension of term for the continued use of an office (Use Group 6) and accessory parking for four automobiles in an R4 zoning district, which expired on May 13, 2000, and an extension of time to obtain a certificate of occupancy, which expired on March 31, 1993; and

WHEREAS, a public hearing was held on this application on November 27, 2012, after due notice by publication in *The City Record*, with continued hearings on March 12, 2013, June 4, 2013, and July 9, 2013, and then to decision on August 13, 2013; 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 10, Queens, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of the intersection of Cross Bay Boulevard and 109th Avenue, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 20, 1959 when, under BSA Cal. No. 64-59-BZ, the Board granted a use variance to permit the construction of an office building and accessory parking for four automobiles, contrary to 1916 Zoning Resolution §§ 7e and 7h; the Board granted the variance for a term of 20 years; and

WHEREAS, subsequently, the grant has been extended by the Board at various times; and

WHEREAS, most recently, on March 31, 1992, the Board: (1) granted an approval to extend the term for ten years from May 13, 1990 to expire on May 13, 2000; and

(2) granted an extension of time to obtain a certificate of occupancy until March 31, 1993; and

WHEREAS, the applicant now seeks to reinstate the variance under BSA Cal. No. 64-59-BZ; 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 2000, the office use and parking have been continuous from 1959 to the present; and

WHEREAS, further, the applicant represents that substantial prejudice would result if reinstatement is not granted, because without reinstatement it would be unable to obtain a certificate of occupancy; and

WHEREAS, the applicant also represents that the office and parking use permitted by the grant are harmonious with the commercial character of the immediate area and Cross Bay Boulevard in general, and have existed for more than 50 years with no adverse effects; and

WHEREAS, based on the applicant's representations, the Board finds that reinstatement of the subject variance is appropriate; and

WHEREAS, the applicant also requests an additional extension of the term and an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term of an expired variance; and

WHEREAS, at hearing, the Board directed the applicant to address the oversized, illuminated accessory signage, open Department of Buildings ("DOB") violations, and lack of plantings along the Cross Bay Boulevard frontage; and

WHEREAS, in response, the applicant provided photographs reflecting the removal of the oversized, illuminated accessory signage and submitted records from DOB showing the dismissal of all violations and payment of associated fines; and

WHEREAS, in addition, the applicant submitted an amended plan reflecting the installation of planters along the Cross Bay Boulevard frontage; and

WHEREAS, based upon the above, the Board finds that the requested reinstatement, 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 issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 11-411 to permit, within an R4 zoning district, the reinstatement of a prior Board approval of office use (Use Group 6) with accessory parking for four automobiles at the subject site, *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 May 31, 2013'- (7) sheets and 'July 3, 2013'- (1) sheet; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on August 13, 2023;

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

THAT signage will comply with C1 district regulations;

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

THAT a new certificate of occupancy will be obtained by August 13, 2014;

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. 420344755)

Adopted by the Board of Standards and Appeals, August 13, 2013.

50-13-BZ
CEQR #13-BSA-086K

APPLICANT – Lewis E. Garfinkel, for Mindy Rebenwurzel, owner.

SUBJECT – Application January 29, 2013 – 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 rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1082 East 24th Street, west side of East 24th Street, 100' north of corner of Avenue K and East 24th Street, Block 7605, Lot 79 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 Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 18, 2013, acting on Department of Buildings Application No. 320377187, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio exceeds the permitted 0.50;
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space is less than the required 150 percent;

3. Plans are contrary to ZR 23-141(a) in that the existing minimum side yard is less than the required minimum 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 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, side yards, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on June 4, 2013, after due notice by publication in *The City Record*, with a continued hearing on July 9, 2013, and then to decision on August 13, 2013; 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 24th Street, between Avenue K and Avenue J, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 3,800 sq. ft. and is occupied by a single-family home with a floor area of 2,108 sq. ft. (0.56 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 of 2,108 sq. ft. (0.56 FAR) to 3,748 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant also proposes to maintain its existing non-complying side yard, which has a width of 3'-8" and reduce its complying side yard from a width of 12'-3" to a width of 8'-6" (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each), reduce its rear yard depth from 32'-1" to 20'-0" (a minimum rear yard depth of 30'-0" is required), and reduce its open space from 127 percent to 55 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, in particular, the applicant represents that the proposed 1.0 FAR is in keeping with the bulk in the surrounding area; and

WHEREAS, at hearing the Board directed the applicant to submit a neighborhood study to support this representation; and

WHEREAS, in response, the applicant submitted a study of single-family homes within 400 feet of the site; based on the study, 13 homes have an FAR of 1.0 or greater, including four that were enlarged pursuant to a special permit from the Board; and

WHEREAS, accordingly, 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 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, side yards, 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 May 7, 2013"- (10) sheets and "June 25, 2013"-(2) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,748 sq. ft. (1.0 FAR), side yards with minimum widths of 3'-8" and 8'-6", a minimum open space of 55 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, August 13, 2013.

57-13-BZ
CEQR #13-BSA-092K
APPLICANT – Eric Palatnik, P.C., for Lyudmila Kofman, owner.
SUBJECT – Application February 2, 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 rear yard (§23-47) regulations. R3-1 zoning district.
PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 16, 2013, acting on Department of Buildings Application No. 320525614, reads in pertinent part:

1. Proposed floor area ratio is contrary to ZR 23-141;
2. Proposed open space is contrary to ZR 23-141;
3. Proposed lot coverage is contrary to 23-141;
4. Proposed rear yard is contrary to ZR 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, 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 June 4, 2013, after due notice by publication in *The City Record*, with a continued hearing on July 9, 2013, and then to decision on August 13, 2013; 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 disapproval of this application; and

WHEREAS, the subject site is located on the west side of Beaumont Street, between Oriental Boulevard and the Manhattan Beach Esplanade, within an R3-1 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 1,965.71 sq. ft. (0.49 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 of 1,965.71 sq. ft. (0.49 FAR) to 3,965.31 sq. ft. (0.99 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant also proposes to reduce its rear yard depth from 32'-4" to 20'-0" (a minimum rear yard depth of 30'-0" is required), reduce its open space from 65 percent to 56.8 percent (a minimum open space of 65 percent is required), and increase its lot coverage from 35 percent to 43.2 percent (a maximum lot coverage of 35 percent is permitted); 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 0.99 FAR is in keeping with the bulk in the surrounding area; and

WHEREAS, to support this representation, the applicant submitted a study of the 62 single-family homes within 400 feet of the site; based on the study, ten homes (18 percent) have an FAR of 1.0 or greater; and

WHEREAS, accordingly, 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 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 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; *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 26, 2013"- (12) sheets; and *on*

further condition:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,965.31 sq. ft. (0.99 FAR), a minimum open space of 56.8 percent, a maximum lot coverage of 43.2 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, August 13, 2013.

84-13-BZ
CEQR #13-BSA-108K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 184 Kent Avenue Fee LLC, owner; SoulCycle Kent Avenue, LLC, lessee.

SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*SoulCycle*) within portions of an existing cellar and seven-story mixed-use building. C2-4/R6 zoning district.

PREMISES AFFECTED – 184 Kent Avenue, northwest corner of intersection of Kent Avenue and North 3rd Street, Block 2348, Lot 7501, 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 Montanez 5
Negative:.....0

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 29, 2013, acting on Department of Buildings Application No. 320690711, reads in pertinent part:

> Proposed physical culture establishment in C2-4 (R6) zoning district is contrary to ZR 32-10 and required special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C2-4 (R6) zoning district, the legalization of a physical culture establishment ("PCE") on portions of the first story of an existing seven-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 4, 2013, after due notice by publication in *The City Record*, and then to decision on August 13, 2013; 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, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located at the southwest corner of the intersection of Kent Avenue and North Third Street; and

WHEREAS, the site has approximately 439 feet of frontage along North Third Street, approximately 178 feet of frontage along Kent Avenue, and 78,142 sq. ft. of lot area; and

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

WHEREAS, the applicant notes that on December 19, 2000, under BSA Cal. No. 191-00-BZ, the Board granted a variance permitting the conversion of the building from a warehouse to a mixed residential and commercial building, contrary to the use regulations in effect at the time (at the time, the site was in an M3-1 zoning district); subsequently, on December 18, 2001, the Board authorized an amendment to the variance permitting the creation of a courtyard and the redistribution of floor area to create additional dwelling units; and

WHEREAS, the applicant also notes that the building is subject to a Historic Preservation Deed of Easement in favor of the Trust of Architectural Easements, which prohibits exterior changes to the building without the Trust's consent; and

WHEREAS, the PCE occupies a total of 4,538 sq. ft. of floor area on the first story of the building; and

WHEREAS, the PCE is operated as SoulCycle; the applicant represents that the PCE has operated since May 18, 2013; 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 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, 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 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, at hearing, the Board raised concerns about: (1) the sufficiency of the sound attenuation measures; (2) the notification of the building's residents of the application for the PCE; and (3) open notices of violation from the Environmental Control Board regarding the building; and

WHEREAS, in response, the applicant submitted an amended plan noting the proposed sound attenuation measures; the applicant also submitted a statement confirming that notices regarding the PCE application were posted near the residential entrances to the building and explaining that the open violations relate to construction of the proposed PCE and that such violations are resolved or will be resolved by the Board's grant 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, 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. 13BSA108K, dated February 25, 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 C2-4 (R6) zoning district, the legalization of a PCE on portions of the first story of an existing seven-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 June 25, 2013" – Three (3) sheets; and *on further condition*:

THAT the term of this grant will expire on May 18, 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 hours of operation of the PCE shall 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 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 the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 13, 2013.

108-13-BZ
CEQR #13-BSA-128M
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for EOP-Retail, owner; Equinox 1095 6th Avenue, Inc, lessee.
SUBJECT – Application April 19, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Equinox*). C5-3, C6-6, C6-7 & C5-2 (Mid)(T) zoning districts.
PREMISES AFFECTED – 100/28 West 42nd Street aka 101/31 West 41st Street, West side of 6th Avenue between West 41st Street and West 42nd Street, Block 00994, Lot 7501, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning

Specialist, dated April 16, 2013, acting on Department of Buildings Application No. 121331157, reads in pertinent part:

ZR 32-10 & 73-36; proposed physical culture establishment is prohibited and requires Board of Standards and Appeals approval; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C5-3 zoning district, partially within a C6-6 zoning district, partially within a C5-2.5 zoning district, and partially within a C6-7 zoning district within the Special Midtown District and the Theater Subdistrict, the operation of a physical culture establishment ("PCE") in portions of the first story, cellar and sub-cellar of a 41-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in *The City Record*, and then to decision on August 13, 2013; 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, has no objection to the application; and

WHEREAS, the subject site is a rectangular lot, spanning the full length of Avenue of the Americas between West 41st Street and West 42nd Street, with 197.5 feet of frontage along Avenue of the Americas, and 300 feet of frontage along both West 41st Street and West 42nd Street, with a total lot area of approximately 59,250 sq. ft.; and

WHEREAS, the site is located partially within a C5-3 zoning district, partially within a C6-6 zoning district, partially within a C5-2.5 zoning district, and partially within a C6-7 zoning district within the Special Midtown District and the Theater Subdistrict and is occupied by a 41-story commercial building with 1,066,500 sq. ft. of floor area; and

WHEREAS, the Board has exercised jurisdiction over the site since January 21, 1975 when, under BSA Cal. No. 613-74-BZ, the Board granted a variance to permit the installation of an illuminated sign at the rooftop level, on the north and south facades of building; and

WHEREAS, the proposed PCE will occupy approximately 1,098 sq. ft. of floor area on the first story, 7,098 sq. ft. of floor space in the cellar, and 21,589 sq. ft. of floor space in the sub-cellar; and

WHEREAS, the PCE will be operated as Equinox; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant represents that the hours of operation for the proposed PCE are Monday through Friday, from 5:00 a.m. to 11:30 p.m., and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; 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 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, at hearing, the Board raised concerns about the proposed signage for the PCE; and

WHEREAS, in response, the applicant submitted amended plans reflecting that the PCE signage would comply with the underlying district regulations; and

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

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. 13BSA128M, dated April 17, 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 partially within a C5-3 zoning district, partially within a C6-6 zoning district, partially within a C5-2.5 zoning district, and partially within a C6-7 zoning district within the Special Midtown District and the Theater Subdistrict, the operation of a PCE in portions of the first story, cellar and sub-cellar

of a 41-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 25, 2013" – Seven (7) sheets and *on further condition*:

THAT the term of this grant will expire on August 23, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

THAT the PCE will comply with Local Law 58/87, as reviewed and approved by DOB;

THAT the signage will comply with the applicable provisions for the underlying zoning district;

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

Adopted by the Board of Standards and Appeals, August 13, 2013.

236-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.

SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to September 10, 2013, at 10 A.M., for adjourned hearing.

282-12-BZ

APPLICANT – Eric Palatnik, P.C., for Izhak Lati, owner.

SUBJECT – Application September 24, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard requirements (§23-461), and a variance (§72-21), contrary to front yard requirements (§23-45). R5 zoning district.

PREMISES AFFECTED – 1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 24, 2013, at 10 A.M., for continued hearing.

301-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Jam Realty of Bayside LLC, owner.

SUBJECT – Application October 22, 2012 – Special permit (§73-52) to allow a 25 foot extension of an existing commercial use into a residential zoning district, and §73-63 to allow the enlargement of a legal non-complying building. C2-2(R4) and R2A zoning districts.

PREMISES AFFECTED – 213-11/19 35th Avenue, Block 6112, Lot 47, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to September 10, 2013, at 10 A.M., for continued hearing.

322-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.

SUBJECT – Application December 6, 2012 – Variance (§72-21) to permit the enlargement of a single-family residence, contrary to open space and lot coverage (§23-141); less than the minimum required front yard (§23-45) and perimeter wall height (§23-631). R5 (OP) zoning district.

PREMISES AFFECTED – 701 Avenue P, 1679-87 East 7th Street, northeast corner of East 7th Street and Avenue P, Block 6614, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

ACTION OF THE BOARD – Laid over to September 17, 2013, at 10 A.M., for continued hearing.

338-12-BZ

APPLICANT – Eric Palatnik, P.C., for 164-20 Northern Boulevard, LLC, owner; Northern Gym, Corp., lessee.

SUBJECT – Application December 13, 2012 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Metro Gym*) located in an existing one-story and cellar commercial building. C2-2/R5B zoning district.

PREMISES AFFECTED – 164-20 Northern Boulevard, west side of the intersection of Northern Boulevard and

Sanford Avenue, Block 5337, Lot 17, 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 September 10, 2013, at 10 A.M., for decision, hearing closed.

13-13-BZ & 14-13-BZ
APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.
SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, Borough of Brooklyn.
COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to September 24, 2013, at 10 A.M., for deferred decision.

61-13-BZ
APPLICANT – Ellen Hay, Wachtel Masyr & Missry LLP, for B. Bros. Broadway Realty, owner; Crunch LLC, lessee.
SUBJECT – Application February 7, 2013 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Crunch*). M1-6GC zoning district.
PREMISES AFFECTED – 1385 Broadway, west side Broadway between West 37th and West 38th Streets, Block 813, Lot 55, Borough of Manhattan.
COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to September 17, 2013, at 10 A.M., for continued hearing.

77-13-BZ
APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 45 Great Jones Street LLC, for Joseph Lauto, owner.
SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit residential use, contrary to ZR 42-00 and ground floor commercial use contrary to ZR§42-14(D)(2)(b). M1-5B zoning district.
PREMISES AFFECTED – 45 Great Jones Street, between Lafayette and Bowery Streets, on the south side of Great Jones Street, Block 530, Lot 29, 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 September 24, 2013, at 10 A.M., for decision, hearing closed.

82-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Michal Cohen and Isaac Cohen, owners.
SUBJECT – Application March 1, 2013 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R5 zoning district.
PREMISES AFFECTED – 1957 East 14th Street, east side of East 14th Street between Avenue S and Avenue T, Block 7293, Lot 64, 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 September 17, 2013, at 10 A.M., for decision, hearing closed.

83-13-BZ
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
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 September 10, 2013, at 10 A.M., for decision, hearing closed.

96-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Urban Health Plan, Inc., owner.
SUBJECT – Application April 2, 2013 – Variance (§72-21) to permit construction of ambulatory diagnostic treatment health facility (UG4), contrary to rear yard regulations (§23-47). R7-1 and C1-4 zoning districts.
PREMISES AFFECTED – 1054 Simpson Street, 121.83 feet north of intersection of Westchester Avenue, Block

2727, Lot 4, Borough of Bronx.
COMMUNITY BOARD #2BX
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 September 17, 2013, at 10 A.M., for decision, hearing closed.

170-13-BZ
APPLICANT – Venable LLP, for The Mount Sinai Hospital, owner.
SUBJECT – Application June 6, 2013 – Variance (§72-21) to allow the enlargement of Mount Sinai Hospital of Queens contrary to §24-52 (height & setback); §24-11(lot coverage); §24-36 (rear yard); and §§24-382 & 33-283 (rear yard equivalents). R6 & C1-3 zoning districts.
PREMISES AFFECTED – 25-10 30th Avenue, block bounded by 30th Avenue, 29th Street, 30th Road and Crescent street, Block 576, Lot 12; 9; 34; 35, Borough of Queens.
COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to September 10, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on November 15, 2012, under Calendar No. 187-11-BZ and printed in Volume 97, Bulletin No. 45, is hereby corrected to read as follows:

187-11-BZ
CEQR #12-BSA-048K
APPLICANT – Davidoff Malito & Hutcher, LLP, for Sandford Realty, LLC, owner.
SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 118 Sandford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, 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, decision of the Brooklyn Borough Commissioner, dated November 15, 2011, acting on Department of Buildings Application No. 320372725, reads:

Proposed residential building cannot be built in M1-1 zoning district, as per Section 42-00 ZR; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the residential conversion (UG 2) of an existing four-story manufacturing building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in the *City Record*, with continued hearings on June 5, 2012, and July 10, 2012, and then to decision on November 15, 2012 (the October 30, 2012 decision date was postponed due to the storm-related office closure); and

WHEREAS, the building 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 3, Brooklyn, recommends disapproval of this application; and

WHEREAS, the site is located on the west side of Sandford Street between Myrtle Avenue and Park Avenue, within an M1-1 zoning district; and

WHEREAS, the site has 37'-9" of frontage on Sandford Street, a depth of 100 feet, and a lot area of 3,775 sq. ft.; and

WHEREAS, the site is currently occupied by a four-story manufacturing building, with a total floor area of 12,836 sq. ft. (3.4 FAR); and

WHEREAS, the building was constructed in approximately 1931 and has been vacant for three years; and

WHEREAS, the applicant proposes to convert the building to residential use with commercial use at a portion of the ground floor, and to make a slight modification to the building envelope to improve the circulation of the building, resulting in a building with a total floor area of 12,566.5 sq. ft. (3.33 FAR); and

WHEREAS, specifically, the applicant proposes to use a 1,376 sq. ft. (0.37 FAR) portion of the first floor for conforming commercial use, and to convert the remaining 11,190.5 sq. ft. (2.96 FAR) of the building to 14 residential units; and

WHEREAS, the applicant originally proposed to convert the subject building to residential and ground floor commercial uses, and to enlarge the existing building by constructing a partial fifth floor at the roof level, resulting in a total floor area of 14,447 sq. ft. (3.83 FAR) and two additional dwelling units (16 total dwelling units); and

WHEREAS, at hearing, the Board raised concerns regarding the proposed enlargement and additional floor area, and directed the applicant to remove the partial fifth floor; and

WHEREAS, in response, the applicant submitted revised plans removing the partial fifth floor enlargement and reflecting the current proposal; and

WHEREAS, because residential use is not permitted in the underlying M1-1 zoning district, the subject use variance is requested; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: the existing building is obsolete for conforming manufacturing use; and

WHEREAS, the applicant represents that the building is obsolete for modern manufacturing due to (1) the small and narrow footprint of the building, (2) wood decking and joists which cannot support loads required for manufacturing, (3) an inoperable elevator and twisted stairwell, (4) the low floor-to-ceiling heights, (5) the lack of a loading birth, and (6) the site's mid-block frontage along a narrow street with low traffic volume; and

WHEREAS, as to the building's small and narrow footprint, the applicant states that the building is unusually narrow at 37'-9" with a floorplate of 3,209 square feet, which renders it unmarketable for conforming occupancy; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a lot study which examined 133 lots within the surrounding M1-1 and M1-2 area and found 28 were occupied with conforming uses and have a street frontage of 38'-0" or less; and

WHEREAS, the lot study submitted by the applicant indicates that of those 28 lots, 25 are distinguishable from the subject property because the lots are either: (1) connected to buildings on adjoining narrow lots; (2) part of a larger assemblage; (3) configured to allow off-street parking/loading; (4) occupied by a residential use; or (5)

located along Nostrand Avenue, a busy thoroughfare; and

WHEREAS, accordingly, the lot study indicates that only three lots of the total 133 lots within the study area were deemed to be comparable to the subject site in terms of their lot width and conforming occupancy; and

WHEREAS, as to the building's load capacity, the applicant represents that the existing floors with wood decking and joists do not have the structural capacity to carry the requisite load capacity for conforming uses; and

WHEREAS, specifically, the applicant states that the 2008 Building Code requires a minimum uniformly distributed live load of 125 p.s.f. and a minimum concentrated live load of 2000 lbs; however, the building's current load capacity measures between 107 and 69 p.s.f. and therefore cannot support a manufacturing warehouse load; and

WHEREAS, the applicant represents that, aside from its low load-bearing capacity, the building's dated floor system consisting of wood decking over wood joists is nearly 50 percent of the building and, aside from any structural stability related work, would require the entire floor and sub-floor to be removed, the affected joists replaced, and the sub-floors and floors reinstalled to achieve a level condition, resulting in significant additional costs associated with the reconstruction of the wood joists and wood decking; and

WHEREAS, as to the inadequate elevator shaft and staircases, the applicant states that the building lacks a functioning elevator and the size of the elevator, at 8'-0" by 8'-0", is not large enough to appropriately market the building for conforming tenancy; and

WHEREAS, the applicant states that the ability to vertically transport products and goods to and from the building's upper levels is further compromised by the existing main stairwell, which would need to be demolished and re-installed because of its uneven and sagging condition; and

WHEREAS, as to the floor-to-ceiling height, the applicant notes that the floor-to-ceiling height varies from 12'-0" to 9'-10" throughout the building; and

WHEREAS, the applicant represents that typical wholesale showroom minimum ceiling heights are 14'-0", and ceiling heights needed for warehousing goods requires a minimum ceiling height of 25'-0" to facilitate the stacking of palettes, and as such, the low ceiling heights of the existing building contribute to the functional obsolescence of the building for conforming manufacturing use; and

WHEREAS, as to the street conditions, the applicant states that Sandford Street, although mapped at a width of 50'-0", is paved for a width of only approximately 30'-0", and off-street parking is permitted on both sides of the street; this coupled with a lack of a loading berth constrains vehicle delivery and access to the site and trailer/truck loading for a conforming use; and

WHEREAS, the applicant states that the building has been vacant for nearly three years, and that the owner has actively attempted to market the space within the building for over two years for a conforming use, but has been unsuccessful; and

WHEREAS, based upon the above, the Board finds that the combination of the small and narrow footprint, wood decking and joists which cannot support load required for manufacturing, inoperable elevator and twisted stairwell, low floor to ceiling height, lack of a loading birth, and mid-block frontage along a narrow, low traffic street create unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a feasibility study analyzing: (1) the building used in conformance with M1-1 zoning district regulations; (2) the original proposal with a fifth floor addition; and (3) the proposed four-story residential building with ground floor commercial use; and

WHEREAS, the applicant's feasibility study reflects that the building occupied by a conforming use does not provide a reasonable return but that the proposed building does result in a reasonable 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 residential 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 notes that although zoned M1-1, the site is two blocks west of an R6 zoning district, and two blocks east of an MX-4 (M1-2/R6A) district, which both permit residential uses as-of-right; and

WHEREAS, the applicant represents that the surrounding area is characterized by a mix of residential uses and commercial uses; and

WHEREAS, the land use map submitted by the applicant shows residential uses immediately to the north and west of the site, and across Sandford Street; and

WHEREAS, the applicant represents that the conforming uses in the surrounding area are mostly non-intrusive, one-story garages and undeveloped property; and

WHEREAS, based upon the above, the Board finds that the proposed residential conversion of the subject building 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, 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, as noted above, the applicant initially proposed to construct a partial fifth story enlargement to the existing building, which would have resulted in a floor area of 14,447 sq. ft. (3.83 FAR) and two additional dwelling units (16 total dwelling units); and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to remove the fifth

story enlargement; and

WHEREAS, accordingly, the Board finds that the current 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 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") 12BSA048K, dated April 30, 2011; 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; and

WHEREAS, DEP reviewed and accepted the October 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 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 residential conversion (UG 2) of an existing four-story manufacturing building, which is 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 May 22, 2012"- eight (8) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a total floor area of 12,566.5 (3.33 FAR); a residential floor area of 11,190.5 (2.96 FAR); a commercial floor area of 1,376 sq. ft. (0.37 FAR); a total height of 48'-0"; and 14 residential units, as illustrated 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 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) 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, November 15, 2012.

***The resolution has been revised to correct the street name to "Sandford" and to change the number of residential units from "12 to 14" residential units. Corrected in Bulletin Nos. 31-33, Vol. 98, dated August 22, 2013.**

***CORRECTION**

This resolution adopted on July 16, 2013, under Calendar No. 54-13-BZ and printed in Volume 98, Bulletin No. 29, is hereby corrected to read as follows:

54-13-BZ
CEQR #12-BSA-089K
APPLICANT – Sheldon Lobel, P.C., for Ricky Novick, owner.
SUBJECT – Application January 31, 2013 – Variance (§72-21) for the enlargement of existing single-family residence, contrary to front yard (§113-54) as there is a parking space within the required front yard, minimum required side yards (§113-543), and side yards (§23-461a) regulations. R5/OPSD zoning district.
PREMISES AFFECTED – 1338 East 5th Street, western side of East 5th Street between Avenue L and Avenue M, Block 6540, Lot 23, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 13, 2013, and acting on Department of Buildings Application No. 320329471 reads, in pertinent part:

Proposed side yards are contrary to ZR 113-543, 23-461(a), pertaining to R4A

Proposed parking space is not permitted in front yard pursuant to ZR 113-54; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing single-family detached home that does not provide the required side yards and provides parking within the required front yard, contrary to ZR §§ 23-461, 113-543, and 113-54; and

WHEREAS, a public hearing was held on this application on May 14, 2013, after due notice by publication in *The City Record*, with a continued hearing on June 11, 2013, and then to decision on July 16, 2013; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East Fifth Street between Avenue L and Avenue M; and

WHEREAS, the site is located within an R5 district within the Special Ocean Parkway District and has approximately 41 feet of frontage along East Fifth Street; and

WHEREAS, the site is a triangular lot ranging in lot width from approximately 41 feet at the front lot line to 9.38 feet at the rear lot line; the lot depth ranges from 104.9 feet to 100 feet; the site has a lot area of approximately 2,521 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story, detached, single-family home with approximately 2,135.40 sq. ft. of floor area (0.85 FAR); and

WHEREAS, the applicant notes that DOB permits for an as-of-right enlargement of the building have been obtained and construction has commenced but not yet been completed; and

WHEREAS, the applicant proposes to enlarge the existing first and second floor of the building contrary to the side yard and front yard requirements and increase the floor area from 2,135.40 sq. ft. (0.85 FAR) to 2,454.88 sq. ft. (0.97 FAR) (a maximum of 3,781.50 sq. ft. (1.50 FAR) is permitted); and

WHEREAS, specifically, the applicant proposes one side yard with a width of 1'-4" and one side yard with a width of 4'-0" (two side yards of no less than two feet each and ten feet total, with a minimum distance of eight feet between buildings is required, per ZR § 113-543); and a parking space within the required front yard (parking is not permitted within the front yard, per ZR § 113-54); the applicant notes that the proposed enlargement complies in all other respects with the applicable bulk regulations; and

WHEREAS, because the proposed enlargement does not comply with the R5/Special Ocean Parkway District regulations, a variance is requested; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations: the lot size and shape; limited width; and limited potential floor area; and

WHEREAS, the applicant states that the lot is triangular in shape, which limits the development of the site to a triangular building due to compliance with the side yard and accessory parking requirements; and

WHEREAS, the applicant submitted a deed chain showing that the lot shape is a historic condition, which has existed since at least 1928; and

WHEREAS, the applicant represents that a triangular building has constrained and inefficient floorplates, inadequate shared living space, and impedes realization of the maximum available FAR; and

WHEREAS, the applicant represents that the limited width of the lot—which, as noted above, is less than ten feet at the rear lot line—would result in a building that tapers to a width of approximately 5'-6" at the rear, which is too narrow to accommodate usable living space; and

WHEREAS, the applicant notes that the triangularity of the lot and its narrow width are atypical on the subject block, where the average lot is rectangular in shape with an average width of 21'-6"; and since many homes are semi-detached and share driveways, the average building on the block has a building width of 17'-5"; and

WHEREAS, the applicant further notes that the only other triangular lot on the block is adjacent to the subject lot but is substantially larger, with approximately 3,900 sq. ft. of lot area, which is nearly 1,400 sq. ft. more than the subject site; and

WHEREAS, the applicant states that the shape and width of the lot reduce the potential building floor area well below what is permitted on the site and common on the block; specifically, the applicant states that it can only build 2,275 sq. ft. of floor area as-of-right, but homes in the neighborhood with average-sized, rectangular lots typically can build up to 2,600 sq. ft. as-of-right; and

WHEREAS, the applicant explored the feasibility of enlarging the building as-of-right i.e., with complying side yards and a parking space within the side lot ribbon, and determined that it would result in an increase in floor area of approximately 140 sq. ft. (70 sq. ft. on each story), which the applicant deemed impractical given the cost of construction; and

WHEREAS, accordingly, the applicant asserts that an as-of-right enlargement is infeasible; 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 Board agrees that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; 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 proposal essentially maintains existing distance between the subject building and the adjacent building to the south and will maintain a distance of greater than 20 feet from the adjacent building to the north; and

WHEREAS, the applicant states that the enlargement will occur in the rear of the building and will not be visible from East Fifth Street; and

WHEREAS, the applicant also notes that the proposed building is well within the maximum height and maximum permitted FAR in the district; thus, the impact of the enlargement on the surrounding community from a bulk perspective is both minimal and harmonious with the neighborhood character; and

WHEREAS, as to the parking space within the front yard, the applicant notes while the space is within the front yard, it is not located in front of the home, but on the side of the home where the side yard intersects with the front yard; as such, in terms of appearance it is comparable to parking spaces in the surrounding neighborhood; 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 lot size and shape; and

WHEREAS, the applicant represents 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

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, within an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing single-family detached home that does not provide the required side yards and provides parking within the required front yard, contrary to ZR §§ 23-461, 113-543, and 113-54; *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 31, 2013" - (10) and "May 28, 2013"-(2) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: two stories, a maximum floor area of 2,454.88 sq. ft. (0.97 FAR), side yards with minimum widths of 1'-4" and 4'-0", and one accessory off-street parking space within the front yard, 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) only;

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

THAT significant construction shall 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, July 16, 2013.

***The resolution has been revised to correct the SUBJECT. Corrected in Bulletin Nos. 31-33, Vol. 98, dated August 22, 2013.**

BULLETIN

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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

SEPTEMBER 17, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 17, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

519-57-BZ
APPLICANT – Eric Palatnik, P.C., for BP Amoco Corporation, owner.
SUBJECT – Application June 19, 2013 – Extension of Term Special Permit (§11-411) of an approved variance which permitted the operation and maintenance of a gasoline service station(Use Group 16B) and accessory uses which expired on June 19, 2013. R3-1/C2-1 zoning district.
PREMISES AFFECTED – 2071 Victory Boulevard, northwest corner of Bradley Avenue and Victory Boulevard, Block 462, Lot 35, Borough of Staten Island.
COMMUNITY BOARD #1SI

189-96-BZ
APPLICANT – John C Chen, for Ping Yee, owner; Club Flamingo, lessee.
SUBJECT – Application May 14, 2013 – Extension of Term for a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing which expires on May 19, 2013. C2-3/R6 zoning district.
PREMISES AFFECTED – 85-10/12 Roosevelt Avenue, south side of Roosevelt Avenue, 58' east side of Forley Street, Block 1502, Lot 4, Borough of Queens.
COMMUNITY BOARD #4Q

APPEALS CALENDAR

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

70-13-A
APPLICANT – Goldman Harris LLC, for JIM Trust (c/o Esther Freund), owners; OTR Media Group, Inc., lessee.
SUBJECT – Application February 13, 2013 – Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status.M1-2/R6(MX-8) zoning districts.
PREMISES AFFECTED – 84 Withers Street, between Meeker Avenue and Leonard Street on the south side of Withers Street, Block 2742, Lot 15, Borough of Bronx.
COMMUNITY BOARD #1BX

71-13-A
APPLICANT – Goldman Harris LLC, for Tuck-It-Away Associates-Deegan, LLC, owners; OTR Media Group, Inc., lessee.
SUBJECT – Application February 13, 2013 – Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status. M1-4 /R6A (MX-13) zoning districts.
PREMISES AFFECTED – 261 Walton Avenue, through-block lot on block bounded by Gerard and Walton Avenues and East 138th and 140th Streets, Block 2344, Lot 60, Borough of Bronx.
COMMUNITY BOARD #1BX

ZONING CALENDAR

299-12-BZ
APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.
SUBJECT – Application October 18, 2012 – Variance (§72-21) to waive the required FAR, height and setback, and rear yard requirements to facilitate the construction of a twelve-story office building with the first and second stories devoted to retail uses. 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

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) at the premises, which is contrary to bulk regulations for community facility in the residential use districts. 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

105-13-BZ
APPLICANT – Law Office of Fred A Becker, for Nicole Orfali and Chaby Orfali, owners.
SUBJECT – Application April 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single home contrary to floor area, open space and lot coverage (ZR 23-141); side yard (ZR 23-461); perimeter wall height (ZR 23-631) and less than the minimum rear yard (ZR 23-47). R3-2 zoning district.
PREMISES AFFECTED – 1932 East 24th street, west side of East 24th street, between Avenue S and Avenue T, Block 7302, Lot 19, Borough of Brooklyn.
COMMUNITY BOARD #15BK

133-13-BZ
APPLICANT – Sheldon Lobel, PC, for Evangelical Church Letting Christ Be known, Inc., owner.
SUBJECT – Application May 10, 2013 – Variance (§72-21) to permit the construction of a new two-story community facility (UG 4A house of worship) (*Evangelical Church*) building is contrary to rear yard (§24-33(b) & §24-36), side yard (§24-35(a)) and front yard requirements (§25-34) zoning requirements. R4 zoning district.
PREMISES AFFECTED – 1915 Bartow Avenue, northwest corner of Bartow Avenue and Grace Avenue, Block 4799, Lot 16, Borough of Bronx.
COMMUNITY BOARD #12BX

169-13-BZ
APPLICANT – Greenberg Traurig, for Joseph Schottland, owner.
SUBJECT – Application June 5, 2013 – Special Permit (§73-621) to permit the legalization of an enlargement of a two-family residence in an R-6 zoning district which; would allow the floor area on the property to exceed the floor area permitted under the district regulations by no more than 10%; contrary to §23-145. R6 (LH-1) zoning district.
PREMISES AFFECTED – 227 Clinton Street, east side of Clinton Street, 100' north of the corner formed by the intersection of Congress Street and Clinton Street, Block 297, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #6BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, AUGUST 20, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

608-70-BZ
APPLICANT – Walter T. Gorman, P.E., P.C., for Neptune Avenue Property LLC, owner. Dunkin Donuts Corporate Office, lessee.
SUBJECT – Application January 22, 2013 – Amendment (§11-413) to convert the previously granted UG16B automotive service station to a UG6 eating and drinking establishment (*Dunkin' Donuts*). R6 zoning district.
PREMISES AFFECTED – 351-361 Neptune Avenue, north west corner Brighton 3rd Street, Block 7260, Lot 101, Borough of Brooklyn.
COMMUNITY BOARD #13BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a reopening and a change in use from an automotive service station (Use Group 16) to an eating and drinking establishment (Use Group 6); and

WHEREAS, a public hearing was held on this application on June 4, 2013, after due notice by publication in the *City Record*, with a continued hearing on July 16, 2013, and then to decision on August 20, 2013; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of the application; and

WHEREAS, the site is located on the northwest corner of Neptune Avenue and Brighton 3rd Street, in an R6 zoning district within the Special Ocean Parkway District; and

WHEREAS, the site is currently occupied by a vacant one-story building constructed for gasoline service station use; and

WHEREAS, on November 15, 1949, under BSA Cal. No. 632-49-BZ, the Board granted a variance to permit the site to be operated as a storage garage for more than five motor vehicles, gasoline service station, lubrication, motor vehicle repair shop, and offices; the grant did not include a term; and

WHEREAS, on December 15, 1970, under the subject calendar number, the Board granted an application to permit the reconstruction and reduction in area of the building and the use of the site as an automotive service station with accessory parking and other accessory use; the grant did not include a term; and

WHEREAS, most recently, on May 7, 2002, the Board amended the approval to permit the conversion of three service bays to an accessory convenience store and the installation of a new canopy over the existing pump islands; and

WHEREAS, the applicant states that the work approved under the 2002 amendment was never performed and the service station no longer operates at the site; and

WHEREAS, the applicant states that the storage tanks associated with the gasoline service station have been closed and removed in accordance with New York State Department of Environmental Conservation requirements; and

WHEREAS, the applicant now proposes to renovate the existing building to accommodate the proposed Use Group 6 eating and drinking establishment, to be operated as Dunkin' Donuts open 24 hours, daily; 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; 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 40 years, and the surrounding area has a number of ground floor commercial uses; and

WHEREAS, at hearing, the Board questioned whether (1) the parking spaces were all functional and necessary to accommodate the demand, particularly the two spaces adjacent to the dumpster enclosure; (2) the exhaust and air condensers could be located further from residential uses to mitigate any sound impacts; (3) the lighting could be softened to reduce the impact on adjacent residential uses; and (4) the garbage pickup could be restricted to hours that are compatible with adjacent residential uses; and

WHEREAS, in response, the applicant (1) stated that all parking spaces are functional and necessary to accommodate the peak demand of 10-12 spaces and that it will post signage at the two spaces adjacent to the dumpster stating that parking is prohibited there during garbage collection hours; (2) proposes a split system which allows the condenser to be located on the ground, rather than the roof and provided revised plans showing the relocation of the condenser units to the walkway adjacent to the building on the Brighton 3rd Street side and the exhaust fans in a different location on the roof; (3) provided specifications on

shielded lighting, which is directed down and away from residential uses; and (4) agreed to restrict the garbage pickup hours to times between 8:00 a.m. and 6:00 p.m.; and

WHEREAS, the applicant also submitted a plan sheet which reflects the traffic flow designed to allow maneuverability; and

WHEREAS, 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 gasoline service station (Use Group 16) to an eating and drinking establishment (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 July 31, 2013"-(7) sheets; and *on further condition*:

THAT garbage pickup will be limited to times between the hours of 8:00 a.m. and 6:00 p.m.;

THAT the signage will comply with C1 zoning district regulations;

THAT that a sign be posted outside of the dumpster enclosure prohibiting parking there between the hours of 8:00 a.m. to 6:00 p.m.

THAT all lighting include shields and be directed downward and away from adjacent residential uses;

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 August 20, 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) 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, August 20, 2013.

228-00-BZ

APPLICANT – Sheldon Lobel, P.C. for Hoffman & Partners LLC, owner.

SUBJECT – Application August 10, 2012 – Extension of time to complete construction of a previously approved variance (§72-21) which permitted the conversion of a vacant building in a manufacturing district for residential use (UG 2), which expired on May 15, 2005; Amendment for minor modifications to approved plans; Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 28/32 Locust Street, southeasterly side of Locust Street between Broadway and Beaver Street. Block 3135, Lot 16. Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to September 10, 2013, at 10 A.M., for deferred decision.

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 – Laid over to September 24, 2013, at 10 A.M., for continued hearing.

199-00-BZ

APPLICANT – Alfonso Duarte, P.E., for EN PING C/O Baker, Esq., owner; KAZ Enterprises Inc., lessee.

SUBJECT – Application March 28, 2013 – Extension of term of a previously granted special permit (§73-244) for the continued operation of a UG 12 eating and drinking establishment without restrictions on entertainment (*Club Atlantis*) which expired on March 13, 2013. C2-3/R6 zoning district.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, northwest corner of Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.

COMMUNITY BOARD #3Q

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 September 17, 2013, at 10 A.M., for decision, hearing closed.

220-07-BZ

APPLICANT – Eric Palatnik, P.C., for Kornst Holdings, LLC, owner.

SUBJECT – Application July 11, 2013 – Extension of time to complete construction of a previously granted variance (§72-21) which permitted the construction of a new four-story residential building containing four dwelling units, which expires on November 10, 2013. M1-1 zoning district.

PREMISES AFFECTED – 847 Kent Avenue, East side of Kent Avenue, between Park Avenue and Myrtle Avenue, Block 1898, Lot 10, 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 September 17, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

220-10-BZY

APPLICANT – Goldman Harris LLC, Orchard Hotel LLC,c/o Maverick Real Estate Partners, vendee ,DAB Group LLC, owner.

SUBJECT – Application March 11, 2013 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a previous vested rights approval, which expired on March 15, 2013. Prior zoning district C6-1. C4-4A zoning district.

PREMISES AFFECTED – 77, 79, 81 Rivington Street, a/k/a 139 , 141 Orchard Street , northern p/o block bounded by Orchard Street to the east, Rivington Street to the north, Allen Street to the west, and Delancy Street to the south, Block 415, Lot 61-63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on July 23, 20013, after due notice by publication in *The City Record*, and then to decision on August 20, 2013; 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 a through-block site with frontages on the west side of Orchard Street, the south side of Rivington Street, and the east side of Allen Street; and

WHEREAS, the site has a width of 87'-9" and a depth of 127'-3", and a total lot area of approximately 9,828 sq. ft.; and

WHEREAS, the subject site is a single zoning lot comprising five separate tax lots (Lots 61, 62, 63, 66 and 67); and

WHEREAS, the applicant proposes to construct a 16-story transient hotel (Use Group 5) building (the "Building") on Lots 61, 66 and 67, utilizing development rights transferred from Lots 62 and 63; the existing building located on Lot 62 will remain; and

WHEREAS, the Building is proposed to have a total floor area of approximately 39,064 sq. ft., which contributes to a total FAR of 6.0 for the entire zoning lot, and a building height of 191'-0"; and

WHEREAS, the site was formerly located within a C6-1 zoning district; and

WHEREAS, on September 29, 2008, Alteration Type 2 Permit No. 110251361-EW-OT (the "Foundation Permit") was issued by the Department of Buildings ("DOB") permitting excavation of the premises and the construction of the foundation of the Building, and work commenced on October 14, 2008; on November 19, 2008, New Building Permit No. 104870392-01-NB (the "New Building Permit") was issued by DOB permitting the construction of the Building (collectively, the "Permits"); and

WHEREAS, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to enact the East Village/Lower East Side Rezoning, which changed the zoning district to C4-4A; and

WHEREAS, as of that date, the applicant had obtained the Permits for the development and completed excavation, but had not completed the foundations for the property; and

WHEREAS, on June 16, 2009 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 311-08-BZY, pursuant to ZR § 11-331; and

WHEREAS, the foundation was completed within six months and construction proceeded until November 19, 2010; on that date, two years after the Enactment Date, the Permits lapsed pursuant to ZR § 11-331; and

WHEREAS, one day prior to the lapse, on November 18, 2010, the applicant's predecessor filed an application under the subject calendar number pursuant to ZR § 11-332, seeking a two-year extension to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 15, 2011, under the subject calendar number, the Board granted a two-year extension of the Permits, to expire on March 15, 2013; and

WHEREAS, the applicant represents that, on March 1, 2011—two weeks before the Board's initial grant under the subject calendar—the developer's loan matured, and the applicant, as lender, commenced a foreclosure proceeding against the developer-borrower in Supreme Court; since the filing of that action, construction work at the site has been limited to maintenance of site safety and the construction of a sidewalk; and

WHEREAS, accordingly, because the two-year time limit has expired and construction has not been completed, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*,

which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a "minor development"; and

WHEREAS, for "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the work must have been performed pursuant to a valid permit; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, in the context of the prior renewal, DOB issued a letter, dated December 22, 2010, in which it stated that the Permits were lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, accordingly, the Board accepts that the Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Board also notes that, based on the record, the Permits have been timely renewed since issuance, including the two-year renewal pursuant to the Board's March 15, 2011 grant; however, no work has been performed and no expenditures undertaken since November 19, 2010; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the applicant notes that, due to the foreclosure proceeding, the only work that has been performed since the prior two-year extension of the Permits by the Board is related to maintenance of site safety and the construction of a sidewalk; as such, the applicant seeks to rely on construction performed and expenditures undertaken as of November 19, 2010, when the Permits initially lapsed; and

WHEREAS, the Board observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the Permits; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the Permits are issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the Permits and prior to the expiration of the Board's most recent two-year extension of time to complete construction on November 19, 2010, includes: 100 percent of the foundation and completion of seven floors of the superstructure, with partial construction of the eighth floor; and

WHEREAS, in support of this statement, the applicant has submitted the following: an affidavit from the owner enumerating the completed work; construction contracts, copies of cancelled checks, copies of lien waivers evidencing payments made by the applicant, and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the Permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development subsequent to the issuance of the Permits through November 19, 2010 is $4,826,511, or 32 percent, out of the approximately $15,249,467 cost to complete; and

WHEREAS, the applicant has submitted financial records, construction contracts, copies of cancelled checks, and copies of lien waivers evidencing payments made by the applicant; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since

the issuance of the initial permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved, that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104870392-01-NB and Alteration Type 2 Permit No. 110251361-EW-OT, 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 the proposed
development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on August 20, 2015.

Adopted by the Board of Standards and Appeals, August 20, 2013.

317-12-A

APPLICANT – Eric Palatnik, P.C., for 4040 Management, LLC, owner.

SUBJECT – Application November 29, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior M1-3D zoning district regulations. M1-2/R5B zoning district.

PREMISES AFFECTED – 40-40 27th Street, between 40th Avenue and 41st Avenue, Block 406, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

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 five-story commercial building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, with continued hearings on June 18, 2013, and July 23, 2013, and then to decision on August 20, 2013; 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 on the west side of 27th Street, between 40th Avenue and 41st Avenue; and

WHEREAS, the site has a lot area of 5,009 sq. ft. and approximately 50 feet of frontage along 27th Street; and

WHEREAS, the applicant proposes to construct a new ten-story commercial building at the site; the proposal would result in 24,938.84 sq. ft. of floor area (4.98 FAR) occupied by a hotel (Use Group 5) (the "Building"); and

WHEREAS, the subject site is currently located within an M1-2/R5B zoning district within the Special Long Island City Mixed Use District, but was formerly located within an M1-3D zoning district; and

WHEREAS, the Building complies in all respects with the former M1-3D zoning district parameters; and

WHEREAS, however, on October 7, 2008 (the "Enactment Date"), the City Council voted to adopt the Dutch Kills Rezoning, which rezoned the site to M1-2/R5B; and

WHEREAS, as a result of the rezoning, the Building does not comply with the district parameters regarding maximum floor area and sky exposure plane; 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, the applicant states that New Building Permit No. 410116422-01-NB (the "Permit") was issued to the owner by the Department of Buildings ("DOB") on June 27, 2008; and

WHEREAS, by letter dated May 31, 2013, DOB confirmed that the Permit was lawfully issued; and

WHEREAS, the applicant notes that ZR § 11-31(c)(1) classifies the construction authorized under the Permit as a "minor development"; and

WHEREAS, the applicant notes that, per ZR §§ 11-331 and 11-332, where all work on foundations for a minor development has been completed prior to the effective date of an applicable amendment to the Zoning Resolution, work may continue for two years, and if after two years, construction has not been completed and a certificate of occupancy has not been issued, the permit shall automatically lapse and the right to continue construction shall terminate; and

WHEREAS, the applicant states that, as of the Enactment Date, the entire foundation for the Building was completed; and

WHEREAS, accordingly, the applicant represents that the applicant's predecessor acquired a vested right to continue construction under the Permit for two years from the Enactment Date (until October 7, 2010), pursuant to ZR § 11-331; nevertheless, construction under the Permit did not continue at the site after October 7, 2008 due to the owner's inability to obtain construction financing, and the only work performed was site safety-related maintenance, including the installation of the cellar concrete slab and first-story concrete deck to stabilize the unbraced foundation walls, and maintenance of the construction fence; and

WHEREAS, accordingly, as of October 7, 2010, construction was not complete and a certificate of

occupancy had not been issued; therefore, on that date the Permit lapsed by operation of law; and

WHEREAS, the applicant notes that it did not, pursuant to ZR § 11-332, seek renewal of the Permit from the Board within 30 days of such lapse; and

WHEREAS, accordingly, the applicant now seeks to proceed pursuant to the common law doctrine of vested rights; and

WHEREAS, the Board notes that when work proceeds under a valid 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 to substantial construction, the applicant states that prior to October 7, 2008, the owner had completed the following work: excavation, underpinning, and the entire foundation; between October 7, 2008 and October 7, 2010, the owner completed the cellar concrete slab and first-story concrete deck; no work has been performed at the site since October 7, 2010, aside from site safety-related maintenance; and

WHEREAS, the Board only considers work performed between June 27, 2008 and October 7, 2010, when the permit lapsed; and

WHEREAS, in support of this appellant's assertions regarding completed work, the applicant submitted the following evidence: invoices, concrete delivery slips, construction contracts, plans highlighting the work completed, and photographs of the site showing certain aspects of the completed work; 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, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; 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 states that prior to the Enactment Date, the owner expended $773,384, including hard and soft costs and irrevocable commitments, out of $6,519,616 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, thus, the expenditures to date represent approximately 12 percent of the projected total cost; 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 if the owner is not permitted to vest the Building under the former M1-3D zoning and must comply with the M1-2/R5B zoning, the maximum permitted floor area ratio would be reduced from 5.0 FAR to 2.0 FAR, representing a loss of 14,920.84 sq. ft., which is approximately 60 percent of the development; and

WHEREAS, the applicant also states that reduction in floor area will result in a reduction in hotel rooms from 78 to 30, which will significantly reduce the market value of the hotel; to support this assertion, the applicant represented that the nearby Comfort Inn located at 42-24 Crescent Street, Queens (an 80-room economy hotel) was recently purchased for $22,500,000, which results in an average value-per-room of $250,000; even assuming the subject hotel will be valued at only $220,000 per room, the reduction in the number of rooms represents a loss of $10,560,0000 of market value (or $12,000,000, if the rooms are valued at $250,000 per room); and

WHEREAS, further, the applicant represents that the loss of 48 rooms would jeopardize its agreement with Super 8 Worldwide, and that financing will become more difficult to obtain and more expensive without a franchise-backed development; and

WHEREAS, the applicant also states that redesigning

the Building in compliance with the M1-2/R5B regulations will cost an estimated $160,000; and

WHEREAS, the Board agrees with the applicant that the owner would incur substantial additional costs in reconstructing the Building to comply with the current zoning; and

WHEREAS, the Board also agrees with the applicant that the reduction in the floor area and hotel rooms results in a significant decrease in the market value of the Building; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building has accrued to the owner of the premises.

Therefore it is Resolved, that this application made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 410116422-01-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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 20, 2013.

166-13-A
APPLICANT – Sheldon Lobel, PC, for Whitney Museum of American Art, owner.
SUBJECT – Application May 21, 2013 – Appeal of NYC Department of Buildings' determination that a public assembly permit is required, pursuant to Building Code Sections 28-117, 28-102,4,3 and C2-116.0. C5-1/R8B zoning districts.
PREMISES AFFECTED – 945 Madison Avenue, southeast intersection of Madison Avenue and East 75th Street, Block 1389, Lot 50, Borough of Manhattan.
COMMUNITY BOARD #8M
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, August 20, 2013.

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 September 24, 2013, at 10 A.M., for continued hearing.

126-13-A
APPLICANT – Sheldon Lobel, PC, for Woodmere Development LLC, owner.
SUBJECT – Application April 30, 2013 – Appeal of NYC Department of Buildings' determination that a rear yard is required at the boundary of a block coinciding with a railroad right-of-way. R7B Zoning District.
PREMISES AFFECTED – 65-70 Austin Street, 65th Road and 66th Avenue, Block 3104, Lot 101, Borough of Queens.
COMMUNITY BOARD # 6Q
ACTION OF THE BOARD – Laid over to October 8, 2013, 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 September 24, 2013, at 10 A.M., for deferred decision.

134-13-A
APPLICANT – Bryan Cave, for Covenant House, owner.
SUBJECT – Application May 9, 2013 – Appeal of NYC Department of Buildings' determination regarding the right to maintain an existing advertising sign. C2-8/HY zoning district.
PREMISES AFFECTED – 538 10th Avenue aka 460 West 41st Street, Tenth Avenue between 41st and 42nd Streets, Block 1050, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Laid over to October 8, 2013, at 10 A.M., for continued hearing.

227-13-A
APPLICANT – St. Ann's Warehouse by Chris Tomlan, for Brooklyn Bridge Park Development Corp., owner; St. Ann's Warehouse, lessee.
SUBJECT – Application July 26, 2013 – Variance pursuant to the NYC Building Code (Appendix G, Section G304.1.2) to allow for the redevelopment of an historic structure (*Tobacco Warehouse*) within Brooklyn Bridge Park to be located below the flood zone. M3-1 zoning district.
PREMISES AFFECTED – 45 Water Street, (*Tobacco Warehouse*) north of Water Street between New Dock Street and Old Dock Street, Block 26, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #2BK
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 September 24, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

59-12-BZ
CEQR #12-BSA-092Q
APPLICANT – Mitchell S. Ross, Esq., for Ian Schindler, owner.
SUBJECT – Application March 15, 2012 – Variance (§72-21) to allow the enlargement of an existing home, contrary to front yard (§23-45) regulations.
PREMISES AFFECTED – 240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue, Block 8103, Lot 25, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 15, 2012, and acting on Department of Buildings Application No. 420317614 reads, in pertinent part:

1. Proposed reconstruction of an existing landmarked building in the bed of a mapped street;
2. Proposed existing east side yard of 7.54 feet is existing non-complying; building is proposed to be raised and to maintain this existing non-complying side yard . . . contrary to ZR 23-461(a);
3. Proposed existing front yard of 6.23 feet is existing non-complying; building is proposed to be raised and to maintain this existing non-complying front yard . . . contrary to ZR 23-45; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R1-2 zoning district within the Douglaston Hill Historic District, the enlargement of an existing, non-complying single-family detached home that does not provide the required side yard or front yard, contrary to ZR §§ 23-461 and 23-45; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on August 20, 2013; and

WHEREAS, a companion case, BSA Cal. No. 60-12-A, has been filed in accordance with General City Law § 35, seeking authorization from the Board to construct in the bed of a mapped street; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Depew Avenue between Prospect Avenue and Willow Place; and

WHEREAS, the site is a triangular lot with a width of 93.77 feet, a depth of 93.23 feet, and a total lot area of 4,371 sq. ft.; the hypotenuse of the triangle is formed by the boundary of a property occupied by the North Side Branch of the Long Island Railroad; and

WHEREAS, the site is located within an R1-2 district within the Douglaston Hill Historic District and has 93.77 feet of frontage along Depew Avenue; and

WHEREAS, the site is currently occupied by a two-story, detached, single-family home with 846.5 sq. ft. of floor area (0.19 FAR); the applicant notes that the home was built approximately 150 years ago as an "oyster house"; and

WHEREAS, the applicant states that because Depew Avenue has been re-graded and raised over the years, the building is now located approximately three feet below curb level; and

WHEREAS, the applicant states that the building has one non-complying side yard with a width of 7.54 feet (a minimum width of 8 feet is required), and a non-complying front yard with a depth of 6.23 feet (a minimum of depth of 20 feet is required); and

WHEREAS, the applicant proposes to elevate the building to street level and vertically and horizontally enlarge it, while maintaining the existing yard non-compliances, which will result in a home with the following parameters: a floor area of 1,789.39 sq. ft. (0.41 FAR) (a maximum floor area of 2,185.50 sq. ft. (0.50 FAR) is permitted); a side yard with a width of 7.54 feet (a minimum width of 8 feet is required); a front yard with a depth of 6.23 feet (a minimum depth of 20 feet is required); and an open space ratio of 187 percent (an open space ratio of 150 percent is required); and

WHEREAS, because the proposed enlargement does not comply with the R1-2 district regulations, a variance is requested; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations: the significantly underbuilt existing building, the location of the building at three feet below curb level due to the elevation of Depew Avenue, the site's location within a historic district, the triangular shape of the lot, and the building's orientation and location on the lot; and

WHEREAS, the applicant states that the existing building at the site is significantly underbuilt with 846.05 sq. ft. of floor area (0.19 FAR) in the subject R1-2 district, which allows a maximum 0.50 FAR; and

WHEREAS, the applicant represents that, according to a survey of the 54 homes within a 400-foot radius of the subject site, the building is the smallest; and

WHEREAS, further, the applicant notes that, according to the survey, the nearby homes range in size from 1,213 sq. ft. to 6,680 sq. ft. and the average home size is 2,300 sq. ft.; and

WHEREAS, the applicant states that, owing to its small size and below-grade placement, the building is unsuitable for modern residential occupancy, in that the existing ceiling heights are less than seven feet on both the first and second stories, the two bedrooms are only 48 sq. ft. and 110 sq. ft. in area, there is only one bathroom, and there is neither adequate closet space, nor a usable cellar; and

WHEREAS, the applicant states that the building is a contributing structure to the Douglaston Hill Historic District and that such designation effectively prohibits the building's demolition and curtails the applicant's ability to modify the structure in a complying fashion; and

WHEREAS, the applicant represents that providing complying side and front yards is neither feasible—due to the lot's triangular shape and the building's existing orientation on the lot—nor desirable, because the existing orientation contributes to the integrity of the historic district; and

WHEREAS, the applicant explored the feasibility of enlarging the building as-of-right in the rear with no elevation of the existing non-complying yards; and

WHEREAS, the applicant states that the as-of-right enlargement requires a split-level configuration, which is architecturally complicated and creates inefficient layouts; in addition, the split-level scenario is costly, does not adequately address the existing rubble foundations (which are crumbling), and does not address the current drainage problems imposed by the building being three feet below curb level; and

WHEREAS, accordingly, the applicant asserts that an as-of-right enlargement is infeasible; 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 Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; 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 proposal maintains existing non-complying yards, which, though deficient according to the Zoning Resolution, help contribute to the historic character of the area; since no increase in the degree of such non-compliances is proposed, the impact of the enlargement from a bulk perspective is negligible; and

WHEREAS, the applicant states that the proposed enlargement will result in a home that is more in character with the larger, more stately homes in the surrounding area; to support this statement the applicant submitted an analysis of the floor area of surrounding homes, which reflects that the proposed enlargement results in a home that is still below the average size; and

WHEREAS, the applicant notes that the existing front yard is unchanged and that the enlargement is oriented toward the Long Island Railroad property, rather than toward any nearby existing homes; and

WHEREAS, the Landmarks Preservation Commission has approved the enlargement by Certificate of Appropriateness, dated August 14, 2013; 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 lot shape, the peculiar conditions of the existing building and the constraints imposed by the site's being within a historic district; and

WHEREAS, the applicant represents that the proposal is the minimum variance necessary to afford relief; and

WHEREAS, accordingly, 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.

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, within an R1-2 zoning district within the Douglaston Hill Historic District, the enlargement of an existing, non-complying single-family detached home that does not provide the required side yard or front yard, contrary to ZR §§ 23-461 and 23-45; *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 25, 2013"- (3) sheets and "March 13, 2013"- (1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 1,789.39 sq. ft. (0.41 FAR), a side yard with a width of 7.54 feet, a front yard with a depth of 6.23 feet, and an open space ratio of 187 percent, 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) only;

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

THAT significant construction shall 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, August 20, 2013.

60-12-A

APPLICANT – Mitchell S. Ross, Esq., for Ian Schindler, owner.

SUBJECT – Application March 15, 2012 – Proposed construction is also located within a mapped but unbuilt portion of a street, contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue, Block 8103, Lot 25, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 29, 2012, acting on Department of Buildings Application No 420317614 which reads in pertinent part:

1. Proposed reconstruction of an existing landmarked building in the bed of a mapped street contrary to GCL 35; and
2. Proposed existing East side yard is 7.54 feet is existing non-complying, building is proposed to be raised and to maintain this existing non-complying side yard and is contrary to ZR 461(a); and
3. Proposed existing front yard is 6.23 feet is existing non-complying, building is proposed to be raised and to maintain this existing non-complying front yard and is contrary to ZR 23-45; and

WHEREAS, this is an application to permit, in an R1-2 zoning district within the Douglaston Hill Historic District, the enlargement of a single-family home which lies partially in the bed of a mapped unbuilt street, contrary to Section 35 of the General City Law; and

WHEREAS, the applicant concurrently filed a companion application under BSA Cal. No. 59-12-BZ for a variance to permit the enlargement of the existing non-complying single-family with non-complying front and side yards, contrary to ZR § 461(a) and ZR § 23-45; and

WHEREAS, the Board granted the companion variance application by separate decision, dated August 20, 2013; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in the *City Record*, and then to decision on August 20, 2013; and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

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

WHEREAS, the applicant proposes to enlarge an existing historic single-family located within the bed of a mapped unbuilt street contrary to General City Law 35; and

WHEREAS, by letter dated April 11, 2013, the Fire Department states that it has reviewed the site plan and has no objections; and

WHEREAS, by letter dated June 27, 2012, the Department of Transportation ("DOT") states that it has reviewed the proposal and has no objections; and

WHEREAS, DOT states that the subject lot is not currently included in the agency's Capital Improvement Program; and

WHEREAS, by letter dated April 16, 2012, the Department of Environmental Protection advises the Board that there are no existing City sewers or existing City water mains within the referenced location; and

WHEREAS, the Landmarks Preservation Commission has approved the enlargement by Certificate of Appropriateness, dated August 14, 2013; and

WHEREAS, based upon the above, the Board has determined that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved, that the decision of the Queens Borough Commissioner, dated August 29, 2012, acting on Department of Buildings Application No. 420317614, are 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 shall substantially conform to the drawings filed with the application marked "Received March 13, 2013" - (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) 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, August 20, 2013.

86-13-BZ
CEQR #13-BSA-110Q

APPLICANT – Eric Palatnik, P.C., for Yefim Portnov, owner.

SUBJECT – Application March 6, 2013 – Special Permit (§73-621) to allow the enlargement of an existing single-family home, contrary to open space ratio and floor area (§23-141) regulations. R2 zoning district.

PREMISES AFFECTED – 65-43 171st Street, between 65th Avenue and 67th Avenue, Block 6912, Lot 14, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated February 22, 2013, acting on Department of Buildings Application No. 420364956, reads in pertinent part:

1. Proposed enlargement exceeds maximum permitted zoning floor area, which is contrary to ZR 23-141(a);
2. Proposed enlargement does not have minimum required (150%) open space, which is contrary to ZR 23-141(a); 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, contrary to ZR § 23-141; 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 August 20, 2013; 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, Queens, recommends disapproval of this application; and

WHEREAS, the Queens Borough President recommends disapproval of this application; and

WHEREAS, the subject site is located on the east side of 171st Street, between 65th Avenue and 66th Avenue, 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 1,233.19 sq. ft. (0.31 FAR); and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the first and second stories of the building, and construct an attic level; and

WHEREAS, the applicant seeks an increase in the

floor area from 1,233.19 sq. ft. (0.308 FAR) to 2,020.22 sq. ft. (0.505 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks a decrease in open space from 224 percent to 135 percent; the minimum required open space 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 represents, and the Board accepts, that the building has existed in its pre-enlarged state since January 22, 1951, the date on which Certificate of Occupancy No. 70333 was issued; 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 floor area ratio, the applicant represents that the proposed floor area is 101 percent of the maximum permitted; and

WHEREAS, as to the open space ratio, the applicant represents that the proposed reduction in the open space results in an open space that is 90 percent of the minimum required; and

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

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR and open space, 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 August 2, 2013"– (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: two stories and an attic, a maximum floor area of 2,020.22 sq. ft. (0.505 FAR) and a minimum open space of 135 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, August 20, 2013.

101-13-BZ
CEQR #13-BSA-121K
APPLICANT – Dennis D. Dell'Angelo, for Meira N. Sussman, owner.
SUBJECT – Application April 10, 2013 – Special Permit (§73-622) to allow the enlargement of an existing single family home, contrary to open space and floor area (§23-141), side yards (§23-461), and less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1271 East 23rd Street, East side 190' north of Avenue "M", Block 7641, Lot 15, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 18, 2013, acting on Department of Buildings Application No. 320525614, reads in pertinent part:

1. Proposed FAR and OSR constitutes an increase in the degree of existing non-compliance, contrary to ZR 23-141;

2. Proposed horizontal enlargement provides less than the required side yards, contrary to ZR § 23-46 and less than the required rear yard, contrary ZR 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, side yards, and rear yard, contrary to ZR §§ 23-141, 23-46, and 23-47; 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 August 20, 2013; 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 23rd Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 3,000 sq. ft. and is occupied by a single-family home with a floor area of 1,986.23 sq. ft. (0.66 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 1,986.23 sq. ft. (0.66 FAR) to 2,941.9 sq. ft. (0.98 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant also proposes to reduce its rear yard depth from 28'-6" to 20'-0" (a minimum rear yard depth of 30'-0" is required), maintain its existing side yards with widths of 2'-11¼" and 6'-8" (the general requirement in this district is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each; however, because the lot is an existing narrow lot, per ZR § 23-48, two side yards with minimum widths of 5'-0" are required), and reduce its open space from 101 percent to 55 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, in particular, the applicant represents that the proposed 0.98 FAR is in keeping with the bulk in the surrounding area; and

WHEREAS, to support this representation, the applicant submitted a study of the 33 single-family homes within 200 feet of the site; based on the study, seven homes (21 percent) have an FAR of 0.98 or greater; and

WHEREAS, accordingly, 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, side yards, and rear yard, contrary to ZR §§ 23-141, 23-46, 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 10, 2013"- (8) sheets and "August 2, 2013"-(2) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,941.9 sq. ft. (0.98 FAR), a minimum open space of 55 percent, side yards with minimum widths of 2'-11¼" and 6'-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) 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, August 20, 2013.

50-12-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.
COMMUNITY BOARD #12Q
ACTION OF THE BOARD – Laid over to September 24, 2013, at 10 A.M., for adjourned hearing.

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 – Laid over to September 17, 2013, at 10 A.M., for continued hearing.

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.
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 September 24, 2013, at 10 A.M., for adjourned hearing.

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 – Laid over to September 24, 2013, at 10 A.M., for adjourned hearing.

97-13-BZ
APPLICANT – Lewis E. Garfinkel, for Elky Ogorek Willner, owner.
SUBJECT – Application April 8, 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). R3-2 zoning district.
PREMISES AFFECTED – 1848 East 24th Street, west side of East 24th St, 380' south of Avenue R, Block 6829, Lot 26, 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 September 10, 2013, at 10 A.M., for decision, hearing closed.

109-13-BZ
APPLICANT – Goldman Harris LLC, for William Achenbaum, owner; 2nd Round KO, LLC, lessee.
SUBJECT – Application April 22, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*UFC Gym*). C5-5 (Special Lower Manhattan) zoning district.
PREMISES AFFECTED – 80 John Street, Lot bounded by John Street to the north, Platt Street to south, and Gold Street to the west, Block 68, 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 September 17, 2013, at 10 A.M., for decision, hearing closed.

161-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Bennco Properties, LLC, owner; Soul Cycle West 19th street, lessee.
SUBJECT – Application May 28, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Soul Cycle*) within a portion of an existing building. C6-4A zoning district.
PREMISES AFFECTED – 8 West 19th Street, south side of

W. 19th Street, 160' west of intersection of W. 19th Street and 5th Avenue, Block 820, Lot 7503, 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 September 17, 2013, at 10 A.M., for decision, hearing closed.

211-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for NYC Department of Citywide Administrative Services, owner; Civic Center Community Group Broadway LLC, lessee.

SUBJECT – Application July 9, 2013 – Re-instatement (§11-411) of a previously approved variance, which permitted the use of the cellar and basement levels of a 12-story building as a public parking garage, which expired in 1971; Amendment to permit a change to the curb-cut configuration; Waiver of the rules. C6-4A zoning district.

PREMISES AFFECTED – 346 Broadway, Block bounded by Broadway, Leonard and Lafayette Streets & Catherine Lane, Block 170, Lot 6 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 September 24, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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244-13-A
210 East 86th Street, 150 East 86th Street East the Southwest corner of 3rd Avenue east 86th Street, Block 1531, Lot(s) 40, Borough of **Manhattan, Community Board: 8**. Waiver of the requirement of the Building Code 27-305 Table 4-1.and the building requires a sprinkler system through out the building because of the height of the building. C2-8A/R8B district.

245-13-BZ
2660 East 27th Street, between Voorhies Avenue and Avenue Z, Block 7471, Lot(s) 30, Borough of **Brooklyn, Community Board: 15**. 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). R4 zoning district. R4 district.

246-13-BZ
514 55th Street, South side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot(s) 10, Borough of **Brooklyn, Community Board: 7**. Variance (§72-21) to permit enlargement of an existing ambulatory diagnostic treatment health facility(UG4) in R6B and C4-3A zoning districts that exceeds maximum permitted floor area per ZR 24-11 and does not provide required rear yard per ZR 24-36. R6B district.

247-13-A
123 Beach 93rd Street, Located on Western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot(s) 11, Borough of **Queens, Community Board: 14**. Common Law Vested Right to continue development of proposed six-story residential building under prior R6 zoning district. R5A zoning district. R5A district.

248-13-BZ
1179 East 28th Street, Located on the east side of East 28th Street, approximately 127 feet north of Avenue L, Block 7628, Lot(s) 13, 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 (ZR 23-141a); side yards (ZR 23-461). R2 zoning district. R2 district.

249-13-BZ
747 Broadway, Northeast corner of intersection of Graham Avenue, Broadway and Flushing Avenue, Block 3127, Lot(s) 1, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit a Physical Cultural Establishment (Crunch Fitness) within portions of existing commercial building. C4-3 zoning district. C4-3 district.

250-13-BZ
3555 White Plains Road, Located on the west side of White Plains Road approximately 100 feet south of the intersection formed by East 213 Street and White plains Road., Block 4643, Lot(s) 43, Borough of **Bronx, Community Board: 12**. 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. R7A/C2-4 district.

251-13-BZ
1240 Waters Place, east side of Marconi Street, appr9oximately 1678 ft. north of intersection of Water ers Place and Marconi Street, Block 4226, Lot(s) 35, Borough of **Bronx, Community Board: 11**. Special Permit (§73-49) to allow roof top parking in M1-1 zoning contrary to §44-11. M1-1 district.

252-13-BZ
1221 Easa6t 22nd Street, East side of East 22nd Street between Avenue K and Avenue L, Block 7622, Lot(s) 21, 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 (ZR 23-141) and less than the required rear yard (ZR 23-47). R-2 zoning district. R2 district.

253-13-BZ
66-31 Booth Street, North side of Booth Street between 66th and 67th Avenue, Block 3158, Lot(s) 96, Borough of **Queens, Community Board: 6**. Special Permit (§73-621) to enlarge a two story two family home in a residential zoning district (RAB) contrary to §23-141B floor area and floor area ratio requirements. R4B zoning district. R4B district.

254-13-BZ
2881 Nostrand Avenue, East side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot(s) 91, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to permit a bulk variance to allow for the residential development of the property. R3-2 zoning district. R3-2 district.

255-13-BZ
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 **Bronx, Community Board: 12**. 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. C2-4(R7-A) district.

256-13-BZ
25, 27, 31, 33, Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 22, Borough of **Staten Island, Community Board: 2**. 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. R3-2 district.

257-13-BZ
27 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit Right of way., Block 3162, Lot(s) 23, Borough of **Staten Island, Community Board: 2**. VARIANCE 72-21 proposed new buildings has bulk non-compliances resulting from the location, pursuant Section ZR23-45, ZR23-462, and ZR23-891 zoning resolution. R3-2 district.

258-13-BZ
25 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 22, Borough of **Staten Island, Community Board: 2**. VARIANCE 72-21 to proposed new buildings has bulk non-compliance resulting from the location, pursuant Section ZR23-45, ZR23-462 and ZR23-891 zoning district. R3-2 district.

259-13-BZ
33 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid transit right of way, Block 3162, Lot(s) 25, Borough of **Staten Island, Community Board: 2**. VARIANCE 72-21 to proposed new buildings has bulk non-compliance resulting from the location, pursuant ZR23-45, ZR23-462 and ZR23-891zoning resolution. R3-2 district.

260-13-A
25 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 22, Borough of **Staten Island, Community Board: 2**. GCL 35 to permit construction of residential building development within the bed of a mapped street of Article 3 of the General City GCL 35 unmapped street district.

261-13-A
27 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 23, Borough of **Staten Island, Community Board: 2**. GCL 35 to permit construction of residential building development within the bed of mapped street of Article 3 the General City Law R3-2 district.

262-13-A
31 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 24, Borough of **Staten Island, Community Board: 2**. GCL 35 to permit construction residential building development within the bed of a unmapped street of Article 3 of the General City Law GCL35. R3-2 district.

263-13-A
33 Sheridan Avenue, Sheridan Avenue, Block 3162, Lot(s) 25, Borough of **Staten Island, Community Board: 2**. GCL 35 to permit construction of residential building development within the bed of mapped street of Article 3 of the General City Law. R3-2 district.

264-13-BZ
257 West 17th Street, North side, West 17th Street, between 7th & 8th Avenues, Block 767, Lot(s) 6, Borough of **Manhattan, Community Board: 4**. 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. C6-2A district.

265-13-BZ
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: 12**. Variance (72-21) to permit a proposed community facility and residential building contrary to zoning bulk regulations. R3A zoning district. R3-A district.

266-13-BZ
515 East 5th Street, North side of East 5th Street between Avenue A and B, Block 401, Lot(s) 56, Borough of **Manhattan, Community Board: 3**. Variance (§72-21) to legalize the enlargement of a now six story family dwelling contrary to §23-145 (maximum floor area). R7B zoning district. R7B district.

267-13-BZ
689 5th Avenue, North East corner of 5th Avenue and East 54th Street, Block 1290, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture (blink fitness) establishment on the ninth floor the space of the building. C5-3 (MID) zoning district C5-3 MID 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 24, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 24, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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 a previously approved Variance (§72-21) and Special Permit (§73-64) to allow the construction of a two-story addition to the roof of the existing building on the property (*Dalton School*), increase floor area (§24-11) and height, base height and front setback (§24-522 and (§24-522)(b) zoning resolution. 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

606-75-BZ
APPLICANT – Sheldon Lobel, P.C., for Printing House Condominium, owners.
SUBJECT – Application July 3, 2013 – Amendment to permit a reduction in the floor area of the existing maisonette units at the site and reallocation of floor to the townhouse units resulting in no net change in total floor area and a reduction of the units. M1-5 zoning district.
PREMISES AFFECTED – 421 Hudson Street, corner through lot with frontage on Hudson Street, Leroy Street and Clarkson Street, Block 601, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #2M

APPEALS CALENDAR

131-13-A & 132-13-A
APPLICANT – Sheldon Lobel, P.C., for Rick Russo, owner.
SUBJECT – Application May 10, 2013 – Proposed construction of family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R2 & R1 (SHPD) zoning district.
PREMISES AFFECTED – 43 & 47Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, Borough of Staten Island.
COMMUNITY BOARD #1SI

224-13-A
APPLICANT – Slater and Beckerman, P.C., for Michael Pressman, owner.
SUBJECT – Application July 25, 2013 – Appeal challenging the determination by the Department of Buildings that an automatic sprinkler system is required in connection with the conversion of the three family dwelling (J-2 occupancy) to a two-family(J-3 occupancy). R6B zoning district.
PREMISES AFFECTED – 283 Carroll Street, north side of Carroll Street between Smith Street and Hoyt Street, Block 443, Lot 61, Borough of Brooklyn.
COMMUNITY BOARD #6BK

ZONING CALENDAR

339-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Lion Bee Equities, LLC., owner.
SUBJECT – Application December 12, 2012 – Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.
PREMISES AFFECTED – 252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway, Block 8129, Lot p/o 53, Borough of Queens.
COMMUNITY BOARD #11Q

100-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Zipporah Farkas and Zev Farkas, owners.
SUBJECT – Application April 10, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R-2 zoning district.
PREMISES AFFECTED – 1352 East 24th Street, west side of East 24th Street between Avenue M and Avenue N, Block 7659, Lot 69, Borough of Brooklyn.
COMMUNITY BOARD #14BK

106-13-BZ
APPLICANT – Law office of Fredrick A Becker, for Harriet and David Mandalaoui, owners.
SUBJECT – Application April 18, 2013 – Special Permit 73-622, to permit the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yard (ZR 23-461) and perimeter wall height (ZR 23-631); R3-2 zoning district.
PREMISES AFFECTED – 2022 East 21st Street, west side of East 21st Street between Avenue S and Avenue T, Block 7299, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

162-13-BZ

APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.

SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units ground floor retail and 11 parking spaces contrary to zoning regulations. M1-5B zoning district.

PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100' south of Spring street, Block 490, Lot 27, 35, Borough of Manhattan.

COMMUNITY BOARD #2M

167-13-BZ

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 in a use group R5 district contrary to §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

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 10, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

228-00-BZ
APPLICANT – Sheldon Lobel, P.C. for Hoffman & Partners LLC, owner.
SUBJECT – Application August 10, 2012 – Extension of time to complete construction of a previously approved variance (§72-21) which permitted the conversion of a vacant building in a manufacturing district for residential use (UG 2), which expired on May 15, 2005; Amendment for minor modifications to approved plans; Waiver of the Rules. M1-1 zoning district.
PREMISES AFFECTED – 28/32 Locust Street, southeasterly side of Locust Street between Broadway and Beaver Street. Block 3135, Lot 16. 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of time to complete construction and obtain a certificate of occupancy in accordance with a variance, which expired on May 15, 2005, and an amendment to permit partition changes, removal of the garbage chute and freight elevator, and other minor modifications to the approved plans; 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 20, 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, the subject site is located on the east side of Locust Street between Beaver Street and Broadway, within an M1-1 zoning district; and

WHEREAS, the site is occupied by a four-story building with 26,392 sq. ft. of floor area and 19 dwelling units; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 15, 2001 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing industrial building to residences (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, as of May 15, 2005, substantial construction had not been completed; accordingly, on that date, per ZR § 72-23, the variance lapsed; and

WHEREAS, the applicant represents that substantial construction was not achieved within the permitted time period because the owner suffered from financial difficulties and health problems; and

WHEREAS, the applicant states that construction is approximately 80 percent complete and that a two-year extension will allow enough time to complete construction and remove outstanding violations; and

WHEREAS, as to the proposed amendment to the variance, the applicant proposes the following modifications to the approved plans: (1) removal of the garbage chute and freight elevator and expansion of the exiting open metal staircase (fire escape); (2) addition of room partitions in several residential units; (3) reconfiguration of the meter room, mechanical rooms, and refuse storage at the basement level; (4) addition of corridors in the basement; and (5) installation of three skylights within the existing pitched roof; and

WHEREAS, at hearing, the Board raised concerns about the proposed interior layouts within the apartments and requested clarification regarding the sprinkler system; and

WHEREAS, in response, the applicant submitted amended plans including the standard note indicating that interior layouts are subject to Department of Buildings' approval; in reference to the sprinkler system, the applicant submitted: (1) a letter from the sprinkler company confirming that the sprinkler system is operational and regularly maintained; (2) confirmation that the Fire Department inspects the sprinkler system at least annually; and (3) photographs of the sprinkler system; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time 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 15, 2001, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for a period of two years from September 10, 2013, to expire on September 10, 2015, and to permit partition changes, removal of the garbage chute and freight elevator, and other minor modifications, as noted above; on condition that all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received August 13, 2013- (12) sheets; and on further condition:

THAT substantial construction will be completed by September 10, 2015;

THAT the interior layouts within the dwelling units will be as approved by DOB;

THAT the sprinkler system will be maintained and tested in accordance with all applicable laws;

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)/configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, September 10, 2013.

378-04-BZ

APPLICANT – Sheldon Lobel, PC, for Krzysztof Ruthkoski, owner.

SUBJECT – Application May 16, 2013 – Extension of time to complete construction of a previously granted variance (§72-21) for the construction of a four-story residential building with an accessory four-car garage, which expired on December 11, 2011 and an Amendment to reduce the scope and non-compliance of the approval; waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection formed by Kingsland Avenue and Richardson Street, Block 2849, Lot 1, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to complete construction of a previously granted variance for a three-story residential building (Use Group 2) in a manufacturing district, which expired on December 11, 2011, and an amendment to reduce the number of stories and total floor area, and to allow a conforming warehouse use (Use Group 17) on the first story; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, and then to decision on September 10, 2013; and

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application, provided that the first story is not used for an eating and drinking establishment; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Kingsland Avenue and Richardson Street, within an M1-1 zoning district; and

WHEREAS, the site has a lot area of approximately 2,733 sq. ft. and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 11, 2007 when, under the subject calendar number, the Board granted a variance authorizing the construction of a three-story residential building with 5,317 sq. ft. of floor area (1.95 FAR), six dwelling units and four accessory off-street parking space within an M1-1 zoning district, contrary to ZR § 42-00; and

WHEREAS, the applicant now seeks to amend the variance as follows: (1) reduce the number of stories from three to two; (2) reduce the total floor area from 5,317 sq. ft. (1.95 FAR) to 4,405 sq. ft. (1.60); (3) reduce the number of dwelling units from six to three; (4) reduce the number of accessory off-street parking spaces from four to two; and (5) change the use of the proposed first story from residential to conforming warehouse and accessory office uses (Use Group 17); and

WHEREAS, at hearing, the Board raised the following concerns: (1) whether the proposed dwelling units satisfy the minimum size requirements; and (2) whether the first floor use would be compatible with the residential use on the upper floors and the Community Board's request that no eating and drinking establishment be permitted on the first story; and

WHEREAS, in response, the applicant submitted an amended statement confirming that the proposed dwelling units satisfy the requirement for minimum dwelling unit size in an R6 district; as to the first floor use, the applicant represents that it will be used for office and storage use which will be compatible with the residential use above; further, the applicant had no objection to a prohibition on an eating and drinking establishment at the site; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on December 11, 2007, so that as amended this portion of the resolution shall read "to extend the time to complete construction for a period of two years from September 10, 2013, to expire on September 10, 2015, and to permit the noted modifications to the site; *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 16, 2013'- (9) sheets and 'July 16, 2013'-(1) sheet; and *on further condition*:

THAT the first story use will be restricted to office, storage and/or warehouse uses;

THAT substantial construction will be completed by September 10, 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 Department of Buildings must ensure compliance 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. 320751218)

Adopted by the Board of Standards and Appeals, September 10, 2013.

107-11-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Yeshiva Bais Yitzchok, owners.
SUBJECT – Application March 8, 2013 – Amendment of a previously granted variance (§72-21) to waive bulk regulations for the enlargement of a synagogue and rabbi's residence (*Congregation Yeshiva Bais Yitzchok*); amendment classifies the enlargement as a new building, which requires a waiver of parking regulations (§25-31). R4-1 zoning district.
PREMISES AFFECTED – 1643 East 21st Street, east side of 21st Street, between Avenue O and Avenue P, Block 6768, Lot 84, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance permitting the enlargement of an existing building occupied by a synagogue (Use Group 4) and rabbi's apartment contrary to the R4-1 bulk regulations; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, and then to decision on September 10, 2013; 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;

WHEREAS, the subject site is located on the east side of East 21st Street, between Avenue O and Avenue P, within an R4-1 zoning district; and

WHEREAS, the subject lot has a width of 40 feet, a depth of 100 feet, and a lot area of 4,000 sq. ft.; 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 variance authorizing the enlargement of an existing building occupied by a synagogue (Use Group 4) and rabbi's apartment, which does not comply with the underlying zoning district regulations for lot coverage, height and setback, front yard, side yards, rear yard, and distance between windows and lot lines, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, 24-36, and 24-651; and

WHEREAS, the applicant now seeks to amend the variance to include a parking waiver, the introduction of a sub-cellar and other modifications that do not alter the envelope of the building or increase the total floor area proposed; and

WHEREAS, as to the parking waiver, the applicant represents that although the original proposal was for an enlargement, the nature and scope of the enlargement made substantive re-use of the existing walls for load-bearing purposes impractical; as such, must be analyzed as a new building (development), which changes the parking requirements; and

WHEREAS, specifically, the applicant states that due to the change from enlargement to development, the number of parking spaces required for the building will be calculated based on the largest room in the building and that such calculation gives rise to a parking requirement of 16 spaces; and

WHEREAS, the applicant notes that it is ineligible for the parking waiver for locally oriented houses of worship pursuant to ZR § 25-33 because the site generates 16 required spaces and the number of spaces that may be waived must be less than ten in the subject R4-1 district; and

WHEREAS, however, the applicant represents that it satisfies the criteria for a waiver under ZR § 25-35 (City Planning Certification for Locally Oriented Houses of Worship); specifically, the applicant submitted evidence that demonstrates that 76 percent of the congregants live within ¾ mile of the site; applying the 76 percent figure to the 235 persons rated capacity ("PRC") produces a reduced PRC of 56, which results in a parking requirement of four spaces (five fewer than the nine that may be waived pursuant to ZR § 25-33); and

WHEREAS, accordingly, the applicant asserts that waiver of the required parking is appropriate; and

WHEREAS, the applicant also proposes the following site modifications, which the applicant represents do not alter the envelope of the building or increase the total floor area proposed: (1) the introduction of a sub-cellar to accommodate a larger mikvah; (2) the enlargement of the cellar multipurpose room; (3) the relocation of the first floor level to curb level; (4) the elimination of a vestibule in the first story; (5) the relocation of administrative space; (6) a minor increase in the size of the Rabbi's residence; and (7) a more uniform façade without the originally-approved staggered heights; and

WHEREAS, based upon 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 *reopens* and *amends* the resolution, as adopted on July 10, 2012, to permit the noted modifications to the site; *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 2, 2013'- Seventeen (17)

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 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."

(DOB Application No. 320333590)

Adopted by the Board of Standards and Appeals, September 10, 2013.

699-46-BZ

APPLICANT – Eric Palatnik, P.C., for Gurcharan Singh, owner.

SUBJECT – Application September 17, 2012 – Amendment (§11-412) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory use. The amendment seeks to convert existing service bays to a convenience store, increase the number of pump islands, and permit a drive-thru to the proposed convenience store. R3X zoning district.

PREMISES AFFECTED – 224-01 North Conduit Avenue, between 224th Street and 225th Street, Block 13088, Lot 44, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

615-57-BZ

APPLICANT – Sheldon Lobel, P.C. for Cumberland farms,INC., owner.

SUBJECT – Application May 10, 2013 – Extension of term (§11-411) of a previously granted variance for the continued operation of a (UG 16B) automotive service station (*Gulf*) with accessory uses, which expired on June 5, 2013. C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, Located on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place. Block 6731, Lot 1. 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 October 8, 2013, at 10 A.M., for decision, hearing closed.

274-59-BZ

APPLICANT – Laurence Dalfino, R.A., for Richard Naclerio, Member, Manorwood Realty, LLC, owner.

SUBJECT – Application September 18, 2012 – Extension of term (§11-411) of a previously granted variance for the continued operation of a private parking lot accessory to a catering establishment, which expired on September 28, 2011; Waiver of the Rules. R-4/R-5 zoning district.

PREMISES AFFECTED – 3356-3358 Eastchester Road aka 1510-151 Tillotson Avenue, south side of Tillotson Avenue between Eastchester Road & Mickle Avenue, Block 4744, Lot 1, 62, Borough of Bronx.

COMMUNITY BOARD #12BX

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 October 8, 2013, at 10 A.M., for decision, hearing closed.

723-84-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Alameda Project Partners Ltd/Cristine Briguglio, owners.

SUBJECT – Application June 6, 2013 – Extension of term of a previously approved variance (§72-21) which permitted a medical office, which expired on October 30, 2012. R1-2 zoning district.

PREMISES AFFECTED – 241-02 Northern Boulevard, southeast corner of intersection Northern Boulevard and Alameda Avenue, Block 8178, Lot 1, 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 October 8, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to October 22, 2013, at 10 A.M., for adjourned hearing.

161-99-BZ & 162-99-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Banner Garage LLC, owner; TSI East 76 LLC dba New York Sports Club, lessee.
SUBJECT – Application January 25, 2012 – Extension of term of a previously granted Special Permit (§73-36) which permitted the operation of a physical culture establishment which expired on June 28, 2010; Amendment to permit a change in the hours of operation; Extension of time to obtain a Certificate of Occupancy which expired on June 28, 2004; Waiver of the Rules. C2-5 (R8B) zoning district.
PREMISES AFFECTED – 349 & 353 East 76th Street, northerly side of East 76th Street between 2nd Avenue and 1st Avenue, Block 1451, Lot 4 & 16, 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 October 8, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

200-10-A. 203-10-A thru 205-10-A
APPLICANT – Sheldon Lobel, PC, for William Davies LLC, owner.
SUBJECT – Application June 21, 2013 – Extension of time to complete construction and obtain a Certificate of Occupancy of a previous vested rights approval, which expires on June 21, 2013. Prior zoning district R5. R4-1 zoning district.
PREMISES AFFECTED – 1359, 1365, 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lot 15, 13, 12 Borough of Queens.
COMMUNITY BOARD #14Q
ACTION OF THE BOARD – Appeals granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
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 on four attached single-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, and then to decision on September 10, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject site is located on the southwest corner of Davies Road and Caffrey Avenue, in an R4-1 zoning district; and

WHEREAS, the site consists of Tax Lots 12 and 14 (Tentative Lots 12, 13, 14 and 15) and has 100 feet of frontage along Davies Road, 75 feet of frontage along Caffrey Avenue, and a total lot area of 7,500 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with four attached single-family homes; the homes on Lots 12 and 15 (the end lots) each have a floor area of 2,329 sq. ft., and the homes on Lots 13 and 14 (the middle lots) each have a floor area of 2,125 sq. ft. (the "Homes"); and

WHEREAS, the subject site is currently located within an R4-1 zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, the Homes comply with the former R5 zoning district parameters, specifically with respect to floor area ratio ("FAR") and use; and

WHEREAS, however, on August 14, 2008 (the "Enactment Date"), the City Council voted to adopt the Rockaway Neighborhoods Rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, the Homes do not comply with the R4-1 zoning district parameters as to FAR, and attached homes are not permitted in R4-1 districts; 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, the applicant states that New Building Permit Nos. 402607345-01-NB, 402607390-01-NB and 402607407-01-NB were issued on August 30, 2007, and New Building Permit No. 402607504-01-NB was issued on September 13, 2007 (collectively, the "Permits"), authorizing the development of four attached single-family homes pursuant to R5 zoning district regulations; and

WHEREAS, however, the applicant states that the Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R4-1 zoning district regulations and the Department of Buildings ("DOB") determined that the Homes' foundations were not complete; and

WHEREAS, on June 21, 2011, under the subject calendar numbers, the Board recognized a vested right to continue construction under the Permits based on its determination that the owner had performed substantial work, made substantial expenditures, and would suffer serious loss if the Homes were required to comply with the R4-1 district regulations; and

WHEREAS, the 2011 grant allowed two years from the date of the June 21, 2011 grant to complete construction and obtain a certificate of occupancy; and

WHEREAS, as of June 21, 2013, construction had not been completed and a certificate of occupancy had not been obtained; and

WHEREAS, accordingly, the applicant now seeks an

additional two years to complete construction and obtain a certificate of occupancy; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued validly prior to the Enactment Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, as noted in the prior grant, by letter dated December 23, 2010, DOB stated that the Permits were validly issued, authorizing construction of the Homes prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a valid 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 to substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following: 100 percent of site preparation work; installation of 84 wooden timber piles, accounting for 100 percent of pile installation; 25 percent of excavation work; installation of 30 percent of the pile caps; and the pouring of ten cubic yards of concrete required for the foundation, accounting for 32 percent of footing installation; and

WHEREAS, the applicant states that, since the Board's 2011 grant, very little work has been performed, owing in part to delays at DOB, and that such work amounts to: rebuilding the construction fence, excavation and soil removal; accordingly, with respect to its claim of substantial construction, the applicant relies primarily on the work performed prior to the Enactment Date; and

WHEREAS, the applicant submitted the following evidence: photographs of the site showing the amount of work completed as of the Enactment Date, concrete pour tickets, a foundation plan, an affidavit from the contractor, a TR5 Technical Report related to the installation of piles, vibration monitoring field inspection reports, a letter from the engineer, and concrete inspection and testing reports; 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, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant periods; 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 states that prior to the Enactment Date, the owner expended $149,921.29, including hard and soft costs and irrevocable commitments, out of $1,248,856.24 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and work orders; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred $102,186 for the work performed at the site as of the Enactment Date, representing 47 percent of the foundation-related hard costs; and

WHEREAS, the applicant further states that the owner paid an additional $47,735 in soft costs related to the work performed at the site as of the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 12 percent of the projected total cost; and

WHEREAS, the applicant further represents that since the Board's 2011 grant, the owner has incurred approximately $11,530 in new expenditures and incurred costs; accordingly, with respect to its claim of substantial expenditures, the applicant relies primarily on the expenditures made prior to the Enactment Date; 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 considers 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 if vesting were not permitted, the site's permissible FAR would be reduced from 1.25 to 0.90, and attached homes would not be permitted; therefore, if required to construct pursuant to R4-1 district regulations, the applicant would be required to eliminate one of the homes from the site and redesign the entire site plan for the development; and

WHEREAS, the applicant submitted a complying site plan for the R4-1 district reflecting that the development would be reduced to three detached single-family homes with 2,250 sq. ft. of floor area each; and

WHEREAS, the applicant represents that the complying scenario would reduce the project value by approximately $540,000, resulting in a project loss of $170,000 under the complying scenario; and

WHEREAS, the applicant states that only 28 of the 84 timber piles installed at the site could be utilized in a complying development, resulting in a loss of approximately $42,175 in pile installation costs alone; and

WHEREAS, the applicant further states that the existing southeastern foundation wall is unusable in the complying development because the first floor extends over the wall by approximately three feet; therefore, approximately 22 cubic yards of concrete would also be lost under the complying development; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any conforming construction, and the loss of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and 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 Homes had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved, that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 402607345-01-NB, 402607390-01-NB, 402607407-01-NB, and 402607504-01-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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 10, 2013.

246-12-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 515 East 5th Street, LLC, owner.

SUBJECT – Application August 9, 2012 – Application seeking a determination that the owner of the property has acquired a common law vested right to complete construction under the prior R7-2 zoning. 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 – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

THE RESOLUTION –

WHEREAS, this is an application requesting a Board determination that the owner of the premises has obtained the right to vest the enlargement to a five-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 21, 2013, after due notice by publication in *The City Record*, with a continued hearing on July 23, 2013, and then to decision on September 10, 2013; 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 3, Manhattan, recommends disapproval of this application; and

WHEREAS, City Council Member Rosie Mendez, Manhattan Borough President Scott Stringer, State Assemblymember Brian Kavanagh, and State Senator Brad Hoylman submitted testimony in opposition to the application; and

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

WHEREAS, the Tenants Association of 515 East 5th Street (the "Opposition"), represented by counsel provided testimony in opposition to the application; and

WHEREAS, the site is located on the north side of East 5th Street, between Avenue A and Avenue B; and

WHEREAS, the site has a width of approximately 25 feet, a depth of approximately 97 feet, and a lot area of 2,425 sq. ft.; and

WHEREAS, the site is occupied by a non-fireproof multiple dwelling building built prior to 1901 (the "Building"); prior to being enlarged, the building was five stories (a height of 49'-0") and contained 7,000 sq. ft. of floor area including ground floor retail use and 17 apartments; and

WHEREAS, the applicant seeks to vest its permits under the common law doctrine of vested rights; alternatively, the applicant seeks (1) recognition that it has obtained a statutory

vested right pursuant to ZR § 11-332 or (2) reversal of DOB's decision that construction must comply with the current R7B zoning district regulations; and

WHEREAS, the applicant states that in 2007, it constructed a sixth floor and partial seventh floor as well as a ground floor extension; and

WHEREAS, the sixth floor includes 1,400 sq. ft. of floor area; the partial seventh floor includes 419 sq. ft. of floor area; and the ground floor enlargement includes 275 sq. ft. of floor area; and

WHEREAS, the floor area with all the enlargements would be 9,194 sq. ft. or 8,775 sq. ft. without the partial seventh floor; and

WHEREAS, the proposal with the enlargement includes 17 units, which are reconfigured from the original and include four duplexes on the sixth and seventh floors; and

WHEREAS, the subject site is currently located within an R7B zoning district, but was formerly located within an R7-2 zoning district; and

WHEREAS, the applicant represents that the Building complies with the former R7-2 zoning district parameters, specifically with respect to floor area and density; and

WHEREAS, however, on November 19, 2008 (the "Enactment Date"), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site to R7B, as noted above; and

WHEREAS, the Building does not comply with the R7B zoning district parameters for floor area and density; and

WHEREAS; the applicant now seeks to proceed pursuant to R7-2 zoning regulations; and

Procedural History

WHEREAS, the applicant states that Application No. 104368845 (the "Permit"), an Alteration Type 1 permit for the construction of the Building's enlargement, was issued by the Department of Buildings ("DOB") on March 7, 2006; and

WHEREAS, the applicant states that the Permit was filed in conjunction with Application No. 104316063, an Alteration Type 2, which included the removal of partitions, mechanical vents, and replacement of defective wood joists and was originally issued on December 22, 2005; and

WHEREAS, according to DOB records, the Building's sixth and seventh floor apartments were occupied as of December 2006, absent a Certificate of Occupancy; and

WHEREAS, such occupancy has been the subject of at least seven violations for illegal occupancy, including the one served on December 6, 2006 which reads in pertinent part:

> ALTERED BUILDING OCCUPIED WITHOUT A VALID CERTIFICATE OF OCCUPANCY: NOTE UNDER ALT#104368845 SIXTH FL AND PENTHOUSE OCCUPIED WITHOUT A VALID C OF O.
>
> REMEDY: DISCONTINUE ILLEGAL USE. OBTAIN VALID C OF O; and

WHEREAS, the applicant represents that construction of the enlargement and renovation of the Building was completed in 2007; and

WHEREAS, on December 4, 2008, DOB issued a stop work order; and

WHEREAS, the Building is the subject of two prior Board cases and associated proceedings pursuant to Article 78; and

WHEREAS, on September 11, 2007, pursuant to BSA Cal. No. 67-07-A, the Board granted an appeal filed by the Opposition and reversed DOB's determination that the enlargement complied with ZR § 23-692 (the "Sliver Law Appeal"); and

WHEREAS, the applicant appealed the Board's decision in Matter of 515 East 5th Street v. BSA, S. Ct. New York Co. Index No. 113745/07 and the court upheld the Board's decision to reverse DOB; and

WHEREAS, in Matter of 515 East 5th Street, the court found that "[t]he fact that DOB had concluded otherwise and had previously approved the construction of similar penthouses was neither binding on the BSA nor dispositive of the issues before the court. Since the BSA's interpretation of the Sliver Law was rational, it must be upheld. *See Matter of Toys "R" Us. V. Silva, 89 N.Y.2d 411, 418-19 (1996)*;" and

WHEREAS, on November 25, 2008, pursuant to BSA Cal. No. 82-08-A, the Board granted a second appeal filed by the Opposition seeking the revocation of the Permit due to a failure to comply with the applicable provisions of the MDL absent the Board's waiver (the "MDL Appeal"); and

WHEREAS, the applicant appealed the Board's decision in Matter of 515 East 5th Street, 514 East 6th Street, and 516 East 6th Street, S. Ct. New York Co. Index No. 117203/08 and the court determined that the case was not ripe for review because the property owner's purported injury resulting from the Board's overturning DOB's approval could potentially be cured by seeking the MDL waivers from the Board; and

WHEREAS, accordingly, in July 2009 the court marked the case off calendar pending the outcome of the applicant's application for MDL waivers from the Board, and the applicant's opportunity to appeal the Board's November 2008 decision remains; and

WHEREAS, by letter dated July 10, 2012, DOB issued a letter denying the applicant's request to reinstate the Permit because it lacks the authority to reinstate the revoked permit under the prior zoning; and

WHEREAS, on August 9, 2012, the applicant filed the subject application and a companion application to the subject application, pursuant to BSA Cal. No. 245-12-A seeking the Board's waiver of certain MDL provisions; and

WHEREAS, on September 6, 2013, the applicant filed a variance application under ZR § 72-21 seeking a waiver of the zoning non-compliance, pursuant to BSA Cal. No. 266-12-BZ; and

WHEREAS, on September 10, 2013, the Board removed the companion MDL application from its calendar pending the outcome of the variance application; and

Common Law Vesting

WHEREAS, the applicant asserts that it has a vested right to proceed pursuant to the common law doctrine of vested rights; and

WHEREAS, the applicant asserts that it has (1) completed substantial construction in that the enlargement is complete; (2) has made substantial expenditures of 100 percent of the total cost of the enlargement; and (3) would incur serious loss if required to comply with the R7B zoning regulations; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit was issued lawfully prior to the Enactment Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, the applicant states that the Permit was issued based upon an approved application which showed complete plans and specifications authorizing the complete construction, and it was issued prior to the Enactment Date, thus it was lawfully issued; and

WHEREAS, the applicant also represents that the plans were subject to DOB review and approval, which affirms the permit's validity; and

WHEREAS, the applicant requests that the Board determine that the permit was valid by invoking its authority pursuant to Section 666(7) of the New York City Charter "to vary or modify any rule or regulation or the provisions of any law relating to the construction . . . of buildings or structures"; and

WHEREAS, specifically, the applicant asks that the Board determine that the Sliver Law non-compliance at the time of permit issuance does not render the permit invalid because a prospective application of the Sliver Law interpretation in the Sliver Law Appeal is consistent with the spirit of the law; and

WHEREAS, the applicant asserts that by approving the vesting application and the companion MDL application, the Board would not be endorsing or sustaining the zoning error that led to the construction of the partial seventh floor since the removal of the partial seventh floor and the MDL waivers will cure the height violation and a grant of prospective application will meet the legislative intent of the Zoning Resolution; and

WHEREAS, the applicant asserts that (1) if the Board does not grant an approval that will allow him to continue construction, substantial justice will not be done; (2) the application of the Sliver Law under which the approval was made was reasonable; and (3) the Board's reversal of DOB's approval leads to a harsh result; and

WHEREAS, as to substantial justice, the applicant asserts that, pursuant to Charter Section 666(7), the Board has a duty to modify the application of "the strict letter of the law, so that the spirit of the law shall be observed" and to do "substantial justice"; and

WHEREAS, the applicant asserts that to enforce the Sliver Law and deem the permit unlawful so that the R7B zoning regulations must be applied is unjust; and

WHEREAS, the applicant asserts that a prospective application of the Sliver Law is consistent with the spirit of the law because it is not asking to maintain the partial seventh floor that was the subject of the Sliver Law Appeal; and

WHEREAS, the applicant asserts that DOB's erroneous approval of the Sliver Law non-compliance can be remedied by the Board; and

WHEREAS, the applicant also notes that the Board did not direct the Permit to be revoked in the Sliver Law Appeal decision and contends that the decision to revoke permits must be considered consistently and with reason; and

WHEREAS, the applicant cites to the Board's decision in BSA Cal. No. 125-11-A (the "East 6th Street Vesting Case") and the Board's and the court's decision in BSA Cal. No. 140-07-A and Golia v. Srinivasan, 95 A.D.3d 628 (2d Dep't 2012) (the "Breezy Point Case"); and

WHEREAS, the applicant asserts that the Board's determination that the permit in the East 6th Street Vesting Case was valid must be applied to the subject case, which, like the East 6th Street building, was also the subject of the MDL Appeal and whose permit the Board directed DOB to revoke on November 25, 2008; and

WHEREAS, the applicant states that (1) the circumstance in the East 6th Street Vesting Case are the same in that the objections are for MDL noncompliance and DOB's erroneous assumption of authority because the partial seventh floor will be removed (and with it the Sliver Law non-compliance) so what remains is the same MDL non-compliance; (2) because the Board directed DOB to revoke the East 6th Street and East 5th Street buildings' permits on the same day, through the same November 25, 2008 resolution in the MDL Appeal, they must have been revoked for the same reason, which is the MDL non-compliance; and (3) DOB is inconsistent as to what is correctable error and what is not and thus the absence of its statement that there are correctable errors in the subject case is not meaningful; and

WHEREAS, the applicant states that the error in DOB granting the Permit was due to its long-standing and plausible policy of interpreting the Sliver Law, the Board's resolution in the Sliver Law Appeal did not include direction to revoke the Permit, and the height violates the MDL and zoning; and

WHEREAS, the applicant states that the Breezy Point Case instructs the Board to apply a prospective application of its zoning interpretation and to not require that subsequently discovered zoning non-compliance renders a permit invalid retroactively; and

WHEREAS, the applicant states that the Breezy Point Case supports the reinstatement of a permit by the Board when DOB makes a mistake in interpreting the Zoning Resolution; and

WHEREAS, the applicant asserts that the Sliver Law is sufficiently ambiguous such that DOB's interpretation is reasonable in the same way it found it to be in the Breezy Point Case; and

WHEREAS, accordingly, the applicant asserts that the Permit was valid and should be deemed valid notwithstanding the fact that it did not comply with the zoning in effect at the time of its issuance at any time before or after the Enactment Date; and

Supplementary Arguments

WHEREAS, the applicant submits the following two supplementary arguments: (1) that it can vest the Building

pursuant to ZR § 11-33 *et seq* and that (2) DOB can reinstate the Permit pursuant to the prior zoning; and

WHEREAS, first, the applicant asserts that it has obtained a statutory vested right, pursuant to ZR § 11-332(a) because it finds that the proposal is "other construction" as defined by ZR 11-31(c)(3) and the construction was completed by the Enactment Date; and

WHEREAS, secondly, the applicant seeks to overturn DOB's July 10, 2012 determination that it could not reinstate the Permit pursuant to the prior zoning, but did not pursue this claim; and

DOB's Position

WHEREAS, DOB states that the Permit is not valid and cannot form the basis for a vested right to proceed; and

WHEREAS, DOB states that the claim of a valid permit at the time of the zoning change fails because the Board determined that the Permit was not valid for reasons unrelated to the zoning change, by its Sliver Law Appeal and its MDL Appeal, which each render the Permit invalid and not entitled to vested rights; and

WHEREAS, DOB cites to the Board's Sliver Law Appeal in which it stated that the Board does not have the authority "simultaneously to determine that the building permits for the expansion of the Building were issued unlawfully and to permit DOB to ignore that fundamental fact; and . . . furthermore, as an administrative body, the Board does not have the equitable powers of a court to address any alleged unfairness to the Owner that may result from its decision in the instant appeal;" and

WHEREAS, DOB disagrees with the applicant's position that the distinctions between the East 6th Street Vesting Case and the subject case are not meaningful because it states that the Board exercised its authority under MDL Section 310 to cure the East 6th Street MDL non-compliance but the Board does not have power to cure the Sliver Law non-compliance through the vesting application; and

WHEREAS, additionally, at the Board's request, DOB performed an audit, dated April 15, 2013, to review the plans it approved on November 13, 2006 for compliance with the prior R7-2 zoning regulations, as if the partial seventh floor were removed (to eliminate Sliver Law non-compliance); and

WHEREAS, DOB submitted the audit results which includes objections for Building Code and MDL non-compliance as well as zoning non-compliances: (1) due to the removal of 75 percent of the floor area, the Building must comply with district bulk regulations and not exceed 12 dwelling units; (2) because the density is exceeded, the Building cannot be enlarged pursuant to Quality Housing bulk regulations and therefore exceeds maximum floor area; (3) insufficient size of first floor dwelling unit, required to be established as pre-existing; and (4) the plans do not specify proposed community facility (Use Group 4) on first floor and cellar; and

WHEREAS, DOB states that even if the Board grants the vested rights application and waiver to the MDL, the remaining objections will need to be addressed; and

WHEREAS, accordingly, DOB states that the application to reinstate the Permit pursuant to vested rights must fail; and

The Opposition's Position

WHEREAS, the Opposition states that the Board and DOB have stated that the Permit was invalid and it should be declared invalid on two separate grounds: (1) the Permit improperly allowed an enlargement which did not comply with the Sliver Law and (2) in issuing the permit, DOB waived applicable MDL provisions without the legal authority to do so; and

WHEREAS, the Opposition cites to Jayne Estates v. Raynor, 22 N.Y.2d 417, 422 (1968) for the principle that "one does not acquire vested rights where one builds in reliance on an invalid permit;" and to Parkview Associates v. City of New York, 71 N.Y.2d 274, 281 (1988), in which the court stated that the "building permit was invalid when issued, vesting no rights"; and

WHEREAS, the Opposition adds that even where DOB erroneously issues a permit as a result of its own failure, vested rights are not acquired, citing Perrotta v. City of New York, 71 N.Y.2d 274 (1985), *aff'd* 66 N.Y.2d 859 (1985); and

WHEREAS, accordingly, the Opposition states that because the applicant's construction was completed pursuant to an invalid permit, the vested rights claim must fail; and

WHEREAS, the Opposition asserts that to reinstate the Permit would be to (1) act contrary to prior Board determinations that have been affirmed by the Supreme Court; (2) reverse the Board's stated position of deference to DOB on the question of permit validity; (3) overlook the applicant's bad faith toward the Board, the Supreme Court, and the Building's tenants; and (4) retroactively amend the permit to eliminate the portions that allowed the partial seventh floor in violation of the Sliver Law; and

WHEREAS, the Opposition states that the applicant who has acted in bad faith cannot benefit from equitable relief and cites to the applicant's failure to bring the Building into compliance with applicable laws and regulations while occupying the Building; and

WHEREAS, the Opposition notes that the Enactment Date was more than a year after the Board invalidated the Permit for failure to comply with the Sliver Law and nearly six months after the Board's determination was affirmed by the Supreme Court but that at no time in the intervening months did the applicant take any measures to revise it plans to demonstrate compliance with the Sliver Law through removal of the Building's partial seventh floor; and

WHEREAS, the Opposition notes that the applicant also failed to pursue a zoning variance application but rather in contravention to DOB orders, it maintained the non-complying seventh floor and continued to occupy and collect rent for the four new apartment units; and

WHEREAS, the Opposition notes that more than three years passed between the Supreme Court's determination that the MDL Appeal was not ripe for review on July 24, 2009 and the applicant's filing the subject application and the companion MDL application and all during that time, the Building has been occupied and the applicant has collected

revenue; and

WHEREAS, the Opposition also asserts that the Building's enlargement does not comply with either the current or prior zoning; and

WHEREAS, additionally, the Opposition asserts that the statutory vested rights claim is untimely based on the clear language of the text; and

Conclusion

WHEREAS, the Board first notes that it ruled on the validity of the Permit in 2007 in the Sliver Law Case in which it determined that the Permit, issued contrary to the Sliver Law, was unlawful; and

WHEREAS, the Board notes that the facts and circumstances surrounding the Permit have not changed since that determination except that the Supreme Court upheld the Board's decision; and

WHEREAS, accordingly, the Board declines to reconsider or reverse its decision and maintains that the Permit, issued contrary to the Sliver Law, is unlawful; and

WHEREAS, the Board finds that the threshold vesting requirement that there be a valid permit prior to the Enactment Date is not met; and

WHEREAS, the Board distinguishes the East 6th Street Vesting Case and the Breezy Point Case; and

WHEREAS, as to the comparison to the East 6th Street Vesting Case, the Board notes that, in the MDL Appeal, it directed DOB to revoke the Permit due to MDL-noncompliance, which was a jurisdictional issue that was subsequently resolved, by the East 6th Street MDL Case; and

WHEREAS, the Board notes that the Permit and the East 6th Street permit had actually lapsed by operation of law on November 19, 2008 before it directed their revocation on November 25, 2008; and

WHEREAS, the Board notes that in the East 6th Street Vesting Case, DOB stated (by its January 10, 2012 submission) that the reinstatement of the East 6th Street permit "would not present a correctable error issue" as long as the Board granted the vested rights application and its pending audit review concluded favorably for the property owner; and

WHEREAS, the Board enumerates certain other distinctions between the East 6th Street Vesting Case and other permit validity cases which include that in East 6th Street: (1) the MDL non-compliance had been resolved at DOB to a great extent prior to the rezoning in 2008, but the property owner had to re-apply to the Board, the appropriate authority, for additional modifications after the rezoning; (2) the flaw relates to the jurisdiction of the permit-issuing entity first and secondarily to the substance of the non-compliance; (3) the revocation was only intended to prevent the application from moving forward until the MDL issues were resolved; and (4) the revocation was by the Board in the context of an interpretive appeal, rather than by DOB; and

WHEREAS, as to the Breezy Point Case, the Board finds that the Appellate Division accepted the Board's conclusion that the new interpretation and the old interpretation were both rational and the Board had the authority to accept both; and

WHEREAS, in contrast, the Board finds that in the Sliver Law Appeal, it concluded that DOB's interpretation was not reasonable and explicitly stated that it could not find that DOB's interpretation was erroneous and also find that the Permit was valid; and

WHEREAS, the Board does not find any basis to re-evaluate the Sliver Law Appeal in light of the Breezy Point Case since it finds the two to be distinct; and

WHEREAS, the Board disagrees with the applicant that the Breezy Point Case requires it to accept an erroneous interpretation and only apply the correct interpretation prospectively; and

WHEREAS, the Board notes that courts defer to buildings departments and zoning boards for determinations about the validity of building permits; as the Appellate Division explained in Matter of Perrotta:

> [a] determination as to whether [there can be] vested rights under [a] building permit must, of necessity, involve *an examination of the validity of the permit*, as well as compliance with technical provisions of the Zoning Resolution, and this is *clearly an appropriate inquiry for agency expertise*. (emphasis added); and

WHEREAS, the Board notes that for statutory vested rights cases, the requirement for a valid permit is forth at ZR § 11-33, which states that "[t]he provisions of this Section shall apply to minor developments, major developments or other construction authorized by building permits lawfully issued before the effective date of an applicable amendment of this Resolution;" and

WHEREAS, further, the Board notes that New York State courts also have stated repeatedly that vested rights can only be obtained where there is reliance on a valid permit. Perrotta; Village of Asharoken v. Pitassy, 119 A.D.2d 404, 417 (N.Y. App. Div. 2nd Dept. 1986); and Natchev v. Klein, 41 N.Y.2d 834, 834 (1977); and

WHEREAS, the Board notes that in Perrotta, DOB erroneously issued a permit due to its own initial failure to notice that a builder's plans did not comply with zoning regulations, the court agreed with DOB that the permit was not valid and stated that "[a] determination as to whether [a] petitioner had vested rights under [its] building permit must, of necessity, involve an examination of the validity of the permit, as well as compliance with technical provisions of the Zoning Resolution, and this is clearly an appropriate inquiry for agency expertise" (107 A.D.2d at 324); and

WHEREAS, the Board notes that recently, the Supreme Court remanded a common law vested rights application to the Board (Bibi Lieberman v. City of New York et al, S.Ct. N.Y. Co. Index No. 27201/10 (September 5, 2012) arising from BSA Cal. No. 10-10-A, 1882 East 12th Street, Brooklyn) to examine the question of permit validity; and

WHEREAS, the Board also cites to the Supreme Court's recent decision in 339 West 29th Street v. City of

New York et al, S.Ct. N.Y. Co. Index No. 10459/13 (August 6, 2013) (arising from BSA Cal. No. 145-12-A, 339 West 29th Street, Manhattan) in which it upheld the Board's decision that a permit was not valid absent the required Landmarks Preservation Commission approval; and

WHEREAS, as to the applicant's request for equitable relief, the Board notes that during the Sliver Law Case, the applicant sought a hardship waiver pursuant to New York City Charter Section 666(7), and the Matter of 515 East 5th Street court disagreed with the applicant that the Board's refusal to consider its request for a hardship waiver was erroneous or an abuse of discretion; and

WHEREAS, the court, by its May 6, 2008 decision, noted that the Board identified the appropriate process for a waiver to the zoning was through a zoning variance rather than a prospective application of a zoning interpretation; it said "Although the hardship waiver process may be more advantageous to the [applicant] than the process for obtaining a variance, it has failed to show that the BSA's refusal to entertain a hardship application as irrational;" and

WHEREAS, accordingly, the Board concludes that the Permit was not valid when issued nor was it valid on the Enactment Date; and

WHEREAS, the Board recognizes that the applicant presented evidence on the common law vesting criteria, however it declines to analyze it since the threshold requirement of a valid permit is not met; and

WHEREAS, as to the applicant's supplemental argument that it has a statutory vested right under ZR § 11-33, the Board concludes that such claims are untimely; and

WHEREAS, specifically, the Board notes that ZR § 11-332(a) requires that if construction "has not been completed and a certificate of occupancy, including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment, the building permit shall automatically lapse and the right to continue construction shall terminate;" and

WHEREAS, accordingly because a certificate of occupancy was not issued by November 19, 2010 (two years from the effective date of the rezoning), the permit automatically lapsed on that date and vested rights pursuant to ZR § 11-33 are not available to the applicant regardless of the amount of completed work; and

WHEREAS, further, under ZR § 11-331, once a permit subject to a rezoning automatically lapses "an application to renew the building permit may be made to the Board, not more than 30 days after the lapse of such building permit;" and

WHEREAS, the Board notes that the applicant did not make an application within 30 days of November 19, 2010, thus by the clear language of the text, the Permit automatically lapsed; and

WHEREAS, as to DOB's authority to reinstate the Permit pursuant to the prior zoning, the Board notes that the applicant has not provided any basis for DOB's authority to reinstate permits under the subject circumstances and supports DOB's position that it may only reinstate the Permit pursuant to current regulations; and

WHEREAS, the Board cites to Building Code § 28-105.9 Expiration, which states that "[a]ll permits issued by the commissioner shall expire by limitation and become invalid if the permitted work or use . . . if commenced, is suspended or abandoned for a period of 12 months thereafter . . . The commissioner may, however, upon good cause shown, reinstate a work permit at any time within a period of two years from the date of issuance of the original permit, provided that the work shall comply with all the requirements of this code and other applicable laws and rules in effect at the time application for reinstatement is made;" and

WHEREAS, the Board notes that, by the applicant's admission, work has not been performed at the site for approximately six years and that it thus does not comply with Building Code § 28-105.9 and is far beyond the time period for reinstatement; and

Therefore it is Resolved, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 104568845, 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 denied.

Adopted by the Board of Standards and Appeals, September 10, 2013.

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 (§310(2)) of the Multiple Dwelling Law.

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 – Off Calendar.

66-13-A

APPLICANT – OTR Media Group, Inc., for Wall & Associates, owner; OTR 161 Street, LLC, lessee.

SUBJECT – Application February 13, 2013 – Appeal challenging Department of Buildings' determination that pursuant to §122-20 advertising signs are not permitted regardless of non-conforming use status. R8/C1-4 Grand Concourse Preservation zoning district.

PREMISES AFFECTED – 111 E. 161 Street, between Gerard and Walton Avenues, Block 2476, Lot 57, Borough of Bronx.

COMMUNITY BOARD #4BX

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

67-13-A
APPLICANT – Bryan Cave LLC, for ESS-PRISAII LLC, owner; OTR 945 Zerega LLC, lessee.
SUBJECT – Application February 12, 2013 – Appeal challenging Department of Buildings' determination that the existing roof sign is not entitled to non-conforming use status. M1-1 zoning district.
PREMISES AFFECTED – 945 Zerega Avenue, Zerega Avenue between Quimby Avenue and Bruckner Boulevard, Block 3700, Lot 31, Borough of Bronx.
COMMUNITY BOARD #9BX
ACTION OF THE BOARD – Laid over to September 24, 2013, 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 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 November 19, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

338-12-BZ
CEQR #13-BSA-066Q
APPLICANT – Eric Palatnik, P.C., for 164-20 Northern Boulevard, LLC, owner; Northern Gym, Corp., lessee.
SUBJECT – Application December 13, 2012 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Metro Gym*) located in an existing one-story and cellar commercial building. C2-2/R5B zoning district.
PREMISES AFFECTED – 164-20 Northern Boulevard, west side of the intersection of Northern Boulevard and Sanford Avenue, Block 5337, Lot 17, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 15, 2013, acting on Department of Buildings Application No. 420618978, reads in pertinent part:

> Proposed Physical Culture Establishment in an R5B (C2-2) zoning district requires a special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C2-2 (R5B) zoning district, the legalization of an existing physical culture establishment ("PCE") located 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 March 19, 2013, after due notice by publication in *The City Record*, with continued hearings on July 9, 2013, and August 13, 2013, and then to decision on September 10, 2013; 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; and

WHEREAS, the Queens Borough President recommends approval of the application on condition that the parking lot lighting be improved and that traffic be restricted so that it enters only from Northern Boulevard and exits only onto Sanford Avenue; and

WHEREAS, the subject site is an irregularly-shaped corner lot located at the intersection of Sanford Avenue, Northern Boulevard and 165th Street, with 143.54 feet of frontage along Sanford Avenue, 32.69 feet of frontage along 165th Street and 97.64 feet of frontage along Northern

Boulevard; and

WHEREAS, the site has a lot area of 7,536 sq. ft., and is occupied by a one-story commercial building with 4,154 sq. ft. of floor area (0.55 FAR) and a parking lot for eight automobiles; and

WHEREAS, the PCE occupies the entire building, including the cellar level; and

WHEREAS, the PCE is operated as MetroGym; the applicant represents 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 instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the PCE are Monday through Saturday, from 6:00 a.m. to 11:00 p.m., and Sunday, from 6:00 a.m. to 10:00 p.m.; and

WHEREAS, at hearing, the Board expressed concerns about the calculation of the occupant load and the lack of sprinklers in the cellar; the Fire Department also submitted a letter recommending sprinklers in the cellar; and

WHEREAS, in response, the applicant submitted amended plans showing: (1) the revised cellar occupant load; and (2) the installation of sprinklers in the cellar; 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 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 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 PCE has operated since August 1, 2010 without a special permit and thus the term will be reduced for the period between August 1, 2010 and the date of this grant; 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. 13BSA066Q, dated December 12, 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 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 C2-2 (R5B) zoning district, the legalization of an existing PCE located 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 August 28, 2013" – Six (6) sheets and *on further condition*:

THAT the term of this grant will expire on August 1, 2020;

THAT the cellar will be fully-sprinklered;

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 all massages must be performed by New York State licensed massage therapists;

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 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, September 10, 2013.

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 Montanez 5
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:
> 1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141;
> 2. Creates non-compliance with respect to the open space ratio and is contrary to Section 23-141;
> 3. 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 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.

97-13-BZ
CEQR #13-BSA-118K

APPLICANT – Lewis E. Garfinkel, for Elky Ogorek Willner, owner.

SUBJECT – Application April 8, 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). R3-2 zoning district.

PREMISES AFFECTED – 1848 East 24th Street, west side of East 24th St, 380' south of Avenue R, Block 6829, Lot 26, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 8, 2013 acting on Department of Buildings Application No. 320728496, reads in pertinent part:

The proposed enlargement of the existing one family residence:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio exceeds the permitted 0.50;
2. Proposed plans are contrary to ZR 23-141(b) in that the proposed open space is less than the required 65%;
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds 35%;
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0";
5. Proposed plans are contrary to ZR 23-461(a) in that the proposed side yard is less than 3'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 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 ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-47, and 23-461; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, and then to decision on September 10, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

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

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue R and Avenue S, within an R3-2 zoning district; and

WHEREAS, the site has a lot area of 3,000 sq. ft. and is occupied by a single-family home with a floor area of 2,013.6 sq. ft. (0.67 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 2,013.6 sq. ft. (0.67 FAR) to 2,214.7 sq. ft. (0.74 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant also proposes to decrease its non-complying rear yard depth from 27'-10" to 20'-0" (a minimum rear yard depth of 30'-0" is required), maintain its existing non-complying side yard widths of 6'-8" and 3'-1" (the requirement in this district is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each), reduce its open space from 62.5 percent to 55.9 percent (a minimum open space of 65 percent is required), and increase its lot coverage from 37.4 percent to 44.1 percent (a maximum lot coverage of 35 percent is permitted); 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 R3-2 zoning district, the proposed enlargement of a 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, 23-47, 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 July 10, 2013"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,214.7 sq. ft. (0.74 FAR), a minimum rear yard depth of 20'-0", side yards with minimum widths of 6'-8" and 3'-1", a minimum open space of 55.9 percent and a maximum lot coverage of 44.1 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 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.

109-13-BZ
CEQR #13-BSA-128M
APPLICANT – Goldman Harris LLC, for William Achenbaum, owner; 2nd Round KO, LLC, lessee.
SUBJECT – Application April 22, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*UFC Gym*). C5-5 (Special Lower Manhattan) zoning district.
PREMISES AFFECTED – 80 John Street, Lot bounded by John Street to the north, Platt Street to south, and Gold Street to the west, Block 68, Lot 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 28, 2013, acting on Department of Buildings Application No. 121539665, reads in pertinent part:

> Proposed Physical Culture Establishment in C5-5 zoning district is not permitted as-of-right per ZR Section 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C5-5 zoning district within the Special Lower Manhattan District, the operation of a physical culture establishment ("PCE") located in a portion of the first story of a 26-story mixed residential and commercial building, contrary to ZR § 32-31; 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 20, 2013, and then to decision on September 10, 2013; and

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

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

WHEREAS, the subject site is a corner lot spanning the west side of the full length of Gold Street between John Street and Platt Street, with 94 feet of frontage along John Street, 119 feet of frontage along Gold Street and 88.33 feet of frontage along Platt Street; and

WHEREAS, the site has a lot area of 10,237 sq. ft., and is occupied by a 26-story mixed residential and commercial building with approximately 153,555 sq. ft. of floor area (15.0 FAR); and

WHEREAS, the PCE will occupy 5,319 sq. ft. of floor area (0.52 FAR) on the first story; and

WHEREAS, the PCE will be operated as 2nd Round KO; and

WHEREAS, the applicant notes that the Board previously granted a special permit for the operation of a PCE at the site under BSA Cal. No. 312-00-BZ; the prior PCE special permit was issued on June 5, 2001, expired on January 1, 2011, and was operated by a different entity; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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 8:00 a.m. to 8:00 p.m.; and

WHEREAS, at hearing, the Board expressed concerns about the adequacy of the proposed means of egress from the PCE and the sound attenuation measures; in addition, the

Board requested clarification on the floor-to-ceiling height of the space, which was not provided on the proposed plans; and

WHEREAS, in response, the applicant submitted a statement demonstrating the code-compliance of the proposed egress and amended plans showing rubberized matting for sound attenuation and a floor-to-ceiling height of 14'-4 3/8"; 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 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 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. 13BSA128M, dated June 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 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 C5-5 zoning district within the Special Lower Manhattan District, the operation of a PCE located in a portion of the first story of a 26-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 June 25, 2013" – Five (5) sheets and "Received August 16, 2013" – One (1) sheet and *on further condition*:

THAT the term of this grant will expire on September 10, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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 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, September 10, 2013.

170-13-BZ
CEQR #13-BSA-150Q
APPLICANT – Venable LLP, for The Mount Sinai Hospital, owner.
SUBJECT – Application June 6, 2013 – Variance (§72-21) to allow the enlargement of Mount Sinai Hospital of Queens contrary to §24-52 (height & setback); §24-11(lot coverage); §24-36 (rear yard); and §§24-382 & 33-283 (rear yard equivalents). R6 & C1-3 zoning districts.
PREMISES AFFECTED – 25-10 30th Avenue, block bounded by 30th Avenue, 29th Street, 30th Road and Crescent street, Block 576, Lot 12; 9; 34; 35, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings' Executive Zoning Specialist, dated May 30, 2013, acting on Department of Buildings Application No. 420606053, reads in pertinent part:

1. Proposed lot coverage of corner lot in R6 portion exceeds maximum permitted; contrary to ZR section 24-11;
2. Proposed building exceeding 23' in height in the required rear yard within the interior lot of the R6 portion is not a permitted obstruction and thus contrary to ZR section 24-36;
3. Proposed rear yard at through lot portion in zoning districts R6 and C1-3/R6 is contrary to ZR sections 24-382 and 33-283 (Required Rear Yard Equivalents);
4. Height and setback limitations for the R6 district portion, above both wide (Crescent) and narrow streets (30th Road) are both contrary to ZR section 24-522; and

WHEREAS, this is an application under ZR § 72-21, to permit, partially within an R6 zoning district and partially within an R6 (C1-3) zoning district, the construction of a six-story addition, renovation and reconfiguration of existing hospital and administration buildings to create an integrated hospital building (Use Group 4) for The Mount Sinai Hospital and Icahn School of Medicine at Mount Sinai ("Mount Sinai") that does not comply with zoning regulations for lot coverage, rear yard, rear yard equivalents, and height and setback, contrary to ZR §§ 24-11, 24-36, 24-382, 24-522, and 33-283; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in the *City Record*, and then to decision on September 10, 2013; and

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

WHEREAS, Community Board 1, Queens, recommends approval of this application, subject to the following conditions: (1) all fencing, including masonry walls at the property line with adjacent property owners, is to be 100 percent opaque with shrubbery to screen the ambulance parking area from adjacent properties; (2) all lighting in ambulance parking, including access and egress areas, is to be directed away from neighboring residents' windows; (3) that contractors will coordinate with, and be considerate, to adjacent residences and business owners during the construction process, including the removal of graffiti as it appears; (4) that Mount Sinai will make every effort to seek, procure and provide adequate parking facilities for the existing and proposed expansion and should be provided with a multilevel parking garage, which should be built at the existing parking; and (5) that Mount Sinai will provide traffic control and mitigation at the ambulance access and egress locations of the property, where there is a high pedestrian traffic flow on the sidewalk; and

WHEREAS, the Queens Borough President recommends approval of this application, provided that the conditions expressed by Community Board 1 are satisfied; and

WHEREAS, the application is brought on behalf of Mount Sinai, a non-profit educational institution and hospital; and

WHEREAS, the subject site spans the west side of Crescent Street between 30th Avenue and 30th Road and is a single zoning lot that comprises Tax Lots 9, 12, 34, and 35; and

WHEREAS, the site has a lot area of 49,098 sq. ft. with 221.1 feet of frontage along 30th Avenue, 204.67 feet of frontage along Crescent Street, and 269.49 feet of frontage along 30th Road; and

WHEREAS, the site is partially located within an R6 zoning district and partially located within an R6 (C1-3) zoning district; and

WHEREAS, the site is currently occupied by a six-story, approximately 65,641 sq. ft. main hospital building (the "Main Building"), a two-story, approximately 9,951 sq. ft. administration building (the "Administration Building"), a three-story, approximately 16,720 sq. ft. annex building on Lot 12 (the "Annex"), a two-story, approximately 8,788 sq. ft. ambulatory surgery building on Lot 9 (the "Ambulatory Building"), and two two-story, approximately 3,740 sq. ft. vacant buildings on Lots 34 and 35; in addition, the site is occupied by several smaller structures that the applicant proposes to remove or relocate, including: a one-story brick storage building and two vinyl storage sheds on Lot 9, and an oxygen tank farm and an air conditioning unit that straddle Lots 9 and 12; and

WHEREAS, the applicant proposes to construct a six-story addition (the "New Building"), renovate the Main Building, renovate and integrate the Administration Building, and demolish the Annex, the Ambulatory Building, and the two-story buildings on Lots 34 and 35 (as well as various small storage structures) to create an access driveway and service yard to accommodate emergency and service vehicles (collectively, the "Project"); the fully-integrated building will have a total floor area of 176,707 sq. ft. (3.60 FAR); and

WHEREAS, the applicant states that the New Building will contain: (1) at the cellar level, mechanical space, a laboratory, a morgue, a sterile processing department, storage and an ambulatory care entrance pavilion; (2) at the first floor, a state-of-the-art emergency department capable of accommodating 36 treatment positions as well as an imaging scanner and x-ray for dedicated emergency use, a walk-in public entrance and an ambulance entrance; (3) at the second floor, outpatient ambulatory care services including an urgent care department, endoscopy department, pre-admission testing, and imaging department (with new MRI, CT Scan, x-ray, mammography, ultrasound and bone density imaging equipment and facilities); (4) at the third floor, seven

operating rooms, pre-op holding beds, a post-anesthesia holding unit, isolation rooms, and required support space; and (5) at the fourth, fifth, and sixth floors, primary and preventive outpatient care facilities, with at least 40 examination rooms per floor and supporting spaces; and

WHEREAS, the applicant states that the Project includes the following renovations of existing buildings: (1) renovation of the existing emergency department on the first floor of the Main Building; (2) installation of a new HVAC system on the first through sixth floors of the Main Building; (3) replacement of existing windows on the first through sixth floors of the Main Building and the first and second floors of the Administration Building with new energy efficient windows; (4) renovation and expansion of the existing inpatient and visitor waiting area off 30th Avenue on the first floor of the Main Building; (5) elimination of dead-end corridors throughout the first through fifth floors of the Main Building; (6) the creation of connections between the Main Building and the New Building on the first through fifth floors; (7) demolition of egress stairs within the Administration Building and replacement with connections to the New Building at the cellar, first and second floors of the Administration Building; (8) alignment and integration of the second floor of the existing buildings and fifth floor of the Main Building with the first and third floors of the New Building; and (9) stone cladding of the façade of all existing buildings; and

WHEREAS, the applicant states that the Project also includes the construction of a new driveway and ambulance entrance between 30th Avenue and 30th Road, which will provide a covered drop-off area and ambulance parking and maneuvering space for improved patient flow and access for emergency vehicles, an oxygen tank farm, required dumpsters and space for the dumpsters to be emptied without obstructing ambulance flow, and an enclosed bicycle shed with 18 spaces; and

WHEREAS, the applicant states, as noted above, that the Project will result in a total floor area of 176,707 sq. ft. (3.60 FAR), which is well below the maximum permitted FAR for a community facility at the site (4.80 FAR); and

WHEREAS, the applicant represents that the Project will create the following non-compliances on the site: (1) the New Building will have maximum street wall height of 97.34 feet and a maximum building height of 101.34 feet with no setback on Crescent Street (wide street) or on 30th Road (narrow street) (a maximum street wall height of 60 feet or 6 stories (whichever is less) is permitted, after which the initial setback is 15 feet on a wide street or 20 feet on a narrow street; there is no maximum building height), and penetrate the sky exposure plane (the required sky exposure plane from a height of 60 feet above the street line is 5.6:1 on a wide street or 2.7:1 on a narrow street); (2) the Project will result in a lot coverage of 99.7 percent on the corner lot portion in an R6 district (the maximum permitted lot coverage is 70 percent for a corner lot); (3) the portions of the site where a 30-foot rear yard is required (on the two interior lot portions of the site) contain a portion of the New Building and an oxygen tank farm, which are not permitted obstructions within a required rear yard; and (4) finally, where 20- and 30-foot rear yard equivalents are required (on the two through lot portions of the site), they are not provided; and

WHEREAS, the applicant notes that Mount Sinai is one of the country's oldest and largest voluntary teaching hospitals, and is internationally acclaimed for excellence in clinical care, education, and scientific research in nearly every aspect of medicine; Mount Sinai bought the 100-year-old hospital now known as Mount Sinai Queens in 1999, continuing a tradition of providing hospital services to the residents of western Queens; and

WHEREAS, the applicant states that Mount Sinai has done all it can to improve and expand Mount Sinai Queens' operations within the confines of the existing buildings, including expansion of the emergency department; expansion and upgrade of the imaging equipment; construction of a new endoscopy suite; and implementation of an electronic health record system to enhance and integrate patient care across Mount Sinai hospital campuses and medical practices; nevertheless, the applicant states that Mount Sinai Queens must further expand in order to meet the needs of its growing patient population; and

WHEREAS, the applicant represents that since the time Mount Sinai acquired the facility, the borough of Queens has lost five hospitals, and Mount Sinai Queens is currently the only hospital and the leading provider of care in its primary service area, an area with a population of approximately a quarter of a million people; when combined with its secondary service area, which only includes one other hospital, Mount Sinai Queens services three-quarters of a million people; the applicant notes that the importance of a local hospital cannot be overstated as for many people the cost and difficulty of traveling to Manhattan, except for highly specialized care, is a barrier to treatment and can delay or forego timely diagnosis and treatment, resulting in otherwise unnecessary and expensive hospitalization; finally, the applicant represents that the community surrounding the site is made up of an ethnically and culturally diverse population, which suffers from several persistent health problems including increased heart disease, obesity, and diabetes; and

WHEREAS, as to the educational component of Mount Sinai, the applicant states that Mount Sinai Queens is a key training site for students of Mount Sinai's medical school, the Icahn School of Medicine at Mount Sinai; medical students do primary care and pediatrics rotations at the Family Health Center, emergency medicine rotation in the emergency department, are introduced to clinical medicine in the Medicine Department, and take elective training in obstetrics, gynecology and reproductive surgery; Mount Sinai Queens also provides resident training in podiatry in the hospital, the Emergency Department, and outpatient clinics; and

WHEREAS, in addition to training medical students, the applicant states that Mount Sinai Queens provides essential health education to the community through local faith-based organizations and community groups, and also, in partnership with its affiliates, holds lectures, health fairs, and open houses,

which offer information and screenings on a wide variety of health care issues; and

WHEREAS, the applicant states that its existing facilities are extremely undersized given the need and size of the surrounding community (particularly due to the recent closure of health care providers in the Queens area) and outdated, in that the Main Building was built more than 60 years ago, and the Annex—the original hospital building—was built more than 100 years ago; and

WHEREAS, the applicant states that the proposed expansion is critical to Mount Sinai's ability to provide high quality medical care and education in up-to-date medical facilities; the applicant asserts that the rapidly changing nature of health care delivery in New York, and around the country, necessitates building new program spaces and improving upon existing ones; the applicant also notes that with the adoption of the Affordable Care Act at the federal level and efforts at the State level around Medicaid Redesign, Mount Sinai Queens must redesign its programs in order to successfully deliver 21st Century medical care and medical education; further, improved facilities would allow an increase in the presence of medical students and faculty, and expand teaching opportunities; and

WHEREAS, the applicant states that the requested waivers are required so that it may construct a building that accommodates Mount Sinai's programmatic needs, which the applicant articulated as follows: (1) large, uniform floor plates to accommodate state-of-the-art equipment and maximize the efficiency of the space; and (2) adequate floor-to-floor heights to allow for alignment and integration with floors of the existing buildings to create a single facility; and

WHEREAS, thus, the applicant states that there is a direct nexus between the need for large, uniform floor plates and high ceilings, and the requested relief from compliance with the regulations regarding maximum street wall height, sky exposure plane, lot coverage, rear yards and rear yard equivalents, (which collectively result in smaller floor plates and lower floor-to-floor heights); and

WHEREAS, as to large, uniform floor plates, the applicant asserts that they will allow for the creation of: an integrated, state-of-the-art operating room floor with ten rooms spanning the entire third floor of the New Building and one wing of the Main Building, a sterile core between the third floor of the New Building and the fifth floor of the Main Building (which will allow safe movement of physicians, staff, and supplies) an expanded and highly efficient emergency department with a connection to inpatient imaging and patient rooms on the second floor of the Main Building, an outpatient ambulatory care floor with nearby complimentary services (which will allow the sharing of support services such as reception and waiting areas, thereby reducing redundancies), an integrated primary and preventive outpatient care space, grouped into practice area suites, with at least 40 exam rooms per floor to accommodate multi-specialty Mount Sinai clinical practical facilities, separation of inpatient and outpatient circulation, double-sided elevator and fire stairs that access all floors and connect the New Building with all other buildings by bridging the offset in elevation, minimizing of mechanical space; and

WHEREAS, as to adequate floor-to-floor heights, the applicant represents that they will allow for: alignment and integration of the first and third floors of the New Building with the second floor of the Administration Building and Main Building and fifth floor of the Main Building, respectively, which requires floor-to-floor heights of approximately 17 feet on the first and second floors of the New Building, space to accommodate the structure, ductwork, conduit, and plumbing required between floors, which requires floor-to-floor heights of at least 15 feet on the third through sixth floors of the New Building, and an entrance pavilion that is easily identifiable to patients approaching along 30th Avenue and which aligns with and leads into the cellar level of the remainder of the New Building; and

WHEREAS, the applicant states that through extensive programming studies and a multi-year planning process, Mount Sinai determined the need for expanded and improved state-of-the-art medical care and teaching facilities to fulfill the needs of the Queens community; further, the applicant represents that the design of the New Building is critically important to the fulfillment of Mount Sinai's mission and the provision of comprehensive and efficient medical services and medical education, as well as the recruitment of high-quality physicians, medical school faculty members, students, and residents; and

WHEREAS, the applicant represents that the proposed design represents the only possible place on the site to locate the approximately 18,891 sq. ft. floor plates of the New Building in an arrangement that achieves the required opportunities for integration of certain departments with existing facilities in the existing buildings, convenient access to shared laboratory and medical support facilities and other support services, effective and efficient staffing of the facility, distinct inpatient and outpatient circulation, efficient mechanical systems, and appropriate placement of loading and service functions; and

WHEREAS, the applicant also notes that the New Building design is constrained by the fact that Mount Sinai has a programmatic need to maintain services within the Ambulatory Building until the New Building is operational; accordingly, the New Building cellar cannot be expanded eastward to accommodate mechanical and support facilities; and

WHEREAS, in addition to the programmatic needs, the applicant states that the building design is constrained by the following unique conditions of the site: (1) irregular shape of the site; and (2) subsurface conditions; and

WHEREAS, the applicant states the site has an irregular shape due to the existence of three out-parcel lots along 30th Avenue, which limit the size and shape of the New Building and prevent an as-of-right design that provides large, uniform floor plates that are integrated with existing buildings; and

WHEREAS, as to subsurface conditions, the applicant submitted a report that indicates the existence of a high water table at the site, which increases the cost of construction and makes construction of multiple sub-cellars infeasible; and

WHEREAS, thus, the applicant states that the requested modifications of the lot coverage, rear yard, rear yard equivalents, and height and setback regulations are due in part to the irregular shape of the site and the subsurface conditions; and

WHEREAS, the applicant explored the feasibility of an alternative configuration of the New Building that would strictly comply with the applicable zoning requirements, and it found that the as-of-right building fails to satisfy its programmatic needs; and

WHEREAS, specifically, the applicant determined that the as-of-right building: (1) fails to provide the necessary floor plate size for all but one floor in the New Building; and (2) would need to rise to twelve stories in order to accommodate the programming in the proposed New Building, and include a sub-cellar to accommodate program area and mechanical equipment displaced from the upper floors due to the required setbacks; and

WHEREAS, the applicant represents that the smaller, non-uniform floor plates undercut the departmental layouts, efficiencies and adjacencies that drive the design of the proposed New Building, resulting in an inefficient use of space, inefficient patient circulation, duplication of programs and staffing, and higher operating costs, as well as a reduction in services and medical school training; and

WHEREAS, the applicant states that the smaller floor plates would force the operating rooms to be split between two floors in order to maintain the necessary operating room size, creating a tremendous loss of efficiency and duplication of program spaces and staffing and resulting in the loss of one of the proposed operating rooms; the additional operating room floor would not connect to the Main Building, and the primary connection of the primary operating room floor between the third floor of the New Building and the fifth floor of the Main Building would be lost due to the relocation of the fire stairs necessitated by the required setback and compliance with Building Code requirements; and

WHEREAS, the applicant also states that the changes necessitated by the as-of-right design would eliminate the proposed sterile core, causing physicians and staff to continually move between sterile and non-sterile areas, which would severely impact the efficiency of the operating rooms; further, the rear yard setbacks would force the relocation of the visitor elevators and adjacent fire stairs to the center of the emergency department, which would displace four treatment positions and compromise the functionality and operating efficiency of the emergency department layout, representing a significant loss to a vital department which had already been compressed in the proposed New Building to the minimum space necessary; and

WHEREAS, additionally, the applicant represents that the progressively smaller floor plates starting on the second floor and the very small floor plates on the ninth through eleventh floors would also necessitate the following changes: relocation of the morgue, storage, sterile processing department and mechanical equipment from the cellar to an added sub-cellar; relocation of the urgent care department, pre-admission testing and imaging department to the cellar and endoscopy to the fourth floor, thereby splitting up the outpatient ambulatory care service and resulting in a loss of efficiency and redundancy of support services and staffing, and creating patient circulation issues as ambulatory care patients move between floors; and distribution of the outpatient care facilities over eight floors rather than three, making it impossible to provide the recommended 40 exam rooms per floor, to locate symbiotic practice groups in close proximity to one another, and to provide outpatient medical training in a model faculty practice setting; and

WHEREAS, the applicant notes that elevator service would suffer in the as-of-right building, because the five proposed elevators would need to serve six additional floors, and additional elevators could not be added due to the smaller upper floor plates; and

WHEREAS, the applicant also notes that an as-of-right building, with its narrow floor plates, limited space for mechanical equipment and shafts, and 15- to 17-foot floor-to-ceiling heights (a key programmatic requirement, as noted), would require the inclusion of a sub-cellar, which, as noted above, would be below the water table; as such, a double pressure slab, extensive waterproofing, and substantial additional support of excavation would be required, including sheeting and shoring at the perimeter of the site and underpinning of the existing buildings; and

WHEREAS, the applicant asserts that, overall, the as-of-right building would increase construction time by approximately five to six months and increase construction costs by approximately $12,000,000 to $13,500,000; and

WHEREAS, the Board acknowledges that Mount Sinai, 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 site, when considered in conjunction with the programmatic needs of Mount Sinai, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Mount Sinai 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 proposed building would be in keeping with the character of the surrounding neighborhood, which is defined by medium density residential neighborhood, light commercial uses, and numerous medical and other institutional uses; and

WHEREAS, the applicant states that the six-story New Building, with its street wall height of 97.34 feet and building height of 101.34 feet on Crescent Road, will be compatible with the directly-adjacent Main Building, which is also six stories and has a building height of 94.73 feet; in contrast, the 12-story, tiered as-of-right building (with a maximum street wall height of 60 feet and total building height of approximately 235 feet) would be out of context with the existing buildings at the site and the neighborhood in general; and

WHEREAS, further, the applicant states that the site comprises nearly half of the block, and the remainder of the block is fully developed with several medium density five- or six-story apartment buildings, many of which contain individual doctors' offices on the ground floors; and

WHEREAS, as to the nearby buildings on adjacent blocks, the applicant states that: (1) uniform three-story mixed residential and commercial buildings characterize the north side of 30th Avenue; (2) a mix of one- and three-story residential, community facility, and commercial uses, and open space are found on the west side of Crescent Street; and (3) across 30th Road are several six-story apartment buildings; and

WHEREAS, in support of its representations regarding the New Building's compatibility with the residential buildings along 30th Road, the applicant submitted a streetscape showing building heights ranging from 52 feet to 146 feet, with the majority of buildings being six stories and between 67 and 83 feet in height; and

WHEREAS, the applicant notes that the contemporary design of the New Building is compatible with newer residential and community facility buildings in the vicinity, including the steel-and-glass arched atrium of the tile-clad Astoria Medical Plaza located at 27-47 Crescent Street, the glass-and-steel façade of the six-story Olympic Open MRI building located at 23-08 30th Avenue, and the masonry-clad P.S. 234 with an abstract gable element at the roofline located at 30-15 29th Street; and

WHEREAS, the applicant states that the creation of a continuous street wall with new street trees, removal of existing chain link fencing and mechanical gates, and replacement of the vertically-oriented oxygen tank (with a height of 31 feet) with a horizontally-oriented oxygen tank (with a height of nine feet) improves the pedestrian experience along the frontages and reduce the site's impact on its residential neighbors; and

WHEREAS, the applicant notes that its proposal does not alter street orientation or street patterns, is designed to improve emergency and commercial vehicle traffic on 30th Avenue, Crescent Street, and 30th Road, and pedestrian and vehicular circulation, and will reduce the parking and idling of vehicles around the site; the applicant also represents that the proposed service yard will be substantially similar in terms of impact on the adjacent property as the as-of-right design, except that the proposed design will have a reduced visual impact due to the reorientation of the oxygen tank; and

WHEREAS, as to the impact of the Project on the low-rise mixed residential and commercial buildings along 30th Avenue, the applicant states that it will be minimal, because the New Building will be situated to the rear of the site, behind the existing Main Building and across 30th Avenue, which is a wide street; additionally, the as-of-right building would be much more visible to the 30th Avenue neighbors and cast significantly longer shadows than the New Building; and

WHEREAS, to address the concerns of Community Board 1, the applicant responds that it will: (1) appropriately screen the proposed service yard from the neighboring properties to the east by an opaque wall, which will match the appearance of the New Building, be eight feet tall along the southern portion of the project (near 30th Road) and four feet tall along the northern portion of the project site (near 30th Avenue), and be covered with plantings from planters on top or from plantings within the wall itself; (2) explore the possibility of an automatic gate at the ambulance exit on 30th Road to further screen the service yard; (3) illuminate the service yard and ambulance driveway with lights installed low and directed away from the adjacent properties; (4) hold quarterly meetings with its neighbors during construction and post a 24-hour telephone number for reporting of concerns; (5) remove graffiti that appears at the site; (6) expand its off-site parking facilities at 23-11 30th Road from 46 parking spaces to 96; and (7) continue to investigate options for ensuring pedestrian safety at the site, particularly around the 30th Avenue vehicle entrance and 30th Road vehicle exit, including the placement of enhanced signage and other visual and tactile markings along the sidewalk; and

WHEREAS, at hearing, the Board raised concerns regarding the hours of deliveries and collection, hours of waste compacting, and the proposed screening, lighting, and landscaping of the service yard; in addition, the Board requested clearer depictions of the neighborhood character and bulk along 30th Road; and

WHEREAS, in response, the applicant submitted an amended statement, which indicated that deliveries, collection, and waste compacting will be limited to daily between the hours of 7:00 a.m. and 9:00 p.m.; in addition, the applicant submitted additional drawings showing

adequate screening, lighting and landscaping along the perimeter of the service yard and streetscapes and photographs sufficiently depicting all frontages of the site in context; and

WHEREAS, accordingly, the Board finds that, consistent with 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 applicant states that, in accordance with ZR § 72-21(d), the hardship was not self-created and that no development that would meet the programmatic needs of Mount Sinai 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, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow Mount Sinai to fulfill its programmatic needs, per 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 617.4; 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. 13BSA150Q, 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 Analysis reviewed the project for potential hazardous materials; and

WHEREAS, DEP reviewed and accepted the July 2013 Remedial Action Work Plan and site-specific 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, 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 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, partially within an R6 zoning district and partially within an R6 (C1-3), the construction of a six-story addition, renovation and reconfiguration of existing hospital and administration buildings to create an integrated hospital building (Use Group 4) for Mount Sinai that does not comply with zoning regulations for lot coverage, rear yard, rear yard equivalents, and height and setback, contrary to ZR §§ 24-11, 24-36, 24-382, 24-533, and 33-283, *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 27, 2013" – twenty-five (25) sheets; and *on further condition*:

THAT the bulk parameters of the New Building will be in accordance with the approved plans and be limited to 176,707 sq. ft. (3.60 FAR), a maximum street wall height of 97.34 feet, a maximum building height of 101.34 feet, and a maximum lot coverage of 99.7 percent on the corner lot portion in the R6 district, as reflected on the BSA-approved plans;

THAT the hours of delivery, collection, and waste compacting within the service yard will be as reflected in the BSA-approved plans and limited to daily, from 7:00 a.m. to 9:00 p.m.;

THAT lighting will be directed away from the adjacent residential buildings;

THAT the site will be maintained free of graffiti;

THAT traffic control and mitigation will be provided at the ambulance entrance and exit;

THAT landscaping and screening will be in accordance with the 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 will be completed pursuant to ZR § 72-23;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided them 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,

September 10, 2013.

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 19, 2013, at 10 A.M., for continued hearing.

16-12-BZ
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 – Laid over to September 24, 2013, 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
ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for deferred decision.

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 October 22, 2013, at 10 A.M., for continued hearing.

199-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.
SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.
PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, 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 October 22, 2013, at 10 A.M., for decision, hearing closed.

236-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.
SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.
PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.
COMMUNITY BOARD #2SI
ACTION OF THE BOARD – Laid over to October 8, 2013, at 10 A.M., for continued hearing.

259-12-BZ
APPLICANT – Davidoff Hutcher & Citron LLP, for 5239 LLC, owner.
SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the development of a single-family house, contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district.
PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, 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 October 8, 2013, 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 October 29, 2013, at 10 A.M., for adjourned hearing.

301-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Jam Realty of Bayside LLC, owner.
SUBJECT – Application October 22, 2012 – Special permit (§73-52) to allow a 25 foot extension of an existing commercial use into a residential zoning district, and §73-63 to allow the enlargement of a legal non-complying building. C2-2(R4) and R2A zoning districts.
PREMISES AFFECTED – 213-11/19 35th Avenue, Block 6112, Lot 47, 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 October 8, 2013, 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 October 29, 2013, at 10 A.M., for continued hearing.

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
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 October 8, 2013, at 10 A.M., for decision, hearing closed.

120-13-BZ
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 #1SI
ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

129-13-BZ
APPLICANT – Lewis E. Garfinkel, for Tammy Greenwald, owner.
SUBJECT – Application May 7, 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(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1010 East 22nd Street, west side of East 22nd Street, 264' south of Avenue I, Block 7585, Lot 61, Borough of Brooklyn.
COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 8, 2013, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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New Case Filed Up to September 17, 2013

268-13-BZ

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(s) 55, Borough of **Queens, Community Board: 13**. 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. R5 district.

269-13-BZ

110 West 73rd Street, South side of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot(s) 37, Borough of **Manhattan, Community Board: 7**. 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. R8B district.

270-13-BZ

288 Dover Street, Dover Street, south of Oriental Boulevard, Block 8417, Lot(s) 38, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to enlarge an existing two story dwelling in a residential zoning district, seeks to vary the floor area ratio. R3-1 zoning district. R3-1 district.

271-13-BZ

129 Norfolk Street, Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot(s) 43, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to enlarge a one story dwelling in a R3-1 residential zoning district, into a two story dwelling, to vary the lot coverage, the side yard and rear yard requirements.. 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

OCTOBER 8, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 8, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

605-84-BZ
APPLICANT – Sheldon Lobel, P.C., for Order Sons of Italy in America Housing Development Fund Company, Inc., owners.
SUBJECT – Application March 26, 2013 – Amendment to legalize the installation of an emergency generator at the premises of a previously granted variance (§72-21) to an existing seven story senior citizen multiple swelling which is contrary to Z.R. Section 23-45 (front yard requirements). R-5 zoning district.
PREMISES AFFECTED – 2629 Cropsey Avenue, Cropsey Avenue between Bay 43rd Street and Bay 44th Street, Block 6911, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #13BK

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*) within portions of an existing building 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

177-07-BZ
APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.
SUBJECT – Application July 23, 2013 – Extension of time to complete construction of a previously approved Variance (§72-21) which permitted the construction of a two story, two family residential building on a vacant corner lot which expired on June 23, 2013. 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

APPEALS CALENDAR

194-13-A thru 205-13-A
APPLICANT –Sanna & Loccisano P.C. by Joseph Loccisano, for Leonello Savo, owner.
SUBJECT – Application July 3, 2013 – Proposed construction of single detached residence not fronting on a legally mapped street contrary to General City Law 36. R3X (SSRD) zoning district.
PREMISES AFFECTED – 36, 35, 31, 27, 23, 19, 15, 11, 12, 16, 20, 24 Savona Court, west side of Savona Court, 326.76' south of the corner form by Station Avenue and Savona Court, Block 7534, Lot 320, 321, 322, 323, 324, 325, 326, 327, 330, 331, 332, 335, Borough of Staten Island.
COMMUNITY BOARD #3SI

237-13-A thru 242-13-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for RLP LLC, owners.
SUBJECT – Application August 12, 2013 – Appeals from decisions of Borough Commissioner denying permission for proposed construction of eight buildings that do not front on a legally mapped street. R3X(SRD) zoning district.
PREMISES AFFECTED – 11, 12, 15, 16, 19, 20 Nino Court, 128.75 ft. south of intersection of Bedell Avenue and Hylan Boulevard, Block 7780, Lot 22, 30, 24, 32, 26, 34, Borough of Staten Island.
COMMUNITY BOARD #3SI

247-13-A
APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities, LLC, owners.
SUBJECT – Application August 22, 2013 – Common Law Vested Rights and seeks to renew Building Permit No. 402483013-01-NB and all related building permits to allow the applicant to continue development of the proposed 6-story residential building at the site, for a term of three years. R5A zoning district.
PREMISES AFFECTED – 123 Beach 93rd Street, western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot 11, Borough of Queens.
COMMUNITY BOARD #14Q

CALENDAR

ZONING CALENDAR

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 which is contrary to use regulations, ZR42-00. 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

55-13-BZ
APPLICANT – Stuart A. Klein, Esq., for Yeshivas Novominsk, owners.
SUBJECT – Application February 1, 2013 – Variance (§72-21) to permit the enlargement of an existing yeshiva dormitory. R5 zoning district.
PREMISES AFFECTED – 1690 60th Street, north side of 17th Avenue between 60th and 61st Street, Block 5517, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #12BK

122-13-BZ
APPLICANT – Law Office of Fredrick A Becker, for Jacqueline and Jack Sakkal, owners.
SUBJECT – Application April 29, 2013 – Special Permit (73-621) for the enlargement of an existing two-family home to be converted into a single family home contrary to floor area (ZR 23-141). R2X (OP) zoning district.
PREMISES AFFECTED – 1080 East 8th Street, west side of East 8th Street between Avenue J and Avenue K, Block 6528, Lot 33, Borough of Brooklyn.
COMMUNITY BOARD #12BK

129-13-BZ
APPLICANT – Lewis E. Garfinkel, for Tammy Greenwald, owner.
SUBJECT – Application May 7, 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(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1010 East 22nd Street, west side of East 22nd Street, 264' south of Avenue I, Block 7585, Lot 61, Borough of Brooklyn.
COMMUNITY BOARD #14BK

158-13-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Golf & Body NYC, owners.
SUBJECT – Application May 20, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Golf & Body*) within a portion of an existing building. C6-6(MID) zoning district.
PREMISES AFFECTED – 883 Avenue of the Americas, southwest corner of the Avenue of the Americas and west 32nd Street, Block 807, Lot 1102, Borough of Manhattan.
COMMUNITY BOARD #5M

159-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Melvin Friedland & Lawrence Friedland, owners; 3799 Broadway Fitness Group, LLP, lessees.
SUBJECT – Application May 24, 2013 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*) within a portion of an existing building; Special Permit (§73-52) to permit the extension of the proposed PCE use into 25' feet of the residential portion of a zoning lot that is split between a C4-4 and R8 zoning districts.
PREMISES AFFECTED – 3791-3799 Broadway, west side of Broadway between 157th Street and 158th Street, Block 2134, Lot 180, Borough of Manhattan.
COMMUNITY BOARD #12M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 17, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

199-00-BZ
APPLICANT – Alfonso Duarte, P.E., for EN PING C/O Baker, Esq., owner; KAZ Enterprises Inc., lessee.
SUBJECT – Application March 28, 2013 – Extension of term of a previously granted special permit (§73-244) for the continued operation of a UG 12 eating and drinking establishment without restrictions on entertainment (*Club Atlantis*) which expired on March 13, 2013. C2-3/R6 zoning district.
PREMISES AFFECTED – 76-19 Roosevelt Avenue, northwest corner of Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.
COMMUNITY BOARD #3Q
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is a re-opening and an extension of term of a previously granted special permit for an eating and drinking establishment without restrictions on entertainment (Use Group 12), which expired on March 13, 2013, and an amendment to permit minor layout changes; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, and then to decision on September 17, 2013; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

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

WHEREAS, the subject site is located on the northwest corner of the intersection of Roosevelt Avenue and 77th Street, within a C2-3 (R6) zoning district; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as Club Evolution, within a portion of a one-story building that occupies the entire zoning lot; and

WHEREAS, the building is also occupied by an enclosed garage for five vehicles, a restaurant (owned by the owner of the subject eating and drinking establishment), and four retail stores; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 13, 2001, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the legalization of an existing eating and drinking establishment with entertainment and dancing; and

WHEREAS, subsequently, the grant has been amended and extended at various times; and

WHEREAS, most recently, on May 11, 2010, the Board granted a three-year extension of term, which expired on March 13, 2013; and

WHEREAS, the applicant now requests an extension of term and an amendment of the resolution to permit a change in the location of the steps leading to the DJ booth and the addition of an elevated platform across from the bar; and

WHEREAS, based upon the above, the Board finds the requested extension and amendment 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 13, 2001, 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 13, 2013, to expire on March 13, 2016, *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT the term of this grant shall expire on March 13, 2016;

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

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. 401018206)

Adopted by the Board of Standards and Appeals, September 17, 2013.

220-07-BZ
APPLICANT – Eric Palatnik, P.C., for Kornst Holdings, LLC, owner.
SUBJECT – Application July 11, 2013 – Extension of time to complete construction of a previously granted variance (§72-21) which permitted the construction of a new four-story residential building containing four dwelling units, which expires on November 10, 2013. M1-1 zoning district.
PREMISES AFFECTED – 847 Kent Avenue, East side of Kent Avenue, between Park Avenue and Myrtle Avenue, Block 1898, Lot 10, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction of a four-story residential building (Use Group 2) within an M1-1 district, contrary to ZR § 42-10; the time to complete construction expires on November 10, 2013; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, and then to decision on September 17, 2013; and

WHEREAS, the site is located on the east side of Kent Avenue between Park Avenue and Myrtle Avenue within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 10, 2009 when, under the subject calendar number, the Board granted a use variance to permit the construction of a four-story residential building (Use Group 2) in an M1-1 zoning district; under the terms of the grant, the applicant had four years in which to complete construction and obtain a certificate of occupancy, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has not commenced at the site due to the prior owner's financial difficulties and that, consequently, construction will not be complete and a certificate of occupancy will not be issued by November 10, 2013; and

WHEREAS, thus, the applicant requests a four-year extension of time to 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 November 10, 2009, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction for a term of four years, to expire on September 17, 2017; *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 shall be completed by September 17, 2017;

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

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) 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. 310020410)

Adopted by the Board of Standards and Appeals September 17, 2013.

519-57-BZ

APPLICANT – Eric Palatnik, P.C., for BP Amoco Corporation, owner.

SUBJECT – Application June 19, 2013 – Extension of term (§11-411) of an approved variance which permitted the operation and maintenance of a gasoline service station (Use Group 16B) and accessory uses, which expired on June 19, 2013. R3-1/C2-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, northwest corner of Bradley Avenue and Victory Boulevard, Block 462, Lot 35, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for continued hearing.

189-96-BZ

APPLICANT – John C Chen, for Ping Yee, owner; Club Flamingo, lessee.

SUBJECT – Application May 14, 2013 – Extension of Term of a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing, which expires on May 19, 2013. C2-3/R6 zoning district.

PREMISES AFFECTED – 85-10/12 Roosevelt Avenue, south side of Roosevelt Avenue, 58' east side of Forley Street, Block 1502, Lot 4, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to October 8, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

272-12-A

APPLICANT – Michael Cetera, for Aaron Minkowicz, owner.

SUBJECT – Application September 6, 2012 – Appeal challenging Department of Buildings' determination that an existing non-conforming single family home may not be enlarged per §52-22. R2 zoning district.

PREMISES AFFECTED – 1278 Carroll Street, between Brooklyn Avenue and Carroll Avenue, Block 1291, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #9BK

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 Montanez 5
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination, dated August 14, 2012, issued by the Department of Buildings ("DOB") (the "Final Determination"); and

WHEREAS, the Final Determination states, in pertinent part:

> The request to allow structural alterations to the existing attached single-family residence that is substantially occupied by a non-conforming use within the R2 district in order to accommodate the proposed horizontal enlargement at the rear is hereby denied.
>
> Within the R2 district, only single-family detached residences in Use Group 1 are permitted residential uses, in accordance with ZR 22-00. The existing attached single-family residence is non-conforming Use Group 2. For the existing building that is substantially occupied by a non-conforming use, no structural alterations are permitted, per ZR 52-22; and

WHEREAS, a public hearing was held on this appeal on July 23, 2013, after due notice by publication in *The City Record*, and then to decision on September 17, 2013; and

WHEREAS, the site had visits by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHERAS, 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 Carroll Street, between New York Avenue and Brooklyn Avenue, within an R2 zoning district; and

WHEREAS, the site is occupied by an attached, three-story, single-family residential building (the "Building"); and

WHEREAS, the last-issued certificate of occupancy for the Building, No. 112580, issued June 4, 1945, authorizes an accessory doctor's office on the first story and a single-family residence on the second and third stories; and

WHEREAS, on August 23, 2007, the Appellant obtained Permit No. 302240625 to perform certain work at the Building, including removal of the accessory doctor's office, various structural alterations (the "Permit"), and the construction of a rear extension; and

WHEREAS, by letter dated May 20, 2009, DOB notified the Appellant that the Permit was issued in error, and by letter dated September 2, 2010, DOB revoked the Permit; and

WHEREAS, at the Appellant's request, DOB reviewed the grounds for the Permit revocation and on August 14, 2012, DOB issued the Final Determination, affirming its earlier determination that the Permit was issued in error, and clarifying that the Permit failed to comply with ZR § 52-22, in that it authorized structural alterations to a building substantially occupied by a non-conforming use; and

WHEREAS, the Appellant requests that the Board reject DOB's determination that the Building is substantially occupied by a non-conforming use, and either: (1) confirm that the Building is occupied by a conforming use and that the Permit authorized an alteration to a non-complying building in accordance with ZR § 54-31; or (2) confirm that although the Building is substantially occupied by a non-conforming use, the Permit authorized structural alterations performed in order to accommodate a conforming use, in accordance with ZR § 52-22; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 *Definitions*

Attached (Building)

A #Building# shall be considered #attached# when it #abuts# two #lot lines# other than a #street line#, or another #Building# or #Buildings# other than a #semi-detached Building#.

Detached (Building)

A "detached" #Building# is a #Building# surrounded by #yards# or other open area on the same #zoning lot#.

* * *

Non-complying, or non-compliance

A "non-complying" #Building or other structure# is any lawful #Building or other structure# which does not comply with any one or more of the applicable district #bulk# regulations either on December 15, 1961 or as a result of a subsequent amendment thereto.

A "non-compliance" is a failure by a #non-complying Building or other structure# to comply with any one of such applicable #bulk# regulations.

* * *

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

* * *

Single-family residence

A "single-family residence" is a #Building# containing only one #dwelling unit#, and occupied by only one #family#.

ZR § 22-00 *General Provisions*

Use Groups Permitted in Residence Districts

USE GROUPS

Residential | Community Facility

Districts	1	2	3	4
#Single-family detached residences#	R2	x		x	x

* * *

ZR §22-11 *Use Group 1*

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

Use Group 1 consists of #single-family detached residences#

A. #Residential uses#
#single-family detached residences#

B. #Accessory uses#

* * *

ZR §22-12 *Use Group 2*

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

Use Group 1 consists of all other types of #residences#

* * *

ZR § 52-22 *Structural Alterations*

No structural alterations shall be made in a #Building or other structure# substantially occupied by a #non-conforming use#, except when made:

(a) in order to comply with requirements of law; or

(b) in order to accommodate a conforming #use#; or

(c) in order to conform to the applicable district regulations on performance standards; or

(d) in the course of an #enlargement# permitted under the provisions of Sections 52-41 to 52-46, inclusive, relating to Enlargements or Extensions, or except as set forth in Sections 52-81 to 52-83, inclusive, relating to Regulations Applying to Non-Conforming Signs; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that: (1) the Building is occupied by a conforming use and that the Permit authorized an alteration to a non-complying building in accordance with ZR § 54-31; or (2) in the alternative, although the Building is occupied by a non-conforming use, the Permit authorized structural alterations performed in order to accommodate a conforming use pursuant to ZR § 52-22, in that the enlarged portion of the building provided complying side yards and contained a conforming use (a single-family residence); and

WHEREAS, the Appellant contends that the Building is a non-complying building occupied by a conforming use in an R2 district, and that the Permit authorized an alteration permitted under ZR § 54-31; and

WHEREAS, the Appellant states that, under the Zoning Resolution, a "use" is not a Use Group; while a use is the purpose for which a building is designed or arranged, a Use Group is a mere classification; and

WHEREAS, as such, the prohibition of a Use Group does not mean the use type—single-family residence, multi-family residence, college, eating and drinking establishment—classified in that Use Group is necessarily prohibited; and

WHEREAS, the Appellant states that because the Building is the residence for a single family, such use falls within Use Group 1, which per ZR § 22-11, consists of "single-family detached residences"; and

WHEREAS, the Appellant asserts that whether the Building is attached or detached is a bulk consideration, and is not determinative on the question of whether the use occupying the Building is conforming or non-conforming; thus, the Appellant contends that although Use Group 2 (which per ZR § 22-12, consists of all types of residences other than "single-family detached residences") is prohibited in an R2 district, because single-family residences *are* permitted, the Building, which is an attached single-family residence is considered a conforming use, and the fact that such Building is attached rather than detached merely renders the Building non-complying; and

WHEREAS, the Appellant asserts that as a non-complying building occupied by a conforming use, the Building may be altered in accordance with Article V, Chapter 4, which governs non-complying buildings; and

WHEREAS, accordingly, the Appellant contends that the Permit, which authorized the construction of an addition at the rear of the Building that complied with the bulk requirements applicable in an R2 district, was properly issued and should not have been revoked; and

WHEREAS, the Appellant notes that DOB previously supported its interpretation classifying the Building as a non-complying building occupied by a conforming use, and specifically authorized structural alterations and the construction of an addition at the rear of the Building, provided that such addition included side yards complying with the underlying district regulations; and

WHEREAS, further, DOB approved seven other permit applications filed by the Appellant between 2001 and 2007 and proposing structural alterations to single-family attached buildings within the subject R2 district; in each case, the Appellant asserts that DOB approved the applications as permitted alterations to non-complying buildings and never classified the buildings as occupied by non-conforming use; thus, the Appellant asserts that DOB has arbitrarily changed its interpretation of the Zoning Resolution; and

WHEREAS, in the alternative, the Appellant states that the Permit authorized structural alterations to a building substantially occupied by a non-conforming use and that such alterations were to accommodate a conforming use and were permitted by ZR § 52-22; and

WHEREAS, the Appellant asserts that even if the use of the Building is considered "non-conforming" because it is not an attached single-family residence, the work proposed under the Permit is properly classified as structural alterations made in order to accommodate a conforming use; and

WHEREAS, the Appellant states that the Permit authorizes the construction of a building segment that, unlike the existing Building, is not attached to the buildings on the adjacent lots; as such, this portion of the Building is occupied by a "detached single-family residence," which is a

conforming use in the R2 district; and

WHEREAS, accordingly, the Appellant states that the Permit authorized structural alterations in order to accommodate a conforming use; and

WHEREAS, the Appellant asserts that the instant appeal is distinguishable from the Board's decision in BSA Cal. No. 16-96-A (Pleasant Valley Village, Staten Island) primarily on the ground that that case involved the Board's classification of new attached buildings as non-conforming under ZR § 22-12 following a rezoning of the district from R3-2 to R3A, while this case involves the extension of a single existing attached building and no rezoning; and

WHEREAS, finally, the Appellant asserts that the owner acquired a common law vested right to complete construction and obtain a certificate of occupancy because it: (1) completed work under the Permit prior to DOB's new interpretation of the Zoning Resolution and prior to February 2, 2011 (the effective date of the Key Terms Amendment, which the Appellant suggests gave rise to DOB's new interpretation); (2) made substantial expenditures; and (3) would suffer serious loss if the vested right is not recognized; and

DOB'S POSITION

WHEREAS, DOB asserts that: (1) the Building is substantially occupied by a non-conforming use; and (2) the Permit erroneously authorized structural alterations and was properly revoked; and

WHEREAS, DOB states that the Building contains non-conforming uses and is restricted by ZR § 52-22's limitations on structural alterations in a building occupied by non-conforming uses; and

WHEREAS, DOB notes that pursuant to ZR § 52-22, "no structural alterations shall be made in a building or other structure substantially occupied by a non-conforming use"; and

WHEREAS, DOB states that ZR § 12-10 defines a non-conforming use as "any lawful use . . . of a building or other structure . . . 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, DOB states that the 1945 CO for the Building authorizes a single-family residence and an accessory doctor's office as lawful uses in the Building, which is an attached, row-house style building; and

WHEREAS, DOB contends that at the time that the Permit was issued (as now), only single-family detached residences (Use Group 1) and accessory uses are allowed as-of-right in the R2 district, per ZR § 22-11; and

WHEREAS, DOB states that all other types of residences (including single-family attached residences) are classified under Use Group 2, per ZR § 22-12; and

WHEREAS, DOB states that ZR § 22-00 does not allow Use Group 2 uses in the R2 district; and

WHEREAS, accordingly, DOB contends that the Building is substantially occupied by a non-conforming use; and

WHEREAS, DOB asserts that the Permit authorized structural alterations contrary to ZR § 52-22; and

WHEREAS, specifically, DOB states that the work includes structural alteration of portions of the Building consisting of the construction of new floors, walls and window openings as well as the lowering of foundations; and

WHEREAS, DOB notes that while there are exceptions to ZR § 52-22's general prohibition on structural alteration, none applies in this case; and

WHEREAS, DOB disagrees with the Appellant that the structural alterations are "made in order to accommodate a conforming use" in accordance with exception (b), because DOB finds that the existing use and the use proposed within the new portion of the Building are both non-conforming Use Group 2; DOB notes that the new portion of the Building is fully integrated with the existing portion of the Building and that the Building, as a whole, contains a single-family attached residence; and

WHEREAS, as to the prior erroneous interpretations involving existing single-family attached residences cited by the Appellant, DOB states that ZR § 22-11 was apparently misinterpreted as a bulk regulation in the respect that it requires single-family residences to be configured so that they are surrounded by yards or other open area on a zoning lot; however, DOB represents that this reading is plainly incorrect since ZR § 22-11 is a use regulation found under Article II Chapter 2 use regulations and not in the Chapter 3 bulk regulations; and

WHEREAS, DOB also states that given that a non-conforming use is defined in ZR § 12-10 as a lawful use of a building which does not conform to any one or more of the applicable use regulations of the district in which it is located on December 15, 1961, and that the use regulation ZR § 22-11 effective in 1961 only allows single-family detached residences in the R2 zoning district, the Building is occupied by a non-conforming use; thus, DOB asserts that no rational explanation can be provided to support the interpretation that an attached single-family residence is a conforming use in the R2 district, where only single-family detached residences are permitted; and

WHEREAS, DOB notes that it has applied the law correctly in the past, and it cites the position in took in BSA Cal. No. 16-96-A; in that case, DOB properly classified multi-family residences rezoned from the R3-2 zoning district to the R3A zoning district as construction that will be non-conforming under ZR § 22-12, which prohibits multi-family buildings in the R3A district; and

WHEREAS, as to the Appellant's argument that the portion of the Building created under the Permit should be treated as a detached building because it is surrounded by two side yards, and therefore is complying construction, DOB asserts that such an interpretation is unsupported by the ZR § 12-10 definitions of "detached," "attached," "semi-detached" and "abut"; and

WHEREAS, further, DOB states that the Zoning Resolution classifies an entire building as being within the category of attached, detached or semi-detached, and does

not classify portions of buildings in different categories; accordingly, DOB asserts the new portion of the Building is properly classified as a portion of an attached building, rather than a separate detached building; and

WHEREAS, therefore, DOB contends that it properly revoked the Permit as authorizing structural alterations to a Building substantially occupied by a non-conforming use, in violation of ZR § 52-22; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the Permit erroneously authorized structural alterations to a building substantially occupied by a non-conforming use; and

WHEREAS, the Board finds that, according to the plain text of ZR § 22-11, single-family detached residences and their accessory uses are classified as Use Group 1, and, all other types of residences are, per ZR § 22-12, classified as Use Group 2; and

WHEREAS, the Board agrees with DOB that the use of the Building is properly classified—both prior to the issuance of the Permit (when the Building included a residence and an accessory doctor's office), and as altered by the Permit—as a single-family attached residence (Use Group 2); and

WHEREAS, the Board finds that according to ZR § 22-00, only Use Group 1 is permitted as-of-right in an R2 district; and

WHEREAS, the Board finds that ZR §§ 22-00, 22-11 and 22-12 are use regulations and a failure to adhere to a use regulation, renders a use, by definition, a non-conforming use; and

WHEREAS, accordingly, the Board finds that the Building is substantially occupied by a non-conforming Use Group 2 use; and

WHEREAS, the Board rejects the Appellant's assertion that because an R2 district permits single-family residences and prohibits attached buildings, its use is conforming and its building is non-complying; the Board finds that such an interpretation is clearly contrary to the plain text of ZR § 22-11; and

WHEREAS, the Board notes that while the Building may also be a non-complying building subject to Article V, Chapter 4, it is further restricted by the applicable provisions of Article V, Chapter 2, including ZR § 52-22, which prohibits structural alterations; and

WHEREAS, additionally, the Board disagrees with the Appellant that the Permit authorized structural alterations made to accommodate a conforming use pursuant to ZR § 52-22(b); and

WHEREAS, the Board agrees with DOB that the structural alterations were made to expand the living space of the single-family attached residence; thus, they were made to accommodate the existing, non-conforming use; and

WHEREAS, the Board rejects the Appellant's argument that because complying yards were provided in the new portion of the Building, the use within that portion is considered conforming single-family detached residence (Use Group 1); and

WHEREAS, the Board finds no authority for such a proposition in the Zoning Resolution, and finds the assertion particularly dubious in this case given that the plans show that the new portion of the Building is fully integrated with the existing portion of the Building and that the Building, as a whole, contains a residence for a single family; and

WHEREAS, turning to the Appellant's arguments regarding the Board's precedent, the Board notes, as DOB observed, that in BSA Cal. No. 16-96-A, it classified multi-family residences rezoned from the R3-2 zoning district to the R3A zoning district as construction that will be non-conforming under ZR § 22-12, which prohibits multi-family buildings in the R3A district; and

WHEREAS, the Board rejects the Appellant's assertion that BSA Cal. No. 16-96-A is distinguishable because new buildings were involved rather than an existing building; that new buildings were involved was not relevant to the question of whether such building became non-conforming as a result of a rezoning; rather, the classification of the buildings was based—as it is in this case—on the definition of "non-conforming", and just as the new buildings in BSA Cal. No. 16-96-A did not comply with a use regulation as a result of an amendment to the Zoning Resolution, so does the Building in this case not comply with a use regulation that became effective when the Zoning Resolution was adopted; and

WHEREAS, further, the Board notes that, more recently, in BSA Cal. No. 306-05-BZ (206A Beach 3rd Street, Queens), the Board found that "the use of the property for attached residences, is specifically not permitted by the use provisions ZR § 22-00 in an R3X district; and therefore, the proposed development is non-conforming as to use"; and

WHEREAS, as to the Appellant's assertion that the owner is entitled to a common law vested right to complete construction, the Board does not agree; and

WHEREAS, the Board notes that a common law vested right to continue construction after a change in zoning generally exists if the owner has undertaken substantial construction, made substantial expenditures, and serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, thus, vested right cases by their very nature involve the prerequisite of an amendment to the Zoning Resolution that changes the law under which the permit was approved; in the instant matter, the Board finds that the Appellant lacks both; and

WHEREAS, for reasons already discussed, the Board finds that the owner does not possess a lawfully issued permit because the Permit was issued contrary to the clear and unambiguous requirements of ZR § 52-22, which, the Board notes, has not been amended since 1989; and

WHEREAS, further, the Board finds that although the Appellant generally identifies the Key Terms Amendment as the amendment that resulted in DOB's interpretation that the Building is occupied by a non-conforming use, the Appellant does not specify which provision(s) were amended and how such amendment(s) resulted in DOB's interpretation; the Board notes that DOB makes no such assertion; on the contrary DOB asserts that its interpretation is long-standing;

and

WHEREAS, likewise, the Board is unaware of anything in the Key Terms Amendment that would compel a different interpretation of ZR § 52-22 (or ZR §§ 12-10, 22-00, 22-11 or 22-12, for that matter); accordingly, it is unnecessary to determine whether the owner has undertaken substantial construction or made substantial expenditures, and the Board rejects the Appellant's request for recognition of a vested right; and

WHEREAS, finally, the Board notes that while DOB may have historically approved applications contrary to ZR § 52-22, the Court of Appeals has held that DOB cannot be estopped from revoking its approval of a building permit issued in violation of the Zoning Resolution (Parkview Associates v. City of New York, 71 N.Y.2d 274 (1988)); and

Therefore it is Resolved, that the Board denies the appeal and affirms DOB's revocation of the Permit based on its determination that the Permit erroneously authorized structural alterations to a building substantially occupied by a non-conforming use, in violation of ZR § 52-22.

Adopted by the Board of Standards and Appeals, September 17, 2013.

70-13-A

APPLICANT – Goldman Harris LLC, for JIM Trust (c/o Esther Freund), owners; OTR Media Group, Inc., lessee.

SUBJECT – Application February 13, 2013 – Appeal of Department of Buildings' determination that the subject advertising sign is not entitled to non-conforming use status. M1-2/R6 (MX-8) zoning districts.

PREMISES AFFECTED – 84 Withers Street, between Meeker Avenue and Leonard Street on the south side of Withers Street, Block 2742, Lot 15, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, September 17, 2013.

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 – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

29-12-A

APPLICANT – Vincent Brancato, owner

SUBJECT – Application February 8, 2012 – Appeal seeking to reverse Department of Building's padlock order of closure (and underlying OATH report and recommendation) based on determination that the property's commercial/industrial use is not a legal non-conforming use. R3-2 Zoning district.

PREMISES AFFECTED – 159-17 159th Street, Meyer Avenue, east of 159th Street, west of Long Island Railroad, Block 12178, Lot 82, 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 October 8, 2013, at 10 A.M., for decision, hearing closed.

71-13-A

APPLICANT – Goldman Harris LLC, for Tuck-It-Away Associates-Deegan, LLC, owners; OTR Media Group, Inc., lessee.

SUBJECT – Application February 13, 2013 – Appeal of Department of Buildings' determination that the subject advertising sign is not entitled to non-conforming use status. M1-4 /R6A (MX-13) zoning districts**.**

PREMISES AFFECTED – 261 Walton Avenue, through-block lot on block bounded by Gerard and Walton Avenues and East 138th and 140th Streets, Block 2344, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for continued hearing.

75-13-A

APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by llya 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 – Laid over to October 8, 2013, at 10 A.M., for deferred decision.

87-13-A
APPLICANT – Bryan Cave LLP, for 176 Canal Corp., owner .OTR Media Group ; lessee
SUBJECT – Application March 6, 2013 – Appeal challenging Department of Buildings' determination that the existing sign is not entitled to non-conforming use status. C6-1G zoning district.
PREMISES AFFECTED – 174 Canal Street, Canal Street between Elizabeth and Mott Streets, Block 201, Lot 13, Borough of Manhattan.
COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to September 24, 2013, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

61-13-BZ
CEQR #13-BSA-093M
APPLICANT – Ellen Hay, Slater & Beckerman, P.C., for B. Bros. Broadway Realty, owner; Crunch LLC, lessee.
SUBJECT – Application February 7, 2013 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Crunch*). M1-6GC zoning district.
PREMISES AFFECTED – 1385 Broadway, west side Broadway between West 37th and West 38th Streets, Block 813, Lot 55, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 9, 2013, acting on Department of Buildings Application No. 121517670, reads in pertinent part:

> Proposed Physical Culture Establishment within M1-6 zoning district is not permitted as-of-right and a special permit from the Board of Standards and Appeals is required; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-6 zoning district within the Special Garment District, the legalization of an existing physical culture establishment ("PCE") in portions of the cellar, first floor, mezzanine, and second floor of an existing 23-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, and then to decision on September 17, 2013; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest intersection of West 38th Street and Broadway, within an M1-6 zoning district within the Special Garment District; and

WHEREAS, the site has 104 feet of frontage along Broadway, 174.51 feet of frontage along West 38th Street and 18,850 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 23-story commercial building; and

WHEREAS, the PCE occupies approximately 20,168 sq. ft. of floor area in the first floor, mezzanine, and second floor of the building, with additional space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 2000, when, under BSA Cal. No. 138-99-BZ, the Board permitted the legalization of an existing PCE operating in portions of the cellar, first floor, mezzanine, and second floor, for a term of nine years, to expire on April 22, 2009; and

WHEREAS, the applicant notes that the PCE has been in operation since the expiration of the prior grant in 2009; and

WHEREAS, the PCE is currently operated as Crunch; 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 10:00 p.m., Friday from 5:30 a.m. to 9:00 p.m., Saturday, from 8:00 a.m. to 6:00 p.m., and closed Sunday; 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 notes that the term of this grant has been reduced to reflect the operation of the PCE after the expiration of the special permit granted under BSA Cal. No. 138-99-BZ on April 22, 2009 until the date of this grant; 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. 13BSA093M, dated February 7, 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 an M1-6 zoning district within the Special Garment District, the legalization of an existing PCE in portions of the cellar, first floor, mezzanine, and second floor of an existing 23-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 24, 2013" – Six (6) sheets; and *on further condition*:

THAT the term of this grant will expire on April 22, 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 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 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, September 17, 2013.

82-13-BZ
CEQR #13-BSA-106K
APPLICANT – Law Office of Fredrick A. Becker, for Michal Cohen and Isaac Cohen, owners.
SUBJECT – Application March 1, 2013 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R5 zoning district.
PREMISES AFFECTED – 1957 East 14th Street, east side of East 14th Street between Avenue S and Avenue T, Block 7293, Lot 64, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 30, 2013, acting on Department of Buildings Application No. 320470496, 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 23-461 in that the proposed side yards are less than the minimum required;
3. 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 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), 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 13, 2013, after due notice by publication in *The City Record*, and then to decision on September 17, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by 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 east side of East 14th Street, between Avenue S and Avenue T, within an R5 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 2,673.5 sq. ft. (0.67 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 of 2,673.5 sq. ft. (0.67 FAR) to 5,059.11 (1.27 FAR); the maximum permitted floor area is 5,000 sq. ft. (1.25 FAR); and

WHEREAS, the applicant also proposes to decrease its rear yard depth from 38'-7" to 20'-0" (a minimum rear yard depth of 30'-0" is required) and maintain its existing side yards, which have widths of 4'-0" and 7'-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 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 1.27 FAR is consistent with the bulk in the surrounding area and notes that there are five homes on the block directly west of the subject block (Block 7292) and seven homes on the block directly east of the subject block (Block 7294) with an FAR of 1.28 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, 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 R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, 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 25, 2013"- (10) sheets and "September 3, 2013"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 5,059.11 (1.27 FAR), a minimum rear yard depth of 20'-0", and side yards with minimum widths of 4'-0" and 7'-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;

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 17, 2013.

96-13-BZ
CEQR #13-BSA-117X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Urban Health Plan, Inc., owner.

SUBJECT – Application April 2, 2013 – Variance (§72-21) to permit construction of ambulatory diagnostic treatment health facility (UG4), contrary to rear yard regulations (§23-47). R7-1 and C1-4 zoning districts.

PREMISES AFFECTED – 1054 Simpson Street, 121.83 feet north of intersection of Westchester Avenue, Block 2727, Lot 4, 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 Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated February 25, 2013, acting on Department of Buildings ("DOB") Application No.

210032249, reads in pertinent part:

> Proposed ambulatory diagnostic treatment health care facility (UG-4) in an R7-1 and C1-4 (R7-1) zoning district without the required rear yard in the R7-1 portion of the site is contrary to ZR Section 23-46; and

WHEREAS, this is an application under ZR § 72-21, to permit the construction of a six-story and one-story ambulatory diagnostic and treatment health care facility (Use Group 4), the one-story portion of which does not provide the required rear yard, contrary to ZR § 24-36; 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 September 17, 2013; 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, this application is brought on behalf of Urban Health Care Plan, Inc. ("Urban Health"), a not-for-profit institution; and

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

WHEREAS, City Councilmember Maria del Carmen Arroyo provided written testimony in support of this application; and

WHEREAS, the subject site is a square interior lot located on the east side of Simpson Street between Westchester Avenue and East 167th Street, partially within an R7-1 zoning district and partially within an R7-1 (C1-4) zoning district; and

WHEREAS, the site has 100 feet of frontage along Simpson Street, a lot depth of 100 feet, a lot area of 10,000 sq. ft., and was previously occupied as a parking lot; and

WHEREAS, the applicant represents that on March 10, 2011, DOB issued Permit No. 210032249-01-NB (the "Permit") for the construction of a six-story ambulatory diagnostic and treatment health care facility (Use Group 4) with 43,233 sq. ft. of floor area (4.3 FAR); and

WHEREAS, the applicant states that the Permit erroneously authorized construction within the required rear yard contrary to ZR § 24-36 and construction commenced; subsequently, the error was discovered; and

WHEREAS, accordingly, the applicant filed the subject variance seeking to proceed according to the original design (the "Proposed Facility"), which was for a six-story building that included a one-story portion (23'-0" in height) with a basement and a cellar within the 30-foot required rear yard for the full width of the R7-1 portion of the zoning lot; the applicant notes that the one-story building extends the full width of the zoning lot but it is a permitted obstruction within the R7-1 (C1-4) portion of the zoning lot; and

WHEREAS, the applicant notes that Urban Health is a well-established, nationally-recognized community health center, which has existed in the South Bronx for nearly 40 years, and works closely with neighborhood hospitals, schools, and community organizations, including Bronx Lebanon Hospital, the Lincoln Medical and Mental Health Center, New York Presbyterian Hospital, the Jane Addams Academic Careers High School, PS 48, 75, 333 and 335, and the St. Vincent de Paul Adult Day Treatment Program; and

WHEREAS, the applicant represents that Urban Health's stated mission is to continuously improve the health status of underserved communities by providing affordable, comprehensive, and high-quality primary and specialty medical care in a culturally proficient, barrier free, individualized, and family-oriented manner, with an emphasis on prevention through education; and

WHEREAS, the applicant states that Urban Health seeks a variance due to the tremendous success of its existing health care facility at 1050 Southern Boulevard (the "Southern Boulevard Facility"), which abuts a portion of the rear lot line of the site and provides medical care to a growing number of patients, many of whom lack insurance and would otherwise seek care within a hospital emergency room; and

WHEREAS, the applicant notes that the closure of Westchester Square Hospital has significantly increased the demand for such services, and the applicant represents that the Proposed Facility will allow Urban Health to increase the number of patient visits per year from approximately 200,000 to approximately 400,000; and

WHEREAS, the applicant states that the Proposed Facility will include the following: (1) in the cellar, a pediatrics unit with a variety of exam and treatment rooms, and storage, employee lockers and bathrooms, and mechanical rooms; (2) at the basement level, the Adult Walk-in Unit waiting room, exam and treatment rooms, and staff support areas; (3) on the first floor, the Adult Medicine Appointment Unit exam and treatment rooms; (4) on the second floor, administrative offices, and obstetrics and gynecology facilities; (5) on the third floor, specialized pediatric facilities; (6) on the fourth floor, mental health facilities, a multi-purpose room, and a conference room; and (7) on the fifth floor, the staff dining room and exercise facility; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the angle of the district boundary line across the site; and (2) the programmatic needs of Urban Health; and

WHEREAS, the applicant states that the site is divided by a district boundary in a manner that creates practical difficulties and unnecessary hardship; specifically, the boundary divides the site beginning in the southwest corner and running at an approximately 40-degree angle in a northeasterly direction and resulting in a site with two distinct portions: a southeast triangular-shaped portion that is fully within the R7-1 (C1-4) zoning district, where a building for an ambulatory and diagnostic health treatment facility is a permitted obstruction in the rear yard up to a height of 23 feet and a northwest trapezoidal-shaped portion that is fully within the R7-1 district where a building for an ambulatory and

diagnostic health treatment facility is *not* a permitted obstruction in the rear yard; and

WHEREAS, thus, the applicant states that compliance with the rear yard requirements of both districts would result in undersized, oddly-shaped and inefficient floor plates at the basement and first story in the Proposed Facility and would prevent the connection of the Proposed Facility with the Southern Boulevard Facility; and

WHEREAS, the applicant states that the following are the programmatic needs of Urban Health, which require the requested waiver: (1) the ability to connect the Proposed Facility to the Southern Boulevard Facility in the area where the rear yard is required; (2) the need to fully utilize the portions of cellar, basement, and first floor (3,740 sq. ft. of floor space spanning three levels) that encroach upon the required rear yard but which were included in the original design and will accommodate vital functions of Urban Health; and

WHEREAS, as to the ability to connect the facilities, the applicant represents that interconnection allows the Proposed Facility to be integrated with the Southern Boulevard Facility, which will result in efficient distribution of patient care and staff resources; and

WHEREAS, as to the need to fully utilize all portions of the originally-designed basement and first floor, the applicant represents that, absent the requested waiver, it will be forced to reduce the Adult Walk-in Unit program floor space in the basement by 50 percent, resulting in a loss of 80 medical visits per day, and it will be forced to eliminate approximately 25 percent of the patient examination and treatment space on the first floor, resulting in a loss of approximately 50 medical visits and 25 counseling sessions per day; and

WHEREAS, accordingly, based upon the above, the Board finds that the angle of the district boundary line, when considered in conjunction with the programmatic needs of Urban Health, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; 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 Urban Health, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Urban Health 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 represents that the neighborhood is characterized by a mix of residential and community facility uses, except along Westchester Avenue where the 2 and 5 trains run on elevated tracks, where commercial uses predominate; and

WHEREAS, the applicant represents that the Proposed Facility is harmonious with the surrounding neighborhood in terms of both use and bulk; and

WHEREAS, the applicant notes that the Proposed Facility complies with all use and bulk regulations of the underlying R7-1 and R7-1 (C1-4) zoning districts, with the exception of the rear yard requirement in the R7-1 portion of the lot for a distance of only 20 linear feet; further, the portion of the site for which the variance is sought directly abuts properties under the ownership and control of Urban Health; and

WHEREAS, the applicant also notes that it purchased the site in 1995 and could have constructed the proposal as-of-right until ZR § 24-33 was amended in 2004 to remove certain community facilities from the list of permitted obstructions within a required rear yard in an R7-1 zoning district; importantly, a community facility classified as a hospital (which performs many of the same functions as the Proposed Facility) would be a permitted obstruction up to a height of 23 feet under ZR § 24-33; thus, the proposal is within the spirit of the Zoning Resolution's preference in certain residential districts for community facilities that provide certain medical services; and

WHEREAS, finally, the applicant represents, as stated above, that Urban Health is a well-established, nationally recognized community health center, which has existed in the South Bronx for nearly 40 years and at the Southern Boulevard Facility since 2001; as such, the Proposed Facility will provide a direct benefit to members of the surrounding community by increasing the availability of health care and improving its quality; 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 Urban Health 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, the Proposed Facility complies with all use and bulk regulations of the underlying R7-1 and R7-1 (C1-4) zoning districts, with the exception of the rear yard requirement in the R7-1 portion of the lot; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary; and

WHEREAS, 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 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 the construction of a six-story and one-story ambulatory diagnostic and treatment health care facility (Use Group 4), the one-story portion of which does not provide the required rear yard, contrary to ZR § 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 June 10, 2013"– fourteen (14) sheets and "Received August 5, 2013" – one (1) sheet; and *on further condition;*

THAT the following shall be the bulk parameters of the building: a maximum of 43,233 sq. ft. of floor area (4.3 FAR), a maximum of six stories, and a maximum building height of 72'-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, September 17, 2013.

35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, 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 October 22, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to October 8, 2013, 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 November 19, 2013, at 10 A.M., for continued hearing.

322-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.

SUBJECT – Application December 6, 2012 – Variance (§72-21) to permit the enlargement of a single-family residence, contrary to open space and lot coverage (§23-141); less than the minimum required front yard (§23-45) and perimeter wall height (§23-631). R5 (OP) zoning district.

PREMISES AFFECTED – 701 Avenue P, 1679-87 East 7th Street, northeast corner of East 7th Street and Avenue P, Block 6614, Lot 60, 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 October 8, 2013, at 10 A.M., for decision, hearing closed.

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, 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 – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

105-13-BZ
APPLICANT – Law Office of Fred A Becker, for Nicole Orfali and Chaby Orfali, owners.
SUBJECT – Application April 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461); perimeter wall height (§23-631) and less than the minimum rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 1932 East 24th street, west side of East 24th street, between Avenue S and Avenue T, Block 7302, Lot 19, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

133-13-BZ
APPLICANT – Sheldon Lobel, PC, for Evangelical Church Letting Christ Be known, Inc., owner.
SUBJECT – Application May 10, 2013 – Variance (§72-21) to permit the construction of a new two-story community facility (UG 4A house of worship) (*Evangelical Church*) building is contrary to parking (§25-31), rear yard (§24-33(b) & §24-36), side yard (§24-35(a)) and front yard requirements (§25-34) zoning requirements. R4 zoning district.
PREMISES AFFECTED – 1915 Bartow Avenue, northwest corner of Bartow Avenue and Grace Avenue, Block 4799, Lot 16, Borough of Bronx.
COMMUNITY BOARD #12BX
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 October 22, 2013, at 10 A.M., for decision, hearing closed.

161-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Bennco Properties, LLC, owner; Soul Cycle West 19th street, lessee.
SUBJECT – Application May 28, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Soul Cycle*) within a portion of an existing building. C6-4A zoning district.
PREMISES AFFECTED – 8 West 19th Street, south side of W. 19th Street, 160' west of intersection of W. 19th Street and 5th Avenue, Block 820, Lot 7503, Borough of Manhattan.
COMMUNITY BOARD #5M
ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for deferred decision.

169-13-BZ
APPLICANT – Greenberg Traurig, for Joseph Schottland, owner.
SUBJECT – Application June 5, 2013 – Special Permit (§73-621) to legalize the enlargement of a two-family residence, contrary to floor area regulations (§23-145). R6 (LH-1) zoning district.
PREMISES AFFECTED – 227 Clinton Street, east side of Clinton Street, 100' north of the corner formed by the intersection of Congress Street and Clinton Street, Block 2297, Lot 5, 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 October 8, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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DIRECTORY

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New Case Filed Up to September 24, 2013

272-13-BZ

78-02/14 Roosevelt Avenue, South side of Roosevelt Avenue between 78th Street and 79th Street, Block 1489, Lot(s) 7501, Borough of **Queens, Community Board: 4**. 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. C2-3(R6)& 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

OCTOBER 22, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 22, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

405-01-BZ
APPLICANT – Eric Palatnik, P.C., for United Talmudcial Academy, owner.
SUBJECT – Application September 18, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a five story school and synagogue which expires on February 14, 2014. R5/C2-3 zoning district.
PREMISES AFFECTED – 1275 36th Street, aka 123 Clara Street, between Clara Street and Louisa Street, Block 5310, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #12BK

19-05-BZ
APPLICANT – Slater & Beckerman, P.C., for Groff Studios Corp., owner.
SUBJECT – Application August 26, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the change in use of portions of an existing nine-story, mixed-use building to residential use which expires November 10, 2013. M1-6 zoning district.
PREMISES AFFECTED – 151 West 28th Street, north side of West 28th Street, 101' east of Seventh Avenue, Block 804, Lot 8, Borough of Manhattan.
COMMUNITY BOARD #5M

219-07-BZ
APPLICANT – James Chin & Associates, LLC, for External Sino Dev. Condo, LLC, owner; Shunai (Kathy) Jin, lessee.
SUBJECT – Application June 1, 2012 – Extension of term of a previously granted Special permit (§73-36) to permit the continued operation of a physical culture establishment (*Cosmos Spa*) which expired on June 3, 2010. M1-6 zoning district.
PREMISES AFFECTED – 11 West 36th Street, 2nd Floor, north side of West 36th Street between 5th and 6th Avenues, Block 838, Lot 35, Borough of Manhattan.
COMMUNITY BOARD #5M

APPEALS CALENDAR

110-13-A
APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.
SUBJECT – Application April 24, 2013 – An Appeal Challenging Department of Buildings interpretation seeking to reinstate a permit in reference to a post approval amendment in regards to the excavation and construction of an accessory swimming pool and covering. R6B zoning district.
PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.
COMMUNITY BOARD #6BK

226-13-A
APPLICANT – Rothrug Rothkrug & Spector LLP, for High Rock Development LLC, owner.
SUBJECT – Application July 26, 2013 – Proposed construction of a one-family dwelling that does not front a legally mapped street, contrary to Section 36 Article 3 of the General City Law. R3-2 /R2 NA-1 Zoning District.
PREMISES AFFECTED – 29 Kayla Court, west side of Kayla Court, 154.4' west and 105.12' south of intersection of Summit Avenue and Kayla Court, Block 951, Lot 23, Borough of Staten Island
COMMUNITY BOARD #2SI

ZONING CALENDAR

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. 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

90-13-BZ
APPLICANT – Akerman Senterfitt, LLP, for Eleftherios Lagos, owner.
SUBJECT – Application March 18, 2013 – Variance (§72-21) to permit the construction of a single-family dwelling contrary to open area requirements (ZR 23-89). R1-2 zoning district.
PREMISES AFFECTED – 166-05 Cryders Lane, northeast corner of the intersection of Cryders Lane and 166th Street,

Block 4611, Lot 1, Borough of Queens.
COMMUNITY BOARD #7Q

121-13-BZ
APPLICANT – Moshe M. Friedman, P.E., for Congregation Beth Aron Moshe, owner.
SUBJECT – Application April 25, 2013 – Variance (§72-21) to permit a UG 4 synagogue (*Congregation Beth Aron Moshe*), contrary to front yard (§24-34), side yards (§24-35) and rear yard (§24-36). R5 zoning district.
PREMISES AFFECTED – 1514 57th Street, 100' southeast corner 57th Street and the eastside of 15th Avenue, Block 05496, Lot 12, Borough of Brooklyn.
COMMUNITY BOARD #12BK

187-13-BZ
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 (*Fitness Center*), and Special Permit (§73-52) to extend commercial use 25'-0" into the R7-1 portion of the lot. C4-4 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

213-13-BZ
APPLICANT – Rothrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.
SUBJECT – Application July 12, 2013 – Special Permit (§73-125) proposed two story building to allow a Medical Office for an ambulatory diagnostic or treatment health care facility, contrary to Section §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

235-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 132 West 31st Street Building Investors11, LLP, owner; Blink West 31st Street, Inc. owner.
SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within an existing commercial building. M1-6 zoning district.
PREMISES AFFECTED – 132 West 31st Street, south side of West 31st Street, 350' east of 7th Avenue and West 31st Street, Block 806, Lot 58, Borough of Manhattan.
COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 24, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

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
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 October 22, 2013, 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
ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for adjourned hearing.

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 – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

606-75-BZ
APPLICANT – Sheldon Lobel, P.C., for Printing House Condominium, owners.
SUBJECT – Application July 3, 2013 – Amendment of a previously approved variance (§72-21) which allowed the residential conversion of a manufacturing building; amendment seeks to permit a reallocation of floor area between the maisonette and townhouse units, resulting in a reduction of total units and no net change in total floor area. M1-5 zoning district.
PREMISES AFFECTED – 421 Hudson Street, corner through lot with frontage on Hudson Street, Leroy Street and Clarkson Street, Block 601, Lot 7501, 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 October 22, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

157-12-A
APPLICANT – Sheldon Lobel, P.C., for John F. Westerfield, owner; Welmar Westerfield, lessee.
SUBJECT – Application May 21, 2012 – Appeal challenging Department of Buildings' determination that the subject property not be developed as an "existing small lot" pursuant to ZR §23-33 as it does not meet the definition of ZR §12-10. R1-2 zoning district.
PREMISES AFFECTED – 184-27 Hovenden Road, Block 9967, Lot 58, Borough of Queens.
COMMUNITY BOARD #8Q
ACTION OF THE BOARD – Appeal granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an appeal of a Department of Buildings ("DOB") final determination dated July 2, 2013, issued by DOB's First Deputy Commissioner (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

> Proposed residential development on a zoning lot in an R1-2 Zoning District (Lot 58) that is deficient in the lot width and lot area required by ZR Section 23-32 that was owned on December 15, 1961 by a husband and wife as tenants by the entirety, abutting an adjacent lot (Lot 56) that was owned individually only be the husband, pursuant to ZR Section 23-33 is impermissible, since the zoning lot was not owned separately and individually from abutting adjacent lot on December 15, 1961; and

WHEREAS, the appeal was brought on behalf of the owner of 184-27 Hovenden Road (hereinafter the "Appellant"); and

WHEREAS, a public hearing was held on this application on August 13, 2013 after due notice by publication in *The City Record*, and then to decision on September 24, 2013; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; 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 Hovenden Road between Somerset Street and Chevy Chase Street, within an R1-2 zoning district; and

WHEREAS, Lot 58, a vacant site, has an average width of 38.55 feet (with a minimum width of 37.1 feet), and a total lot area of 3,855 sq. ft.; and

WHEREAS, the R1-2 zoning district regulations require a minimum lot width of 60 feet and a minimum lot area of 5,600 sq. ft., pursuant to ZR § 23-32; and

WHEREAS, Lot 56, the adjacent lot to the east, has similar dimensions to Lot 58 and several other lots on the subject block and is occupied by a two-family home; and

WHEREAS, the Appellant disagrees with DOB's contention that Lot 56 and Lot 58 were not held in separate and individual ownership on December 15, 1961 and thus Lot 58 cannot be developed as an undersized lot; and

SITE HISTORY

WHEREAS, on July 1, 1941, Otto Westerfeld purchased Lot 56, which is occupied by a home built in approximately 1938 that remains; the home on Lot 56 has a Certificate of Occupancy No. 61216, issued on October 14, 1938; and

WHEREAS, on May 3, 1944, Otto Westerfeld and Christine Westerfeld purchased Lot 58, a vacant lot, as tenants by the entirety; and

WHEREAS, until 1985, Lot 56 was owned by Otto Westerfeld alone when it was transferred to Otto Westerfeld and his wife Christine Westerfeld as tenants by the entirety; and

WHEREAS, until Otto Westerfeld's death in 1994, Lot 58 was held by Otto Westerfeld and Christine Westerfeld as tenants by the entirety; and

WHEREAS, from 1994 until her death in 2007, Lot 56 and Lot 58 were owned by Christine Westerfeld; and

WHEREAS, from 2007 until 2009, Lot 56 and Lot 58 were owned by the Westerfelds' heirs; and

WHEREAS, in 2009, the Westerfelds' heirs conveyed Lot 56 to the current owner; and

WHEREAS, Lot 58 is now owned by the Westerfelds' heirs; and

WHEREAS, on April 23, 2012, the Appellant sought approval from DOB to allow Lot 58 to be developed as an "existing small lot" pursuant to ZR § 23-33; and

WHEREAS, DOB's subsequent denial of the request forms the basis for the Final Determination; and

RELEVANT ZONING RESOLUTION PROVISIONS

WHEREAS, the Appellant and DOB cite the following Zoning Resolution provisions, which read in pertinent part:

> ZR § 23-33
> Special Provisions for Development of Existing Small Lots
> R1 R2 R3 R4 R5 R6 R7 R8 R9 R10
> In all districts, as indicated, either one #single-family detached residence# or, where permitted, one #single-# or #two family residence# may be #developed# upon a #zoning lot# that:
> (a) has less than the prescribed minimum #lot area# or #lot width# or, in #lower density growth management areas# in the Borough of Staten Island, does not comply with the provisions of Section 23-32 (Minimum Lot Area or Lot Width for Residences);
> (b) was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit or, in R2X, R3A, R3X or R4A Districts, both on the effective date of establishing such district on the #zoning maps# and on the date of application for a building permit or, in #lower density growth management areas#, both on December 8, 2005, and on the date of application for a building permit . . . ; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant makes the following primary arguments in support of its assertion that Lot 58 can be developed as an existing small lot in compliance with ZR § 23-33: (1) Lot 58 was owned separately and independently from all adjoining tracts of land on December 15, 1961 and today; (2) the history of development of Lot 56 has been independent of Lot 58; and (3) the Zoning Resolution does not require that adjacent zoning lots in common ownership be merged; and

Separate and Individual Ownership from Adjoining Tracts of Land

WHEREAS, the Appellant asserts that ownership of Lot

56 by one individual and Lot 58 by that same individual and his wife as tenants by the entirety satisfies the separate and individual ownership requirement of ZR § 23-33; and

WHEREAS, the Appellant asserts that DOB is incorrect to say that the same person owned both lots on December 15, 1961 when one was owned individually by Otto Westerfeld and the other was owned by Otto Westerfeld and Christine Westerfeld as tenants by the entirety; and

WHEREAS, the Appellant relies on two New York State cases: Barbara Homes, Inc. v. Michaelis, 178 N.Y.S.2d 543 (Sup. Ct. 1958) and Edlu Custom Builders, Inc. v. Young, 181 N.Y.S.2d 400 (Sup. Ct. 1958) to support its position that ownership of one property by an individual and the other by that individual and their spouse constitutes separate and individual ownership; and

WHEREAS, the Appellant disagrees with DOB's position to distinguish Barbara Homes and Edlu Custom Builders on the basis that they concern the right to bequeath, sell, or encumber property because those issues are inherently related to zoning; and

WHEREAS, the Appellant notes that *The Law of Zoning and Planning* Section 49:20, acknowledges the holding in Barbara Homes and Edlu Custom Builders with regard to the ownership of one property as an individual and a second as tenants by the entirety; and

WHEREAS, the Appellant acknowledges that from October 21, 1985 when Otto Westerfeld transferred Lot 56 to Otto Westerfeld and Christine Westerfeld as tenants by the entirety until the Westerfeld heirs' sale of Lot 56 on September 2, 2009, Lot 56 and Lot 58 were both owned by Otto Westerfeld and Christine Westerfeld as tenants by the entirety and not owned separately and individually from each other; and

WHEREAS, but, the Appellant notes that the period between 1985 and 2009 is not relevant to ZR § 23-33 and does not affect the required finding that there be separate and individual ownership on December 15, 1961 and on the date of application for a building permit; and

WHEREAS, as to the ownership on the date of an application for a building permit, the Appellant notes that since 2009, Lot 56 and Lot 58 have been owned separately and individually from each other; and

WHEREAS, the Appellant asserts that DOB incorrectly equates "separate and individual ownership" of adjoining tracts of land with "common ownership"; and

WHEREAS, as to the definition of separately and individually, the Appellant asserts that ZR § 23-33 does not make reference to common ownership, a term that was used in DOB Directive No. 14-1967 with the subject "Section 23-33 Zoning Resolution – Provisions for Existing Small Lots" but is not defined nor used in ZR § 23-33; and

History of Development of Lot 56 and Lot 58

WHEREAS, the Appellant asserts that a third party owned Lot 56 at the time of construction of the home there and the issuance of the Certificate of Occupancy in 1938, more than 23 years prior to the effective date of the 1961 Zoning Resolution; and

WHEREAS, the Appellant notes that Otto Westerfeld alone purchased Lot 56, three years later in 1941, 20 years prior to the effective date of the Zoning Resolution; and

WHEREAS, the Appellant asserts that given the history, it is clear that the owners did not try to circumvent the minimum lot size requirement, which was not conceived of or articulated in the Voorhees Report until two decades after the Westerfelds acquired the lots, one of which had previously been developed by another independent third party; and

WHEREAS, the Appellant notes that Lot 58 was vacant and undeveloped on the following dates: in 1938 (when Lot 56 was developed); 1941 (when Otto Westerfeld purchased Lot 56); 1944 (when Otto Westerfeld and Christine Westerfeld purchased it as tenants by the entirety); and 1961 (at the adoption of the Zoning Resolution with the § 23-33 restriction on small lots); and today; and

WHEREAS, the Appellant asserts that its history renders Lot 58 as a ZR § 12-10(a) lot and that DOB does not have the authority to require an involuntary merger pursuant to ZR § 12-10(b); and

WHEREAS, the Appellant notes that Lots 11, 15, 53, and 60 also adjoin Lot 58 and, as per ZR § 23-33, must also have been owned separately and individually from it on December 15, 1961 and on the date of an application for a building permit; and

WHEREAS, the Appellant has submitted deeds for all other adjoining lots which reflect that neither Otto Westerfeld nor Christine Westerfeld are listed as owners of Lots 11, 15, 53, or 60 on December 15, 1961; and

WHEREAS, the Appellant also submitted current deeds for Lots 11, 15, 53, and 60, which reflect that the Westerfelds' heirs are not listed as owners currently; and

WHEREAS, the parties agree that none of the other lots were owned with Lot 58 on December 15, 1961 or thereafter; and

The Absence of a Requirement to Merge Lot 56 and Lot 58

WHEREAS, in support of its assertion that Lot 58 may be developed separately from Lot 56, the Appellant applies the theory that an affirmative action is required to merge contiguous lots and that common ownership alone, without the affirmative action, does not create a de facto zoning lot; and

WHEREAS, the Appellant disputes DOB's position that the two lots were in common ownership, but notes that even common ownership would not force a merger that would require the lots to be developed together; and

WHEREAS, the Appellant cites to several sources including a June 24, 1988 letter from the Department of City Planning's General Counsel which states that the Board's position was that "common ownership of contiguous lots was not automatically recognized to create a zoning lot absent an affirmative action at the Department of Buildings by the filing of an application or alteration which treated the lots as one" and a September 13, 2010 determination by DOB which states that when adjacent lots are clearly distinct on December 15, 1961, they are considered ZR § 12-10(a) zoning lots for all future development unless an application is filed to unify the

uses on the lots or the usage of the lots is linked, in which case they would be considered ZR § 12-10(b) zoning lots; and

WHEREAS, further, the Appellant states that New York courts have held that where there is no ordinance providing for merger by reason of common ownership, common ownership of adjoining parcels alone does not create a lot merger, citing to Allen v. Adami, 39 N.Y.2d 275 (1976); Van Perlstein v. Oakley et al, 611 N.Y.S.2d 336 (Sup. Ct. 1994); and

WHEREAS, accordingly, the Appellant asserts that Lot 58 can be developed as an existing small lot because it was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit and the owners did not take any affirmative action to merge the lots; and

DOB'S POSITION

WHEREAS, DOB makes the following primary arguments in support of its determination that Lot 58 cannot be developed as an existing small lot: (1) Lot 58 and Lot 56 were not owned separately and individually from each other on December 15, 1961; (2) Lot 56 and Lot 58 could have merged pursuant to ZR § 12-10(b); and (3) public policy dictates that undersized lots be prohibited from being developed in most instances; and

Separate and Individual Ownership

WHEREAS, DOB asserts that the same person – Otto Westerfeld - owned Lot 56 and Lot 58 on December 15, 1961 and, therefore, Lot 58 does not meet ZR § 23-33's requirement that the lot was owned "separately and individually" from other adjoining tracts of land on that date; and

WHEREAS, DOB cites to the deeds which reflect that on December 15, 1961, Otto Westerfeld and Christine Westerfeld owned Lot 58 and Otto Westerfeld owned Lot 56; and

WHEREAS, DOB asserts that since the deeds identify Otto Westerfeld as an owner of both lots on December 15, 1961, Lot 58 was not owned separately and individually from all other adjoining tracts of land on December 15, 1961 and therefore Lot 58 is not entitled to be developed as an existing small lot; and

WHEREAS, DOB states that it is not relevant that Christine Westerfeld was also an owner of Lot 58 in 1961, as Otto Westerfeld's ownership of "the totality of both lots" precludes a finding of separate and individual ownership in 1961; and

WHEREAS, DOB cites to a prior Board case at BSA Cal. No. 54-97-A (129 Garretson Avenue, Staten Island) in which the same two people both owned two lots that existed on December 15, 1961 as separate tax lots and the Board decided that "the fact that the lots are separately described in a deed and are separately assessed and taxed has no bearing on whether a lot is a separate lot for zoning purposes or on whether there is separate ownership"; and

WHEREAS, DOB states that the Board's decision in Garretson Avenue makes it clear that ZR § 23-33 requires more than simply a tract of land that existed on December 15, 1961; and

WHEREAS, DOB cites to the Board's consideration in Garretson Avenue that minimum lot width and lot area regulations are undermined if an owner who could have developed adjoining lots together in order to meet minimum size requirements is allowed to develop substandard-sized lots instead; in its Garretson Avenue decision, the Board stated that "the exception in ZR § 23-33 is narrowly drafted so that new frontage and area requirements will not be circumvented by an owner who could have developed the combined lots in conformance with the new zoning requirements at the time the zoning requirements were enacted"; and

WHEREAS, DOB asserts that the Barbara Homes and Edlu Custom Builders cases should not be followed because they are based on whether an owner has the right to bequeath, sell, and encumber property and not whether the owner has a right to develop land; and

WHEREAS, DOB states that the court noted that the zoning regulation at issue in Barbara Homes did not define or explain the term "common ownership" or "different ownership"; and

WHEREAS, DOB notes that the court concluded that the lots were not in common ownership under the statute because each spouse possessed the right of survivorship and neither spouse could sell or mortgage the property without the consent of the other, whereas an individual property owner had full control over his or her own property; and

WHEREAS, DOB distinguishes Barbara Homes and Edlu Custom Builders because it finds that even though tenancy by the entirety limits a spouse's right to bequeath, sell, and encumber a property, it does not limit one spouse's right as an owner of both lots in 1961 to merge the lots into a single zoning lot pursuant to the ZR § 12-10(b) "zoning lot" definition; and

WHEREAS, DOB asserts that rights related to survivorship, conveyance and encumbrance that Christine Westerfeld had to Lot 58 are not relevant to Otto Westerfeld's ability to merge Lots 58 and 56 into a ZR § 12-10(b) zoning lot; and

WHEREAS, accordingly, DOB asserts that the holdings in Barbara Homes and Edlu should not be followed since ZR § 23-33 is concerned with whether an owner would be able to merge lots into a zoning lot under the Zoning Resolution such that any single owner may develop the lots together and not whether that person has the right to bequeath, sell, or encumber property; and

WHEREAS, DOB states that its application of ZR § 23-33 is consistent with the plain meaning of the text; and

WHEREAS, specifically, DOB states that the common sense meaning of the text is that there is no right to develop a small lot if the same person owned or owns all of the small lot and all of an adjoining lot and that a small lot is not owned "separately and individually" from a contiguous lot if one individual had or has ownership of the entirety of both lots; and

WHEREAS, DOB states that in order to satisfy ZR § 23-33, completely different people must own the small lot and the surrounding lots because when one person owns both the

small lot and an adjoining lot, there is a unity and singleness of ownership that is incompatible with the text's language; and

WHEREAS, DOB asserts that the Appellant's interpretation of ZR § 23-33 is not consistent with its plain language and that Christine Westerfeld's ownership of Lot 58 does not cause it to be owned separately and individually from Lot 56; and

WHEREAS, DOB states that if the text meant to exclude only those small lots that belong equally to any and all owners of neighboring lots, it would have instead stated that the small lot could be developed provided it was not held in "identical," "same" or "common" ownership with adjoining lots; and

WHEREAS, DOB states that when both lots are owned by one person, there is a unity of ownership, and an absence of separate and individual ownership, that is not trumped by the existence of an additional owner of one lot; and

Merger Pursuant to ZR § 12-10(b)

WHEREAS, DOB states that ZR § 23-33 must be read in conjunction with the ZR § 12-10 "zoning lot" definition to determine whether the small lot and an adjoining lot that is not owned separately and individually from the small lot could be developed as a single merged lot that complied with minimum lot size requirements; and

WHEREAS, DOB asserts that if the small lot and the adjoining lot could be merged into a single "zoning lot" by the owner of both lots in accordance with ZR § 12-10, then, by the Board's rationale in Garretson Avenue, the lot cannot be developed in reliance on ZR § 23-33 without undermining the Zoning Resolution's minimum lot standards; and

WHEREAS, DOB states that the small Lot 58 and adjoining Lot 56 were held in "single ownership" by Otto Westerfeld on December 15, 1961, so the lots could have been developed or used together as a "zoning lot" under the ZR § 12-10(b) definition and therefore the small lot should not be developed independently per ZR § 23-33 to circumvent minimum lot standards established in 1961; and

WHEREAS, DOB notes that a ZR § 12-10(b) zoning lot is defined as "a tract of land, either unsubdivided or consisting of two or more contiguous lots or record, located within a single 'block,' which, on December 15, 1961 or any applicable subsequent amendment thereto was in single ownership," consists of contiguous tax lots or other recorded parcels in single ownership on December 15, 1961 that are used or developed together pursuant to a permit, certificate of occupancy or other Department record; and

WHEREAS, DOB asserts that the Board's rationale in the Garretson Avenue decision supports its position that Lot 58 cannot rely on ZR § 23-33 because Otto Westerfeld, as an owner of both Lot 58 and Lot 56 on December 15, 1961 could have complied with ZR § 23-32 by applying for a permit to develop or used the lots together in accordance with the ZR § 12-10(b) "zoning lot" definition; and

WHEREAS, DOB cites to Newport Assn., Inc. v. Solow, 30 N.Y.2d 263 (1972) for the point that an owner can form a zoning lot under the Zoning Resolution where the owner does not possess complete control over that property; and

WHEREAS, DOB notes that in Newport, the Court determined that a zoning lot could be formed out of three lots because the long-term lessee of one lot, who was also the fee owner of two adjoining parcels, held all the lots in "single ownership"; and

WHEREAS, DOB notes that the Court's decision was based on the 1961 Zoning Resolution definition of ownership of a zoning lot that included a lease of not less than 50 years duration, with an option to renew for an additional 25 years or longer; and

WHEREAS, DOB asserts that there is a parallel relationship between Newport's long-term lessee who had the right to create a zoning lot comprising all the parcels and could properly obtain a permit to use floor area derived from the portion of the lot he leased without needing the consent of the fee owner of the lot, and Otto Westerfeld who did not need Christine Westerfeld's consent to file an application to use or develop Lots 56 and 58 as a single zoning lot pursuant to ZR § 12-10(b) "zoning lot" definition; and

WHEREAS, DOB states that its determination that the subject lots were not owned separately and individually within the meaning of ZR § 23-33, but rather in single ownership, is consistent with the ruling in Newport; and

WHEREAS, DOB states that the 1977 Zoning Resolution amendment to the "zoning lot" definition did not nullify the Court's determination that one owner of an entire tract of land holds the land in "single ownership" even though the land includes differently held parcels; and

WHEREAS, DOB notes that the 1977 Zoning Resolution amendment removed the definition of "ownership" that included long term lessees, but this did not disturb the concept that an owner of a tract of land holds the land in "single ownership" and may develop as a ZR § 12-10(b) zoning lot notwithstanding the objection of an additional owner of a portion of the land; and

WHEREAS, DOB finds that the Newport Court recognized not just the leasehold ownership, but the fee ownership in lots which together placed the land under "single ownership" notwithstanding the existence of another owner of one of the lots; and

WHEREAS, DOB notes that the City Planning Commission (CPC) added the ZR § 12-10(d) zoning lot definition and removed the ownership through lease device for combining lots to solve the problem raised in Newport of allowing a party with a leasehold interest to shift unused development rights without notice to other parties holding property interests; and

WHEREAS, DOB notes that CPC did not amend ZR § 12-10(b) to change the concept that single ownership may have existed in 1961 in the absence of a leasehold interest where there was one fee owner of the entire tract of land in addition to other fee owners of portions of the land; and

WHEREAS, DOB states that if Lot 58 and Lot 56 are each a lot of record existing on December 15, 1961 and there was no application to develop or use the lots together in order to satisfy a requirement of the Zoning Resolution, they are

each zoning lots as defined by ZR § 12-10(a), but they still cannot take advantage of the special provisions for developing existing small lots because ZR § 23-33 grants the exception only where the lots are separately and individually owned in 1961 and on the date of application for a building permit; and

WHEREAS, DOB states that there is nothing in the Administrative Code or Zoning Resolution that would preclude DOB from accepting a permit application filed by Otto Westerfeld had he chosen to exercise his right to merge the lots under ZR § 12-10(b) and DOB would have had no basis to revoke the permit in the event Christine Westerfeld objected to such merger; and

WHEREAS, DOB adds that as long as the land is held in "single ownership," that owner is entitled to full utilization of development rights derived from the entire tract of land under ZR § 12-10(b), per Newport; and

Public Policy Goals

WHEREAS, DOB states that the Zoning Resolution sets a high standard in the R1 district to provide usable open space, privacy, and low density comparable to the standards in adjacent suburban areas for families that might otherwise leave the city (citing to Voorhees Walker Smith & Smith, Zoning New York City, A Proposal for a Zoning Resolution for the City of New York, August 1958); and

WHEREAS, DOB asserts that to allow Lot 58 to be developed separately from Lot 56 when both could have been merged by Otto Westerfeld in 1961 to comply with minimum size requirements would defeat the goal of the R1 districts minimum lot area and lot width regulation; and

WHEREAS, DOB asserts that ZR § 23-33 should be applied under limited circumstances because the Zoning Resolution's minimum lot size and lot width requirements achieve important public purposes; and

CONCLUSION

WHEREAS, the Board has determined that Lot 58 meets the requirements of ZR § 23-33 and can be developed as an existing small lot; and

WHEREAS, specifically, the Board finds that Lot 58 meets the criteria of an existing small lot because: (1) it was owned separately and individually from all adjoining lots on December 15, 1961 and (2) it is owned separately and individually from all adjoining lots today (and since 2009), in advance of an application for a building permit; and

WHEREAS, the Board finds that because on December 15, 1961, Otto Westerfeld owned Lot 56 and Otto Westerfeld and Christine Westerfeld owned Lot 58 as tenants by the entirety, they were owned separately and individually; and

WHEREAS, the Board notes that the meaning of "owned separately and individually" is not clear on its face; however, the Board is not persuaded that the text has a plain meaning of practical, effective, or even common ownership; and

WHEREAS, further, the Board is not persuaded by DOB's reliance on the term "single ownership" from the definition of "zoning lot" at ZR § 12-10(b) as there is no basis to import that term and it is similarly not defined, thus, its meaning in relation to ZR § 23-33's "owned separately and individually" is unclear; and

WHEREAS, the Board does not see any support in the text for DOB's position that "owned separately and individually" means that in order to satisfy ZR § 23-33, the ownership of the two lots must be disconnected or completely distinct such that the lots could not have been developed together per the ZR § 12-10(b) definition of "zoning lot"; and

WHEREAS, the Board finds that the facts of Barbara Homes are on point to the extent that the case involved two adjoining sites, one owned by a husband and the other owned by the husband and his wife as tenants by the entirety and that the question was raised about whether development could occur on a lot that existed prior to the adoption of the zoning ordinance and was smaller than what the zoning ordinance required; and

WHEREAS, the Board notes that the statute in Barbara Homes precluded such development if the adjoining lots were in common ownership, but noted that common ownership was not defined in the statute; and

WHEREAS, the Board notes that in Barbara Homes, the court considered the principles of ownership by tenants by the entirety and found that in such an arrangement "neither party has any individual interest" and that there are numerous differences between individual or absolute ownership and tenancy by the entirety; and

WHEREAS, the Board notes that the court concluded that the sites were under different ownership and did not meet the zoning ordinance's "common ownership" standard; and

WHEREAS, the Board notes that there has not been any dispute as to whether Lot 56 and Lot 58 are or will be owned separately and individually on the date of the application for a building permit; and

WHEREAS, the Board is not persuaded by DOB's citation to the Garretson Avenue decision or the Newport case, both of which can be distinguished; and

WHEREAS, as to Garretson Avenue, the Board notes that both lots were unquestionably owned by the same two individuals on December 15, 1961, so there can be no claim that they were owned separately and individually; and

WHEREAS, the Board notes that it determined the Garretson Avenue case based on those facts failing to satisfy the requirements of ZR § 23-33 and not based on its statement that ZR § 23-33's intent is to prohibit an owner who could have developed combined lots from developing an existing small lot; and

WHEREAS, further, the Board notes that the Appellant does not assert that merely because Lot 56 and Lot 58 existed in their current configuration on December 15, 1961 that the exception at ZR § 23-33 is available; and

WHEREAS, the Board notes that the Newport Court acknowledged the long-term lessee as *the* owner at the time of the application to transfer the air rights and rejected the fee owner as another owner with the right to transfer the air rights during the term of the lease; and

WHEREAS, further, the Board notes that the Newport case addressed whether the long-term lessee (*the* owner at the time of application) had the ability to merge the contiguous

lots; it did not say that if the same identical entity owned contiguous lots it must merge them; and

WHEREAS, the Board finds that the Newport Court recognized an identical owner as the owner of the contiguous lots and there was not an assertion that there was co-ownership between the long-term lessee and the fee owner or that the long-term lessee had a co-owner in some other manner on one of the other lots; and

WHEREAS, the Board notes that Zoning Resolution text in effect at the time of the Newport decision recognized the long-term lessee as an owner who could satisfy the ZR § 12-10(b) requirement of a tract of land (three contiguous lots) in "single ownership" with the right to merge the lots and did not address the issue of co-ownership; and

WHEREAS, in Newport, the same entity was the owner (as it was defined at the time) of the leased lot and the adjacent two lots, which it owned in fee; and

WHEREAS, the Board notes that the Zoning Resolution was amended to exclude long-term lessees as owners who could assume the role of the fee owner to merge lots; and

WHEREAS, the Board finds that the Westerfelds' ownership structure is quite different from Newport in that there is not a scenario under which both lots had the same owner because Otto was not the sole owner of both and nor were Otto and Christine as tenants by the entirety the owners of both; further, Newport did not address the question of tenants by the entirety, an ownership structure in which Otto nor Christine alone could fully assume the role of owner of Lot 58; and

WHEREAS, as to a zoning lot merger pursuant to ZR § 12-10(b), the Board does not find that the ability to merge the lots, when such merger is not automatic or required, is indicative of Lot 58 failing to meet the requirements of the ZR § 23-33 exception for small lots; and

WHEREAS, finally, the Board does not find the fact that DOB only requires one of the two tenants by the entirety to authorize applications for building permits to be conclusive on the question of whether the two lots are owned separately and individually; the Board notes that a single tenant by the entirety cannot encumber or alienate his or her property without the consent of the other; and

WHEREAS, the Board states that its decision is limited to the subject facts in which one spouse owned one lot and both spouses owned the adjoining undersized lot as tenants by the entirety on December 15, 1961, and it has not made a determination about any other ownership structure; and

WHEREAS, the Board concludes that, based upon the above, Lot 58 satisfies the ZR § 23-33 criteria for an existing small lot that can be developed according to all other applicable Zoning Resolution requirements.

Therefore it is Resolved, that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated July 2, 2013, is hereby granted.

Adopted by the Board of Standards and Appeals, September 24, 2013.

67-13-A

APPLICANT – Bryan Cave LLC, for ESS-PRISAII LLC, owner; OTR 945 Zerega LLC, lessee.

SUBJECT – Application February 12, 2013 – Appeal challenging Department of Buildings' determination that the existing roof sign is not entitled to non-conforming use status. M1-1 zoning district.

PREMISES AFFECTED – 945 Zerega Avenue, 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: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

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 form 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, 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

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 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 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 § 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, 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 24, 2013.

227-13-A

APPLICANT – St. Ann's Warehouse by Chris Tomlan, for Brooklyn Bridge Park Development Corp., owner; St. Ann's Warehouse, lessee.

SUBJECT – Application July 26, 2013 – Variance pursuant to the NYC Building Code (Appendix G, Section G304.1.2) to allow for the redevelopment of an historic structure (*Tobacco Warehouse*) within Brooklyn Bridge Park to be located below the flood zone. M3-1 zoning district.

PREMISES AFFECTED – 45 Water Street, (*Tobacco Warehouse*) north of Water Street between New Dock Street and Old Dock Street, Block 26, Lot 1, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated July 31, 2013, acting on Department of Buildings Application No. 320517017, reads, in pertinent part:

> The existing building is a Historic Structure and as per FIRM map 3604970203F is located within an area of special flood hazard (Elev. 10 AE Zone). The elevation of the lowest level is below the Base Flood Elevation and compliance with BC Appendix G (G304.1.2, section 1 or 2) is required; and

WHEREAS, this is an administrative appeal filed pursuant to Appendix G, Section BC G107 of the New York City Administrative Code (the "Building Code") to permit the renovation and enlargement of an existing building in a flood hazard area contrary to the flood-proofing requirements of Appendix G, Section G304.1.2 of the Building Code; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, and then to decision on September 24, 2013; 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 2, Brooklyn recommends approval of this application; and

WHEREAS, Councilmember Steven T. Levin submitted a written statement in support of this application; and

WHEREAS, the subject site is a corner lot located on the north side of Water Street between New Dock Street and Old Dock Street within the Empire-Fulton Ferry State Park a/k/a Brooklyn Bridge Park, within an M3-1 zoning district; (zoning compliance has been overridden by the General Park Plan); and

WHEREAS, the site is occupied by the remnants of a building, which was constructed between 1860 and 1861, altered numerous times over the years, and has come to be known as the "Tobacco Warehouse"; it is included on the National and New York State Registers of Historic Places and was designated an individual landmark by the Landmarks Preservation Commission ("LPC") in 1977; and

WHEREAS, the applicant proposes to integrate the remnants of the building—which are free-standing masonry walls—into a new theater building with approximately 19,000 sq. ft. of floor area and 7,000 sq. ft. of open space; the applicant notes that the theater will be operated as "St. Ann's Warehouse"; and

WHEREAS, the applicant states that the proposed building does not comply with the flood-proofing requirements of the Building Code; and

WHEREAS, accordingly, the applicant seeks a variance pursuant to Section BC G107.2.1; and

WHEREAS, the applicant states that the site is located within a Special Flood Hazard Area as determined by the Federal Emergency Management Agency ("FEMA"), as indicated on the Flood Insurance Rate Maps for the City of New York; and

WHEREAS, Appendix G, Section BC G304 of the Building Code establishes general limitations on occupancy and construction within Special Flood Hazard Areas; and

WHEREAS, specifically, Section BC G304.1.2 requires that nonresidential buildings comply with either an "elevation option," in which the lowest floor is elevated at or above the design floodplain elevation, or a "dry floodproofing option," in which the building is made water-tight to a level at or above the design flood elevation, or obtain a variance; and

WHEREAS, the applicant states that the design floodplain elevation is 8.44 feet and the proposed ground floor elevation is 7.29 feet; therefore, the ground floor elevation is below the design floodplain elevation, contrary to Section BC G304.1.2; and

WHEREAS, accordingly, the instant appeal was filed seeking relief from Appendix G, Section G304.1.2 of the Building Code; and

WHEREAS, pursuant to Building Code Appendix G Section G107.2.1, the Board may grant a variance to the provisions of Section G304 upon finding that: (1) the application has received approval from LPC and/or the New

York State Historical Preservation Office, as applicable; (2) the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure; and (3) the variance is the minimum necessary to preserve the historic character and design of the structure; and

WHEREAS, the applicant states that on June 4, 2013, LPC issued a positive advisory report for the proposal, and by letter dated July 19, 2013, the New York State Historic Preservation Office indicated that it had forwarded the proposal to the National Park Service with the recommendation that it be approved; and

WHEREAS, the applicant states that the proposed rehabilitation will not preclude the structure's continued designation as a historic structure; and

WHEREAS, in particular, the applicant states that the proposal is supportive of the historic structure, in that: (1) it maintains the existing masonry walls and openings, which give the building its distinctive character; (2) it preserves the ground floor openings in their original relationship to the grades at Water Street and the surrounding park (which historically were the working waterfront streets and spaces); and (3) it employs design elements, such as doors, windows, and interior finishes that allude to the historic function and configuration; and

WHEREAS, the applicant states that the variance is the minimum necessary to preserve the historic character and design of the structure; and

WHEREAS, specifically, the applicant states that the Tobacco Warehouse's distinctive façade and its historic at-grade entrances from the street are key elements of the building's historic character and design; as such, alteration of these elements to provide a compliant elevation or dry floodproofing was deemed infeasible; and

WHEREAS, as to elevating the building, the applicant represents that it would require extensive structural modifications and the creation of accessible ramps and landings, which would alter the site and surrounding spaces and be inconsistent with the historic character and design of the building; in addition, the applicant represents that the proposed ground floor elevation is the highest elevation that will provide the minimum floor-to-ceiling height necessary (20 feet) to create a modern performance venue that will accommodate stage sets, lighting positions and seating with proper viewlines within the proposed total building height (38.75 feet), which the applicant endeavored to minimize, both for preservation, and neighborhood-impact purposes; and

WHEREAS, as to dry floodproofing the building, the applicant represents that it would require the partial disassembly and reconstruction of the façade with an integrated water membrane, the installation of steel receiving channels on the façade or within door jambs, and the construction of flood gates at entrances, all of which would compromise the aesthetics of the building and the site; and

WHEREAS, based on its review of the record, the Board finds that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and that the variance is the minimum necessary to preserve the historic character and design of the structure; and

WHEREAS, further, as noted above, LPC issued a positive advisory report for the proposal on June 4, 2013, and by letter dated July 19, 2013, the New York State Historic Preservation Office indicated that it had forwarded the proposal to the National Park Service with the recommendation that it be approved; and

WHEREAS, in addition to the specific findings the Board must make pursuant to Appendix G Section G107.2.1, the Board must also evaluate the effect of the proposed variance on the following factors: (1) the danger that material and debris may be swept onto other lands resulting in damage or injury; (2) the danger to life or property due to flooding or erosion damage; (3) the susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners; (4) the importance of the services provided by the proposed development to the community; (5) the availability of alternative locations for the proposed development that are not subject to flooding or erosion; (6) the relationship of the proposed development to comprehensive plan and flood plain management program for that area; (7) the safety of access to the property in times of flood for ordinary and emergency vehicles; (8) the expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and (9) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges; and

WHEREAS, the applicant represents that the proposed variance would not create the danger that material and debris may be swept onto other lands resulting in damage or injury, in that the applicant has developed a building safety plan to be implemented in the event of a flood warning; in such case, the plan requires all unfixed items to be relocated to the mezzanine level, to the top of the seating riser, or onto the catwalk structure; and

WHEREAS, the applicant represents that the proposed variance would not create a danger to life and property due to flooding or erosion damage, in that the applicant anticipates that it will receive sufficient notice of a flood and that it will prevent occupancy of the building during any such event; further, as noted above, in a flood event, all unfixed items at the ground floor will be relocated; and

WHEREAS, the applicant states that flood damage to the proposed building and its contents would be limited because the project requires that critical building elements and infrastructure (electrical, mechanical, ducted distribution, and lighting) that could be damaged during flooding are located well above the base flood elevation; in addition, the finishes at the ground level (concrete floors, gypsum and plywood) are comparatively inexpensive and

easy to replace in the event that they are damaged by flood waters; likewise, office spaces are to be located at upper levels, which will protect records, furnishings and equipment; finally, the proposed elevator is controlled by a gearless hoist mechanism located at the top of the elevator shaft, approximately 22 feet above the ground floor, and the elevator pit will contain only incidental equipment, such as an access ladder, steel guiderails, and pit bumpers; and

WHEREAS, as to the importance of the services provided by the proposed development to the community and the availability of alternative locations for the proposed development that are not subject to flooding or erosion, the applicant represents that the adaptive reuse of the 250-year-old Tobacco Warehouse on the Brooklyn waterfront as a community and performance space furthers the public interest in historic preservation and the arts and has garnered the support of numerous elected officials and community groups; and

WHEREAS, as to the relationship of the proposed development to the comprehensive plan and flood plain management program for that area and the safety of access to the property in times of flood for ordinary and emergency vehicles, the applicant represents that, as noted above, it has developed a comprehensive flood management program for the building, including the evacuation of the building during a hazardous flood and the provision of additional staffing, which obviates the need for vehicular access to the site; however, if access were to become necessary, the applicant notes that it is easier under the proposed design than it would be if flood gates and barriers were provided in accordance with Building Code Appendix G; and

WHEREAS, as to the expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, the applicant represents that the proposed building and grounds do not impact such items; the applicant also notes that the existing building survived the surge that accompanied Superstorm Sandy without damage to its structure and the proposed building is designed to withstand similar floodwaters; and

WHEREAS, finally, the applicant represents that the proposal does not increase the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges; and

WHEREAS, based on the above, the Board has determined that the evidence in the record supports the findings required to be made pursuant to Building Code Section BC G107.2.1 and Section 666(7) of the New York City Charter.

Therefore it is Resolved, that the application to permit the renovation and enlargement of an existing building in a flood hazard area contrary to the flood-proofing requirements of Section BC G304.1.2 of the Building Code is granted; *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 30, 2013" nine (9) sheets; and *on further condition*:

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

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

Adopted by the Board of Standards and Appeals, September 24, 2013.

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 October 29, 2013, at 10 A.M., for continued hearing.

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 – Laid over to October 22, 2013, 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

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 November 19, 2013, at 10 A.M., for decision, hearing closed.

87-13-A
APPLICANT – Bryan Cave LLP, for 176 Canal Corp., owner .OTR Media Group; lessee
SUBJECT – Application March 6, 2013 – Appeal challenging Department of Buildings' determination that the existing sign is not entitled to non-conforming use status. C6-1G zoning district
PREMISES AFFECTED – 174 Canal Street, Canal Street between Elizabeth and Mott Streets, Block 201, Lot 13, Borough of Manhattan.
COMMUNITY BOARD #3M
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 October 22, 2013, at 10 A.M., for decision, hearing closed.

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 November 19, 2013, at 10 A.M., for adjourned 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 November 19, 2013, at 10 A.M., for deferred decision.

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 & 47Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, Borough of Staten Island.
COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

224-13-A
APPLICANT – Slater and Beckerman, P.C., for Michael Pressman, owner.
SUBJECT – Application July 25, 2013 – Appeal challenging the determination by the Department of Buildings that an automatic sprinkler system is required in connection with the conversion of a three family dwelling (J-2 occupancy) to a two-family (J-3 occupancy). R6B zoning district.
PREMISES AFFECTED – 283 Carroll Street, north side of Carroll Street between Smith Street and Hoyt Street, Block 443, Lot 61, Borough of Brooklyn.
COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

72-12-BZ
CEQR #12-BSA-104K
APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.
SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.
PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.
COMMUNITY BOARD #6BK
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, September 24, 2013.

211-13-BZ
CEQR #14-BSA-007M
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for NYC Department of Citywide Administrative Services, owner; Civic Center Community Group Broadway LLC, lessee.
SUBJECT – Application July 9, 2013 – Re-instatement (§11-411) of a previously approved variance, which permitted the use of the cellar and basement levels of a 12-story building as a public parking garage, which expired in 1971; Amendment to permit a change to the curb-cut configuration; Waiver of the rules. C6-4A zoning district.
PREMISES AFFECTED – 346 Broadway, Block bounded by Broadway, Leonard and Lafayette Streets & Catherine Lane, Block 170, Lot 6 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, a reinstatement, and an extension of term for the continued use of a parking garage for more than five vehicles, which expired on May 29, 1971; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, and then to decision on September 24, 2013; 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, Manhattan, noted its familiarity with the subject site but declined to issue a recommendation regarding this application; and

WHEREAS, the site comprises the block bounded by Broadway, Leonard Street, Catherine Street and Lafayette Street and is within a C6-4A zoning district; and

WHEREAS, the site has 60 feet of frontage along Broadway, 400 feet of frontage along Leonard Street, 401.75 feet of frontage along Catherine Street, and 82.83 feet of frontage along Lafayette Street, and is occupied by a 12-story commercial building; and

WHEREAS, the exterior and portions of the interior of the building are designated as individual landmarks by the Landmarks Preservation Commission ("LPC"); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 29, 1956, when, under BSA Cal. No. 18-56-BZ, the Board granted a use variance to permit a portion of an existing building to be used as a parking garage for more than five motor vehicles, contrary to 1916 Zoning Resolution § 7f; the Board granted the variance for a term of 15 years; and

WHEREAS, by resolution dated July 17, 1956, the Board amended the grant to allow access to the garage by ramp, instead of elevators; and

WHEREAS, the term of the grant expired in 1971 and was never extended; and

WHEREAS, the applicant now seeks to reinstate the variance granted under BSA Cal. No. 18-56-BZ for a term of ten years; and

WHEREAS, the applicant proposes to locate 110 parking spaces in the basement (21 spaces) and in the cellar (79 spaces, including stacker spaces) of the building, and provide access to the facility via a curb cut on Leonard Street; and

WHEREAS, the applicant notes that the City of New York, Department of Citywide Administrative Services ("DCAS") has owned the site since 1968; recently, the site was the subject of a request for proposals by the New York City Economic Development Corporation and a purchaser has been selected; the prospective owner seeks to convert the building to primarily residential use and to continue the parking use; 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 1971, the parking use has been continuous from 1971 to the present; in support of this representation, the applicant submitted numerous leases, certificates of insurance, communications, appraisals, licenses, permits, court filings, and various other public records, which demonstrate the continuity of the parking use; and

WHEREAS, further, the applicant represents that substantial prejudice would result if reinstatement is not granted, because both DCAS and the prospective owner, in agreeing to the terms of sale, contemplated that the garage use would be continued and that the garage would be an available amenity to the residents of the building and to the public in the surrounding area; and

WHEREAS, as to the whether the parking use substantially impairs the appropriate use and development of adjacent properties, the applicant asserts that the garage has operated continuously at the site as the neighborhood has evolved from predominantly commercial and manufacturing to mixed residential and commercial; further, the parking spaces have always been and will to continue to be located in the cellar and basement of the building, which mitigates any impact the garage may have upon adjacent properties; and

WHEREAS, based on the applicant's representations, the Board finds that reinstatement of the subject variance is appropriate; and

WHEREAS, the applicant also requests a ten-year extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term of an expired variance; and

WHEREAS, at hearing, the Board requested clarification regarding whether: (1) the accessory signage near the intersection of Lafayette Street and Leonard Street was approved by LPC; and (2) whether the stackers in the cellar were approved by the Department of Buildings ("DOB"); and

WHEREAS, in response, the applicant submitted amended plans indicating that: (1) the signage at the intersection of Lafayette Street and Leonard Street had been removed and noting that signs may be posted at the garage entrance, not illuminated and not extending beyond the building line, to identify the garage and provide such other information as may be required by the Department of Consumer Affairs; and (2) the parking would be according to layouts approved by DOB and would not exceed 110 spaces; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 11-411 to permit, within a C6-4A zoning district, the reinstatement of a prior Board approval for a parking garage at the subject site, *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 9, 2013'- (5) sheets; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on September 24, 2023;

THAT the layout of the spaces will be as approved by DOB and will not exceed 110 spaces;

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

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. 121684301)

Adopted by the Board of Standards and Appeals, September 24, 2013.

16-12-BZ

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

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 October 29, 2013, at 10 A.M., for decision, hearing closed.

50-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.

PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for adjourned hearing.

282-12-BZ
APPLICANT – Eric Palatnik, P.C., for Izhak Lati, owner.
SUBJECT – Application September 24, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard requirements (§23-461), and a variance (§72-21), contrary to front yard requirements (§23-45). R5 zoning district.
PREMISES AFFECTED – 1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, Lot 48, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

339-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Lion Bee Equities, LLC., owner.
SUBJECT – Application December 12, 2012 – Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.
PREMISES AFFECTED – 252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway, Block 8129, Lot p/o 53, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

13-13-BZ & 14-13-BZ
APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.
SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, 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 October 29, 2013, at 10 A.M., for decision, hearing closed.

77-13-BZ
APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 45 Great Jones Street LLC, for Joseph Lauto, owner.
SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit residential use, contrary to ZR 42-00 and ground floor commercial use contrary to ZR§42-14(D)(2)(b). M1-5B zoning district.
PREMISES AFFECTED – 45 Great Jones Street, between Lafayette and Bowery Streets, on the south side of Great Jones Street, Block 530, Lot 29, 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 October 29, 2013, at 10 A.M., for decision, hearing closed.

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
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 October 29, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to October 29, 2013, at 10 A.M., for adjourned hearing.

100-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Zipporah Farkas and Zev Farkas, owners.
SUBJECT – Application April 10, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.
PREMISES AFFECTED – 1352 East 24th Street, west side of East 24th Street between Avenue M and Avenue N, Block 7659, Lot 69, 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 October 22, 2013, at 10 A.M., for decision, hearing closed.

106-13-BZ
APPLICANT – Law office of Fredrick A Becker, for Harriet and David Mandalaoui, owners.
SUBJECT – Application April 18, 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 yard (§23-461) and perimeter wall height (§23-631); R3-2 zoning district.
PREMISES AFFECTED – 2022 East 21st Street, west side of East 21st Street between Avenue S and Avenue T, Block 7299, Lot 18, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

162-13-BZ
APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.
SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units, ground floor retail, and 11 parking spaces, contrary to use regulations (§42-00). M1-5B zoning district.
PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100' south of Spring street, Block 490, Lot 27, 35, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

167-13-BZ
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 – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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281-13-BZ
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283-13-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

OCTOBER 29, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 29, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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

647-70-BZ
APPLICANT – Jeffrey A. Chester Esq/GSHLLP, for Channel Holding Company, Inc., owner; Cain Management II Inc., lessee.
SUBJECT – Application August 1, 2013 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation an automotive service station and auto laundry (UG 16B). Amendment seeks to convert accessory space into an accessory convenience store. C2-3/R5 zoning district.
PREMISES AFFECTED – 59-14 Beach Channel Drive, Beach Channel Drive corner of Beach 59th Street, Block 16011, Lot 105, Borough of Queens.
COMMUNITY BOARD #

APPEALS CALENDAR

90-12-A
APPLICANT – Fried, Frank, Harris, Shriver & Jacobson, LLP, for Van Wagner Communications, LLC, owner.
SUBJECT – Application September 11, 2013 – Reopening by the court and remanded back to BSA for reconsideration.
PREMISES AFFECTED – 111 Varick Street, Block 578, Lot 71, Borough of Manhattan.
COMMUNITY BOARD #

221-13-A
APPLICANT – Law Office of Jay Goldstein, PLLC, for Naseem Ali, owner.
SUBJECT – Application July 22, 2013 – Appeal seeking that the owner has a common law vested right to continue construction and obtain a Certificate of Occupancy under the prior R3A zoning district. R2A zoning district.
PREMISES AFFECTED – 239-26 87th Avenue, south side of 87th Avenue between 241st Street and 239th Street, Block 7966, Lot 54, Borough of Queens.
COMMUNITY BOARD #13Q

ZONING CALENDAR

262-12-BZ
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

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

168-13-BZ
APPLICANT – Lewis E Garfinkel, for Dovie Minzer, owner.
SUBJECT – Application June 4, 2013 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(a); side yard (§23-461(a); less than the required rear yard; (§23-47) and perimeter wall height (§23-631. R3-2 zoning district.
PREMISES AFFECTED – 1323 East 26th Street, east side of East 26th Street, 180' south of Avenue M, Block 7662, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #14BK

173-13-BZ
APPLICANT – Greenberg Traurig, LLP, for 752 UWS, LLC, owner; 752 Paris Gym LLC, lessee.
SUBJECT – Application June 14, 2013 – Variance (§72-21) to legalize the existing commercial Paris Health Club facility which occupies the cellar, first floor and the first mezzanine of a 24-story residential building, contrary to (§22-00). R10-A zoning district.
PREMISES AFFECTED – 752-758 West End Avenue aka 260-268 West 97th Street, southeast corner of West End Avenue and West 97th Street, Block 1868, Tentative Lot 1401 (f/k/a part of 61), Borough of Manhattan.
COMMUNITY BOARD #7M

229-13-BZ
APPLICANT – Rothkrug Rothrug & Spector LLP, for Country Leasing Limited Partnership, owner; Blink Nostrand Avenue, Inc., lessee.
SUBJECT – Application August 6, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 3779-3861 Nostrand Avenue, 2928/48 Ave Z, 2502/84 Haring Street, Block bounded by Nostrand Avenue, Avenue Z, Haring Street and Avenue Y, Block 7446, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #15BK

232-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for SDF12 Bay Street, LLC, owner; Staten Island Fitness, LLC, lessee.
SUBJECT – Application August 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within portions of proposed commercial building. M1-1 zoning district.
PREMISES AFFECTED – 364 Bay Street, northwest corner of intersection of Bay Street and Grant Street, Block 503, Lot 1 and 19, Borough of Staten Island.
COMMUNITY BOARD #1SI

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, OCTOBER 8, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

615-57-BZ
APPLICANT – Sheldon Lobel, P.C. for Cumberland farms,INC., owner.
SUBJECT – Application May 10, 2013 – Extension of term (§11-411) of a previously granted variance for the continued operation of a (UG 16B) automotive service station (*Gulf*) with accessory uses, which expired on June 5, 2013. C1-3/R5B zoning district.
PREMISES AFFECTED – 154-11 Horace Harding Expressway, Located on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place. Block 6731, Lot 1. 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for an extension of term for a previously granted variance for a gasoline service station, which expired on June 5, 2013; and

WHEREAS, a public hearing was held on this application on July 16, 2013 after due notice by publication in *The City Record*, with continued hearings on August 13, 2013, and September 10, 2013, and then to decision on October 8, 2013; and

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

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

WHEREAS, the subject site spans the full width of the block on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place; and

WHEREAS, the site is located partially within a C1-3 (R5B) zoning district and partially within a C1-3 (R4-1) zoning district, and is occupied by a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1958 when, under the subject calendar number, the Board granted a variance for the alteration of an existing gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on January 9, 2007, the term of the grant was extended for ten years from the expiration of the prior grant; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, at hearing, the Board expressed concern regarding the lack of landscaping at the site; and

WHEREAS, in response, the applicant provided photographs showing: (1) the planting of 19 new evergreen trees along the site's rear retaining wall; and (2) the trimming of the existing shrubs and trees, as well as the lawn along 154th Place; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on January 14, 1958, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from June 5, 2013 to expire on June 5, 2023, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received May 10, 2013'– (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 5, 2023;

THAT the above condition shall 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 the Department of Buildings must ensure compliance 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. 400032255)

Adopted by the Board of Standards and Appeals, October 8, 2013.

274-59-BZ
APPLICANT – Laurence Dalfino, R.A., for Richard Naclerio, Member, Manorwood Realty, LLC, owner.
SUBJECT – Application September 18, 2012 – Extension of term (§11-411) of a previously granted variance for the continued operation of a private parking lot accessory to a catering establishment, which expired on September 28, 2011; Waiver of the Rules. R-4/R-5 zoning district.

PREMISES AFFECTED – 3356-3358 Eastchester Road aka 1510-151 Tillotson Avenue, south side of Tillotson Avenue between Eastchester Road & Mickle Avenue, Block 4744, Lot 1, 62, Borough of Bronx.

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 Montanez 5

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 use of a private parking lot for the catering establishment located at Block 4743, Lot 8, which expired on September 28, 2011; 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 10, 2013, and then to decision on October 8, 2013; 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 12, Bronx, recommends approval of this application; and

WHEREAS, the subject site spans the full width of the block on the south side of Tillotson Avenue between Mickle Avenue and Eastchester Road, and is located partially within an R5 zoning district and partially within an R4 zoning district; and

WHEREAS, the site has approximately 29 feet of frontage along Eastchester Road, approximately 190 feet of frontage along Tillotson Avenue, approximately 83 feet of frontage along Mickle Avenue, and is occupied as a private parking lot for the catering establishment located across Eastchester Road at Block 4743, Lot 8; and

WHEREAS, the Board has exercised jurisdiction over the site since January 17, 1961 when, under the subject calendar number, the Board, pursuant to 1916 Zoning Resolution § 7h, granted a use variance to permit, in a residence district, the maintenance of a private parking lot for the patrons of the catering establishment at Block 4743, Lot 8, for a term of ten years; and

WHEREAS, subsequently, the grant was extended by the Board at various times, most recently, on October 29, 2002, when, under the subject calendar number, the Board extended the grant for a term of ten years, to expire on September 28, 2011; and

WHEREAS, the applicant now requests an additional extension of the term; and

WHEREAS, the applicant states that the parking lot is fully attended and has a capacity of 37 automobiles, but does not have a booth because the automobiles are received at the catering establishment located at Block 4743, Lot 8; and

WHEREAS, the applicant notes that the hours of operation for the parking lot are seven days per week from 10:00 a.m. to 11:00 p.m.; and

WHEREAS, the applicant further notes that the site has been maintained in accordance with all conditions of the prior grant, except that the landscaping does not conform to the approved plans; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board expressed the following concerns about the site: (1) the lack of landscaping; (2) the condition of the concrete wall; and (3) the lack of striping in the parking lot; and

WHEREAS, in response, the applicant submitted an amended statement indicating that: (1) approximately ten hedges with a height of seven feet and a spread of approximately two feet will be planted adjacent to the residential lots, except where there is existing foliage; (2) the wall will be repaired and patched, as necessary; and (3) striping is unnecessary in the parking lot because it is fully attended; the applicant also notes that it calculated the capacity of 37 parking spaces using 300 sq. ft. per space rather than 200 sq. ft. per space, which is permitted for attended parking lots; and

WHEREAS, in addition, the applicant's amended statement indicates the following minor changes to the site: there is only one drain (instead of two); there is a sliding gate on Tillotson Avenue (instead of a double swinging gate); there is a single swinging gate on Eastchester Road (instead of a double swinging gate); and there are double lights (instead of single lights); and

WHEREAS, the Board finds that these minor site changes are in substantial compliance with the original grant; and

WHEREAS, based upon the above, the Board finds, pursuant to ZR §§ 11-411, that the requested extension of term is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, dated January 17, 1961, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the prior expiration, to expire on September 28, 2021, *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 21, 2013'- (3) sheets and 'August 28, 2013'-(1) sheet; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on September 28, 2021;

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

THAT all landscaping will be maintained according to 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. 220140540)

Adopted by the Board of Standards and Appeals, October 8, 2013.

723-84-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Alameda Project Partners Ltd/Cristine Briguglio, owners.

SUBJECT – Application June 6, 2013 – Extension of term of a previously approved variance (§72-21) which permitted a medical office, which expired on October 30, 2012. R1-2 zoning district.

PREMISES AFFECTED – 241-02 Northern Boulevard, southeast corner of intersection Northern Boulevard and Alameda Avenue, Block 8178, Lot 1, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued use of a commercial building (Use Group 6) within an R1-2 zoning district, which expired on October 30, 2012; and

WHEREAS, a public hearing was held on this application on September 10, 2013, after due notice by publication in *The City Record*, and then to decision on October 8, 2013; 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 11, 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 corner lot located at the southeast corner of the intersection of Northern Boulevard and Alameda Avenue, within an R1-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since October 6, 1987, when, under BSA Cal. No. 724-84-A, the Board granted an appeal authorizing the installation of dry wells, subject to certain conditions; later that month, on October 30, 1987, under the subject calendar number, the Board approved a variance to permit, within an R1-2 zoning district, the construction of a 22,130 sq. ft. three-story bank and office building (Use Group 6), which does not conform to applicable use regulations, for a term of 25 years, to expire on October 30, 2012; and

WHEREAS, subsequently, on November 29, 2005, the Board amended the grant to permit a gastroenterologist's office on the ground floor; and

WHEREAS, the applicant now requests an 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, the applicant represents that no changes to the grant are proposed and that the site is in compliance with all conditions of the prior grants except that an amended certificate of occupancy was not obtained to reflect the 2005 amendment to the grant; and

WHEREAS, at hearing, the Board directed the applicant to submit proof regarding the site's compliance with the landscaping and signage requirements of the prior BSA-approved plans; and

WHEREAS, in response, the applicant submitted photographs demonstrating compliance with the landscaping and signage requirements of the 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 October 30, 1987, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of 25 years from the prior expiration, to expire on October 30, 2037, *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 26, 2013'- (6) sheets and 'October 3, 2013'- (2) sheets; and *on further condition*:

THAT the variance, as amended, shall expire on October 30, 2037;

THAT there shall be ten parking spaces reserved for the use of the medical office and that such spaces will be so designated by signage, as illustrated on the BSA approved plans;

THAT the hours of operation will be limited to Monday through Friday, 8:00 a.m. to 6:00 p.m.;

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

THAT an amended certificate of occupancy will be obtained by October 8, 2014;

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 the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

Resolution, the 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. 420787143)

Adopted by the Board of Standards and Appeals, October 8, 2013.

161-99-BZ & 162-99-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Banner Garage LLC, owner; TSI East 76 LLC dba New York Sports Club, lessee.
SUBJECT – Application January 25, 2012 – Extension of term of a previously granted Special Permit (§73-36) which permitted the operation of a physical culture establishment which expired on June 28, 2010; Amendment to permit a change in the hours of operation; Extension of time to obtain a Certificate of Occupancy which expired on June 28, 2004; Waiver of the Rules. C2-5 (R8B) zoning district.
PREMISES AFFECTED – 349 & 353 East 76th Street, northerly side of East 76th Street between 2nd Avenue and 1st Avenue, Block 1451, Lot 4 & 16, 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 Montanez 5
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 modify the hours of operation and for an extension of term, which expired on June 28, 2010, for a physical culture establishment ("PCE"); and

WHEREAS, a public hearing was held on this application on September 10, 2013, 2013, after due notice by publication in *The City Record*, and then to decision on October 8, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by 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 north side of East 76th Street, between First Avenue and Second Avenue within a C2-5 (R8B) zoning district; and

WHEREAS, the site comprises two adjacent lots: Lot 14 (349 East 76th Street), which has 5,108 sq. ft. of lot area, and Lot 16 (353 East 76th Street), which has 2,614 sq. ft. of lot area; and

WHEREAS, the applicant represents that Lot 14 is occupied by a four-story commercial building with 20,432 sq. ft. of floor area, and Lot 16 is occupied by a four-story mixed commercial and residential building; the PCE occupies the entire building on Lot 14 and 2,227 sq. ft. of floor area on the first story of the building on Lot 16; and

WHEREAS, initially, the Board exercised jurisdiction over only Lot 14; specifically, on July 20, 1993, under BSA Cal. No. 214-92-BZ, the Board granted a special permit pursuant to ZR § 73-36 to permit the operation of PCE in the entire building on Lot 14 for a term of ten years, to expire on July 20, 2003; and

WHEREAS, subsequently, on June 28, 2000, the Board, under the subject calendar numbers, granted special permits pursuant to ZR § 73-36 to permit the operation of the PCE in the entire building on Lot 14 and on the first story of the building on Lot 16; these special permits superseded the special permit granted under BSA Cal. No. 214-92-BZ, and they expired on June 28, 2010; and

WHEREAS, the applicant now seeks to change the hours of operation from Monday through Thursday, 6:00 a.m. to 11:00 p.m., Friday, 6:00 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 10:00 p.m. to Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday, 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant seeks to extend the term of the special permits for ten years; and

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

WHEREAS, based on its review of the record, the Board finds that the proposed change in hours of operation and ten-year extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolutions, both of which are dated June 28, 2000, so that as amended this portion shall read: "to grant an amendment to change the hours of operation and to grant an extension of the special permits for a term of ten years from the prior expiration"; *on condition* that all work and site conditions shall comply with drawings marked 'Received January 25, 2013'-(8) sheets (Lot 14) and 'January 25, 2013'-(4) sheets (Lot 16)'; 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 this grant will be limited to a term of ten years from the expiration of the prior grants, to expire on June 28, 2020;

THAT the hours of operation be limited to Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday, 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

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

THAT a certificate of occupancy will be obtained for each of the above-referenced lots by October 8, 2014;

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 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. 101766144 and 102105259)

Adopted by the Board of Standards and Appeals, October 8, 2013.

605-84-BZ

APPLICANT – Sheldon Lobel, P.C., for Order Sons of Italy in America Housing Development Fund Company, Inc., owners.

SUBJECT – Application March 26, 2013 – Amendment of a previously granted variance (§72-21) to an existing seven-story senior citizen multiple dwelling to legalize the installation of an emergency generator, contrary to front yard requirements (§23-45). R5 zoning district.

PREMISES AFFECTED – 2629 Cropsey Avenue, Cropsey Avenue between Bay 43rd Street and Bay 44th Street, Block 6911, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

189-96-BZ

APPLICANT – John C Chen, for Ping Yee, owner; Club Flamingo, lessee.

SUBJECT – Application May 14, 2013 – Extension of Term of a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing, which expires on May 19, 2013. C2-3/R6 zoning district.

PREMISES AFFECTED – 85-10/12 Roosevelt Avenue, south side of Roosevelt Avenue, 58' east side of Forley Street, Block 1502, Lot 4, 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 October 22, 2013, at 10 A.M., for decision, hearing closed.

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

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 October 29, 2013, at 10 A.M., for decision, hearing closed.

177-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.

SUBJECT – Application July 23, 2013 – Extension of time to complete construction of a previously approved variance (§72-21) which permitted the construction of a two-story, two-family residential building, which expired on June 23, 2013. 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 Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

29-12-A

APPLICANT – Vincent Brancato, owner

SUBJECT – Application February 8, 2012 – Appeal seeking to reverse Department of Building's padlock order of closure (and underlying OATH report and recommendation) based on determination that the property's commercial/industrial use is not a legal non-conforming use. R3-2 Zoning district.

PREMISES AFFECTED – 159-17 159th Street, Meyer Avenue, east of 159th Street, west of Long Island Railroad, Block 12178, Lot 82, Borough of Queens.

COMMUNITY BOARD #12Q

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 Montanez 5

THE RESOLUTION –

WHEREAS, this is an appeal of an Order of Closure for the subject premises, issued by the Commissioner of the

Department of Buildings ("DOB") on November 23, 2010 (the "Order"), brought by the property owner (hereinafter "Appellant"); and

WHEREAS, the Order states, in pertinent part:

> I have reviewed the record of charge and specification in the Petition and Notice of Hearing, dated February 1, 2010, and the Report and Recommendation of the Administrative Law Judge, dated November 1, 2010. The Report of the recommendation of the Administrative Law Judge recommended closure of the premises.
>
> It is my determination that the maintenance and repair of steel containers, truck repair, and storage of commercial trucks constitutes illegal commercial and/or manufacturing uses in a residence district and, therefore, the subject premises is ORDERED CLOSED . . . ; and

WHEREAS, a public hearing was held on this appeal on July 9, 2013 after due notice by publication in *The City Record*, with a continued hearing on September 17, 2013, and then to decision on October 8, 2013; and

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

WHEREAS, the subject site is located on the north side of Meyer Avenue, between 159th Street and Bedell Street, in an R3-2 zoning district; and

WHEREAS, Lot 82 is irregularly-shaped with 86.56 feet of frontage on the north side Meyer Avenue to a depth of approximately 190 feet, 80 feet of frontage on the west side of Bedell Street to a depth of 100 feet, and a lot area of approximately 15,000 sq. ft.; and

WHEREAS, the site is occupied partially by open use, which the Appellant asserts is consistent with the historic use of iron works, and several metal shed structures; and

WHEREAS, the Appellant contests the Order, which states that "the maintenance and repair of steel containers, truck repair, and storage of commercial trucks" are illegal non-conforming uses in the subject zoning district; and

WHEREAS, accordingly, the primary questions on appeal are whether (1) the non-conforming use was established prior to 1947 when the site was first zoned residential and (2) the use has been continuous from 1947 until the present without an interruption of two years or more; and

PROCEDURAL HISTORY

WHEREAS, in response to complaints raised, on October 7, 2009 and December 10, 2009, DOB performed inspections of Lot 82 and observed the site is in violation of the Zoning Resolution because it is being used for automobile repairs, commercial vehicle storage, contractor's yards, and for junk salvage storage; and

WHEREAS, the October 7, 2009 inspection report for 159-17 Meyer Avenue states that the commercial trucks, excavator, trailer, and other equipment were observed as were commercial vehicles in different stages of being repaired; trucks at the site were identified as All Seasons Carting, 159-17 Meyer Avenue; and

WHEREAS, the December 10, 2009 Padlock Inspection Report stated that no changes were observed from the last inspection and the property was continuing to be used for storage of commercial vehicles and a garage use for automotive repairs and storage; and

WHEREAS, DOB determined that the noted uses were not permitted in the subject R3-2 zoning district and proceeded to enforce against the Appellant pursuant to Administrative Code § 26-127.2, otherwise known as the Padlock Law, which provides DOB with the authority to declare illegal commercial uses in residential zoning districts to be a nuisance, and to then close such uses; and

WHEREAS, however, prior to the issuance of an Order of Closure, the Padlock Law provides that the owner is entitled to a hearing at the City's Office of Administrative Trials and Hearings ("OATH"); and

WHEREAS, by Petition and Notice of Hearing before OATH, dated February 1, 2010, Appellant was charged with violating ZR § 22-00 based on inspections by DOB, between October 7, 2009 and December 10, 2009, reflecting that the yard and garage at the premises had been used for automobile repairs, commercial storage, contractor's yards and junk salvage storage; and

WHEREAS, on February 18, 2010, DOB inspected and observed that there were not any changes since the last inspection and, again on April 19, 2010, DOB inspected and observed that there were not any changes since the last inspection and that it continued to be used for commercial activities including commercial trucks and equipment, a welding business, and container storage; and

WHEREAS, the OATH hearing was held on July 19, 2010; and

WHEREAS, by a Report and Recommendation, dated November 1, 2010, OATH issued a recommendation for closure of non-conforming use at the site; and

WHEREAS, based on the finding that the premises was being used for maintenance and repair of steel containers, truck repair and storage of commercial trucks in violation of ZR § 22-00 and that sufficient evidence of a legally created, prior non-conforming use had not been provided, the Administrative Law Judge recommended that the DOB Commissioner may order closure of the premises pursuant to Administrative Code § 28-212.2; and

WHEREAS, on November 23, 2010, after reviewing the administrative record and the Report and Recommendation, DOB Commissioner Robert D. LiMandri determined that the maintenance and repair of steel containers, truck repair and storage of commercial trucks constitutes illegal commercial and manufacturing uses in a residence district and ordered the premises closed; and

WHEREAS, pursuant to the City Charter, the Appellant may appeal the Order to the Board, and the Board has the authority to review the validity of the Order and the underlying issues *de novo*; it is not bound by any finding or

determination of OATH, nor is any other party; and

WHEREAS, on March 23, 2011, the Appellant commenced a proceeding in court challenging the Closing Order as in violation of lawful procedure, affected with error of law, arbitrary and capricious, an abuse of discretion and contrary to substantial evidence; and

WHEREAS, the Appellant alleged in the petition, that it has operated an industrial iron works company at the site, including activities associated with storage, maintenance, fabrication and repairs to steel containers and this activity has repeatedly been confirmed and ratified by DOB as valid and additionally alleges that ample and uncontested evidence of similar operations dating back to 1940 was provided at the OATH hearing but ignored1; and

WHEREAS, the City moved to have the court proceeding dismissed for failure to exhaust administrative remedies as petitioner failed to appeal the Closing Order to the Board as required under New York City Charter § 666 and New York City Administrative Code § 28-103.4, before seeking judicial review; and

WHEREAS, on July 21, 2011, the City and the Appellant stipulated a withdrawal of the Article 78 proceeding and provided that the Appellant could file an appeal at the Board within a specified period; and

SITE HISTORY

WHEREAS, zoning maps reflect that Lot 82 has been within a residential zoning district since 1947; and

WHEREAS, the site is commonly referred to as 159-17 Meyer Avenue; however, the lots and addresses, including the range of 159-09 through 159-17 are referenced in historic documents and associated with Lot 82; and

WHEREAS, sometime around 1922 a home was constructed at the site that was demolished in 1973; and

WHEREAS, the Appellant asserts that Vincent Brancato began renting the site in the 1950s before purchasing it from the City; and

WHEREAS, in 1961, Lot 82 was zoned R3-2, which it remains today; and

WHEREAS the Appellant does not have information to explain the full history of the configuration of Lot 82 and the surrounding lots, but Brancato's deed references Lots 82, 84, and 85, and due to the absence of Lots 84 and 85 on the current tax map, it seems that they were enveloped by Lot 82 at some point; and

WHEREAS, however, the Appellant states that Lot 82 has been occupied by iron works since prior to 1947 – first by A. Hoffman, then Brancato Iron Works, and since approximately 2003 by several tenants who continue the iron works and related uses; and

WHEREAS, OATH accepted that Brancato Iron Works began operations at the site in 1958, when the site was already zoned residential and its use was continuous up until the date of the hearing; and

WHEREAS, at the Board's first hearing, DOB stated that it agreed that there was sufficient evidence to establish the use at 1958 but that 1947 is the operative date; and

CRITERIA FOR MAINTAINING A NON-CONFORMING USE

WHEREAS, DOB and the Appellant agree that the site is currently within an R3-2 zoning district and that commercial and manufacturing uses active at the site, are not permitted as-of-right uses within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming iron works use is permitted to remain, the Appellant must meet the Zoning Resolution 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, ZR § 52-61 – Discontinuance - Non-Conforming Uses – General Provisions - states that: "If, 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, accordingly, as per the Zoning Resolution, the Appellant must establish that the use was established before it became unlawful, by zoning, in this case in 1947 (as reflected on the 1947 zoning maps) and it must have continued without any two-year period of discontinuance since then; and

WHEREAS, neither DOB nor the Appellant contest that this is the appropriate standard to apply to the analysis of whether the non-conforming use may continue at the site; and

APPELLANT'S ARGUMENTS

WHEREAS, the Appellant makes the following primary arguments in support of its position that the Order of Closure be reversed: (1) the commercial and industrial use has been established and was continuous since prior to 1947; and (2) the issuance of the Order of Closure and DOB's and OATH's actions were procedurally flawed; and

WHEREAS, the Appellant asserts that the site has been used as an industrial site as evidenced by its submissions dating back to at least 1940 when it was used for iron works; and

WHEREAS, the Appellant resubmitted all of its evidence from the OATH proceeding, which includes copies of resolved DOB complaint reports from 1990, 1995, and 2005 related to construction without a permit and illegal

1 The Order was previously challenged in an Article 78 proceeding brought by Rock Hard Concrete in December 2010. (Rock Hard Concrete Corp v. Robert D. Limandri , DOB, OATH, City of New York and Vincent Brancato, Index No. 116018/10). Rock Hard Concrete ultimately vacated the site.

occupancy (Block 12178, Lot 82; 159-09, 159-11, 159-15, 159-17 Meyer Avenue) which reflect DOB's acceptance of the use as non-conforming per notations which state that it is accepted as a pre-1961 use; and

WHEREAS, the Appellant also submitted (1) a notice in a 1940 Department of Housing and Building ledger for construction at 159th Street and Meyer Avenue identified as A. Hoffman premise; (2) a 1957/58 phone book advertisement; (3) a 1961 accountant's statement for Brancato Iron Works at 112-11 159th Street; (4) a 1970s permit for work at 159-17 Meyer Avenue; (5) the deed dated January 29, 1981, between the City and Vincent Brancato for the purchase of Lots 82, 84, and 84 at auction; (6) 1998, 2003, 2010 New York City Department of Finance property tax bills for 159-17 Meyer Avenue; (7) a series of emails between the Appellant, DOB, and the Administrative Law Judge; and (8) a lease agreement dated May 17, 2003 between Vincent Brancato and Rock Hard Concrete Corp. for 159-17 Meyer Avenue; and

WHEREAS, the Appellant notes that DOB accepted OATH's decision and, thus, accepted that the use was established at the site from 1958; and

WHEREAS, the Appellant submitted 19 affidavits during the OATH proceeding to establish the use at the site prior to 1961 as was initially believed to be the operative date; and

WHEREAS, the primary source is Vincent Brancato who founded Brancato Iron Works; he stated that he immigrated to the United States from Italy in 1950 at age 19 and that in 1955 he set up operations at 112-01-17 159th Street for its main offices and purchased the Hoffman Iron facility; Mr. Brancato provided records to help establish his presence on 159th Street back to the 1950s, including a 1965 torch license, 1957 Yellow Page advertisement and finance records as well as the 1940 DOB record that states A. Hoffman at 112-10 159th Street; and

WHEREAS, Mr. Brancato states that 159th Street was the mailing address used for all businesses on the block but that he rented Lot 82 on Meyer Avenue in the 1950s and states that other lots have since been consolidated into Lot 82; accordingly, Mr. Brancato states that Lot 82 includes 159-09 through 159-17 Meyer Avenue; and

WHEREAS, when it was learned that 1947, rather than 1961, was the operative date, Mr. Brancato supplemented his affidavit to address the 1947 threshold; he states that when he first saw the A. Hoffman site on Lot 82 in 1950, he could see that it had been there since before 1947, based on wear and tear; Mr. Brancato relies on the DOB records from 1940 with entries for A. Hoffman on Meyer Avenue support he conclusion that an iron works facility was established in 1940 prior to the 1947 date; and

WHEREAS, the Appellant's other affidavits include those from Rock Hard Concrete's president, former Brancato Iron Works employees, people who formerly worked and lived in the surrounding area, and other neighbors who said that there was consistent use of the site as iron works since the 1950s; and

WHEREAS, the affidavits address the consistency of the type of work despite the change in occupants; and that the 1922 house at the site was used for industrial work until its demolition; and

WHEREAS, the Appellant submitted three other supplemental affidavits to address the period prior to 1947; those are from Thomas Griffin (the "Griffin Affidavit"), Edward Puppe (the "Puppe Affidavit"), and Andrew Jenkins (the "Jenkins Affidavit"); and

WHEREAS, Mr. Griffin states that due to a family business that was nearby, he visited the area between 1945 and 1975 and witnessed the iron works business during that period; and

WHEREAS, during the hearing process, Mr. Puppe submitted his affidavit which states that he worked in the Jamaica area including Meyer Avenue and 159th Street from 1946 to 1966 as a police officer and that all during that period "the entire stretch of land north of Meyer Avenue, including Lot 82 . . . was used for iron works and related industrial purposes"; and

WHEREAS, Mr. Puppe also states that he saw trucks, iron containers, piles of new and used steel as well as stacks of finished steel products and that in 1946, Lot 82 was part of Hoffman Iron Works which also had offices on 159th Street and that Brancato's use took over the site immediately after Hoffman left and was the same use, which continues today; and

WHEREAS, Mr. Jenkins states that he has had personal knowledge of the area from 1960 and was a DOB Deputy Commissioner from 1974 to 1978; he asserts that because DOB would not determine a use to be a lawfully established non-conforming use unless it was proven to have been established prior to the zoning change, the use has to have been legally established prior to 1947 as would have been required to satisfy any DOB review; and

WHEREAS, the Appellant asserts that DOB has not submitted any documents to refute the establishment of the use prior to 1947; and

WHEREAS, the Appellant asserts that since DOB and OATH accepted the initial affidavits which address the pre-1961 period, then they should accept the supplemental affidavits which address the pre-1947 period as there should be no distinction between the two sets of affidavits; and

WHEREAS, the Appellant also asserts that the photographs DOB submitted of homes on the block are from the 1930s and not 1940s and do not refute the eyewitness accounts of Mr. Puppe and Mr. Griffin regarding the pre-1947 character of the area; and

WHEREAS, the Appellant states that the absence of pre-1947 evidence should not be construed against it but rather for it where the reasonable presumption is that complaints against it since 1995 were closed based on proof; and

WHEREAS, the Appellant asserts that the paucity of evidence of residential use in the area in the 1930s and 1940s confirms that the block was occupied by commercial or industrial use, which became non-conforming in 1947; and

WHEREAS, as to the question of whether the current

use is a departure from the established use to the extent that it constitutes a discontinuance of use, the Appellant asserts that the existing use is not junk salvage or storage, but rather continues to be iron works and repair of metal containers; and

WHEREAS, the Appellant asserts that OATH determined that the current uses were not junk salvage and DOB should be held to that since it adopted OATH's determination; and

WHEREAS, the Appellant asserts that there are the following procedural deficiencies: (1) DOB is never clear about the addresses it is enforcing against; (2) the Order is defective because it does not identify the correct addresses and must only apply to 159-17 Meyer Avenue; and (3) DOB abandoned the order as it did not enforce it in a timely manner; and

WHEREAS, the Appellant asserts that only the portion of the lot identified as 159-17 Meyer Avenue is subject to padlocking and not the remainder of Lot 82, but that, nonetheless, the remainder of Lot 82 has also been occupied by non-conforming use prior to 1947; and

DOB'S POSITION

WHEREAS, DOB asserts that (1) the use was not established prior to 1947; (2) the current use reflects a discontinuance of the iron works; and (3) the Order applies to all of Lot 82; and

WHEREAS, DOB states that the relevant date by which the use must have been established is 1947 as it is not disputed that the site has been within a residential zoning district from 1947 through today, as reflected on 1947 and 1953 zoning maps; and

WHEREAS, DOB is not persuaded by the evidence that the Appellant submitted to support its claim that the site was occupied by the non-conforming use prior to 1950 when Vincent Brancato came to the United States from Italy and 1955 when he states he established his business on 159th Street; and

WHEREAS, DOB asserts that the Order of Closure was properly based upon OATH's Report and Recommendation, which found that the Appellant had not established a valid nonconforming use defense and recommended closure of the site to abate the illegal nuisance; and

WHEREAS, DOB states that the Appellant has not presented new facts to support its effort to establish the commercial and manufacturing uses; and

WHEREAS, DOB notes that during the course of the OATH proceeding, the Appellant provided evidence to support its claim that the use had existed at the site prior to 1961, but that ultimately, it was discovered that the operative date was actually 1947 and the Appellant subsequently submitted supplemental affidavits; and

WHEREAS, DOB notes that the evidence to establish the use prior to 1947 was initially limited to two affidavits from Vincent Brancato and the Griffin Affidavit, which it rejects as being not reliable enough to pre-date 1950 and that the Griffin Affidavit has no probative value since it is so general and dates back 65 years; and

WHEREAS, DOB notes that of the 19 affidavits submitted during the OATH proceeding, only Vincent Brancato's observations date back prior to 1958 and that was to 1955; of all the other affiants, there was one recalling observations back to 1958 and another to 1959, with all the others spanning the period of 1960 to the present; and

WHEREAS, DOB states that affidavits are only credible if their narrative is consistent with other accounts obtained independently or with documentary evidence; and

WHEREAS, as to evidence, DOB states that the photographs and business documents do not confirm the presence of the use at the site prior to 1947; and

WHEREAS, DOB asserts that the fact that commercial and manufacturing uses may have been occurring on other zoning lots on Block 12178 under the Hoffman name does not support the subject claim about the use of Lot 82, especially since there was a dwelling built on Lot 82 in 1922; and

WHEREAS, DOB finds the representations and recollections about the historic use of the site to be so broad as to cover the block as a whole, which fails to provide sufficient detail to support a claim that Lot 82 has been occupied by the non-conforming use during all relevant periods; and

WHEREAS, DOB submitted tax photographs, which it states where taken between 1939 and 1941, which reflect homes at 112-33 and 112-31 159th Street (Lots 1 and 3); and 159-17 and 159-05 Meyer Avenue (Lots 82 and 86) and building data that indicates that they all existed in 1958 when the first of the four was demolished; one was demolished in 1973 and the other two remain; and

WHEREAS, DOB asserts that the evidence that four homes existed on the block until at least 1958 refutes two supplemental affidavits (the Puppe Affidavit and the Jenkins Affidavit); the Puppe Affidavit states that the entire stretch along Meyer Avenue from 159th Street to the railroad was used for iron works; and

WHEREAS, DOB asserts that the subject portion of Meyer Avenue was very different than it is today and had a number of residences not noted in the Puppe Affidavit; and

WHEREAS, DOB finds that in addition to the recollection being set more than 60 years in the past, it is also not reliable because Mr. Puppe fails to recognize the true character of the block, which included residences; and

WHEREAS, similarly, DOB dispels of the Jenkins Affidavit for failing to reach back to 1947 as Jenkins' involvement with the site began in 1960 and that he says that in his former position at DOB, he would not have allowed the use to continue if he had not had evidence that it was lawfully established prior to 1947; and

WHEREAS, DOB notes that no documentary evidence has been submitted by Jenkins or the Appellant to support the claim that DOB even received evidence to establish the pre-1947 use at the site; and

WHEREAS, DOB notes that in 2009, it initiated an enforcement proceeding against the commercial and manufacturing uses at the site after inspections revealed it was being used for automobile repairs, commercial vehicle storage, contractors' yards, and for junk salvage storage; such uses are contrary to the Zoning Resolution because they are

within use groups which are not permitted in the subject R3-2 zoning district; and

WHEREAS, specifically, commercial vehicle repair and storage are both Use Group 16 (ZR § 32-25); contractors' yards, including iron works and container carting are within Use Group 17 (ZR § 42-14); and the storage of salvage auto parts and junk salvage are Use Group 18 (ZR § 42-15); and

WHEREAS, further, DOB states that the uses are in violation of the Building Code because they are not supported by the legal use documents on file with DOB; the only documents on record are a 1912 New Building Application for a dwelling that was presumably the one demolished in 1973; and

WHEREAS, DOB maintains that the evidence demonstrates that Use Group 18 junk salvage storage is present at the site; based on its inspector's observations, there were numerous damaged empty metal containers at the site, which it deems constitute junk salvage/storage; and

WHEREAS, as to what portion of the lot is subject to the Order, DOB asserts that all of Lot 82 is subject to it as the Order describes the premises as 159-17 Meyer Avenue "a/k/a Lot 82" rather than saying "a portion of Lot 82"; and

WHEREAS, DOB states that the fact that the OATH petition did not list the range of addresses at Lot 82 does not limit the scope of the padlock action given, in particular, the fact that some premises do not have street addresses as is fairly common for undeveloped land; and

WHEREAS, DOB states that it is currently investigating other lots on the block as it appears that illegal uses extend beyond Lot 82; and

CONCLUSION

WHEREAS, the Board finds that the record fails to reflect that the non-conforming use was established on Lot 82 prior to 1947 when it was zoned for residential use; and

WHEREAS, the Board does not find that the four supplemental affidavits (from Brancato, Griffin, Puppe, and Jenkins) provide a sufficient level of detail or information about the site prior to 1947; and

WHEREAS, first, the Board notes that by Mr. Brancato's own testimony, he states that he did not enter the United States until 1950 and did not visit first the site until several years after that, so his statements about the use of the site prior to 1947 are purely speculative; and

WHEREAS, as to the Griffin Affidavit, the Board notes that it is very general, based on the assertion that Mr. Griffin's family had a business near the site during the period of 1945 to 1975, but does not include any detail or isolated point of reference in time as the Board finds would be difficult to do for period more than 65 years ago; and

WHEREAS, as to the Puppe Affidavit, the Board agrees with DOB that Mr. Puppe's statement that the whole blockfront from 159th Street to the railroad was used for iron works calls into question the precision of his recollections of that period more than 65 years ago given that historic records show that there were several homes along Meyer Avenue in the 1940s until their demolition beginning in 1958 according to City records; additionally, as with the Griffin Affidavit, there is a lack of specificity and precision; and

WHEREAS, finally, as to the Jenkins Affidavit, the Board notes that Mr. Jenkins' personal observations did not begin until 1960 and the Board is not persuaded by the statement that the use must have been established prior to 1947 or DOB would not have dismissed complaints and allowed it to continue; and

WHEREAS, the Board notes that DOB erroneously relied on a 1961 establishment date as reflected in its complaint reports and the early stages of the proceedings in the matter; and

WHEREAS, the Board notes that there is nothing in the record that confirms that DOB ever required or that the Appellant proved the establishment of the use in 1947; and

WHEREAS, the Board notes that the only other pre-1947 evidence in the record – the 1940 DOB ledger – is not legible but seems to reflect a "dwelling, garage, shop" and does not speak to the establishment of an iron works on Lot 82; and

WHEREAS, the Board agrees with DOB that Lot 82 is subject to the Order of Closure, in the absence of any evidence or arguments in the record to limit it to 159-17 Meyer Avenue; and

WHEREAS, during the hearing process, the Board directed the Appellant to photograph the current uses at the site and to provide a map of where the different addresses on Lot 82 are located to support its argument that 159-17 Meyer Avenue should be considered distinct from other addresses and the Order should only cover that one portion of the site; and

WHEREAS, the Appellant failed to provide photographs or the map and never explained how different addresses fit into Lot 82; and

WHEREAS, in fact, the Board notes that the Appellant has claimed that addresses are somewhat interchangeable across the block as the Meyer Avenue addresses where the use is located are not always used while there has been consistent use of a 159th Street address for the offices; and

WHEREAS, based on site visits and a review of recent aerial photographs, the Board finds that it is difficult even to conclude that the entire use is within Lot 82 as certain site conditions seem to straddle other lots, including Lot 74, Lot 80, Lot 101, and even into Bedell Street; and

WHEREAS, the Board understands that DOB is investigating the legality of other uses on the block; and

WHEREAS, the Board recognizes that on a site with a significant amount of open use and temporary structures, it is difficult to differentiate between portions of the site, particularly on a site with significant depth in relation to actual street frontage; and

WHEREAS, as to the question of continuity, the Board notes that so long as the Use Group 17 use was established prior to 1947, the Zoning Resolution would allow for it to convert to another Use Group 17 or 16 use, but not to Use Group 18; and

WHEREAS, the Board notes that truck repair is Use Group 16 and metal finishing or heat treatment or

manufacturing is Use Group 17, both of which would be permitted to continue if the Use Group 17 iron works had been established in 1947 and not discontinued; and

WHEREAS, the Board cannot definitively conclude based on its own observations nor is it persuaded by DOB that the current use constitutes a discontinuance of the iron works use or another use that would be permitted if the non-conforming use were established in 1947; and

WHEREAS, however, the Board notes that the record before it does not thoroughly address the question of continuity of use to an extent that the Board can make a determination; and

WHEREAS, the Board refrains from addressing whether there were any procedural irregularities associated with the OATH proceeding as it is able to exercise its zoning expertise with regard to non-conforming use independent of the OATH proceeding and as, noted above, its review of the facts and the record is *de novo*; and

WHEREAS, additionally, the Board notes that the Appellant has had nearly four years since DOB's first inspection in 2009 to gather evidence to support its claims of establishment and continuity of use and finds four years to be an ample amount of time to assemble evidence and defend its position; and

WHEREAS, in sum, the Board concludes as follows: (1) the non-conforming use has not been established prior to 1947; (2) the whole of Lot 82 is the appropriate subject of the review; and (3) any use of the site which does not conform to R3-2 zoning district regulations must cease; and

Therefore it is Resolved, that this appeal, which challenges an Order of Closure issued by DOB on November 23, 2010, is denied.

Adopted by the Board of Standards and Appeals, October 8, 2013.

75-13-A

APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by llya 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 Montanez 5

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 30'-8¼" and a depth of 16'-2¾", and an area of 514 sq. ft., but is required, per MDL § 26(7) to have a minimum width of 40'-5" 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 $31,000 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 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.

126-13-A
APPLICANT – Sheldon Lobel, PC, for Woodmere Development LLC, owner.
SUBJECT – Application April 30, 2013 – Appeal of NYC Department of Buildings' determination that a rear yard is required at the boundary of a block coinciding with a railroad right-of-way. R7B Zoning District.
PREMISES AFFECTED – 65-70 Austin Street, 65th Road and 66th Avenue, Block 3104, Lot 101, 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 November 26, 2013, at 10 A.M., for decision, hearing closed.

134-13-A
APPLICANT – Bryan Cave, for Covenant House, owner.
SUBJECT – Application May 9, 2013 – Appeal of NYC Department of Buildings' determination regarding the right to maintain an existing advertising sign. C2-8/HY zoning district.
PREMISES AFFECTED – 538 10th Avenue aka 460 West 41st Street, Tenth Avenue between 41st and 42nd Streets, Block 1050, Lot 1, 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 October 22, 2013, at 10 A.M., for decision, hearing closed.

194-13-A thru 205-13-A
APPLICANT –Sanna & Loccisano P.C. by Joseph Loccisano, for Leonello Savo, owner.
SUBJECT – Application July 3, 2013 – Construction of single detached residences not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.
PREMISES AFFECTED – 36, 35, 31, 27, 23, 19, 15, 11, 12, 16, 20, 24 Savona Court, west side of Savona Court, 326.76' south of the corner form by Station Avenue and Savona Court, Block 7534, Lot 320, 321, 322, 323, 324, 325, 326, 327, 330, 331, 332, 335, Borough of Staten Island.
COMMUNITY BOARD #3SI
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 October 22, 2013, at 10 A.M., for decision, hearing closed.

237-13-A thru 242-13-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for RLP LLC, owners.
SUBJECT – Application August 12, 2013 – Construction of six buildings not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.

PREMISES AFFECTED – 11, 12, 15, 16, 19, 20 Nino Court, 128.75 ft. south of intersection of Bedell Avenue and Hylan Boulevard, Block 7780, Lot 22, 30, 24, 32, 26, 34, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

247-13-A

APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities, LLC, owners.

SUBJECT – Application August 22, 2013 – Common Law Vested Right to continue development of proposed six-story residential building under prior R6 zoning district. R5A zoning district.

PREMISES AFFECTED – 123 Beach 93rd Street, western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot 11, Borough of Queens.

COMMUNITY BOARD #14Q

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 October 29, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

301-12-BZ

CEQR #13-BSA-050Q

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Jam Realty of Bayside LLC, owner.

SUBJECT – Application October 22, 2012 – Special permit (§73-52) to allow a 25 foot extension of an existing commercial use into a residential zoning district, and §73-63 to allow the enlargement of a legal non-complying building. C2-2(R4) and R2A zoning districts.

PREMISES AFFECTED – 213-11/19 35th Avenue, Block 6112, Lot 47, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 21, 2012, acting on Department of Buildings Application No. 420113745, reads in pertinent part:

> The subject building is located on a zoning lot split into R2A and C2-2/R4 zoning districts (and) enlargement of vertical and horizontal at R2A portion of building is contrary to ZR 22-00 (and) enlargement of C2-2/R4 portion of building exceed[s] maximum permitted FAR, contrary to ZR 33-121; and

WHEREAS, this is an application under ZR §§ 73-52, 73-63, and 73-03, to permit, on a site partially within an R2A zoning district and partially within a C2-2 (R4) zoning district, the legalization of an extension of an existing commercial use within portions of an existing building within the R2A portion of the zoning lot, contrary to ZR § 22-00, and the enlargement of a non-complying, non-residential building within the C2-2 portion of the zoning lot, contrary to ZR § 33-121; and

WHEREAS, a public hearing was held on this application on July 16, 2013 after due notice by publication in *The City Record*, with continued hearings on August 13, 2013 and September 10, 2013, and then to decision on October 8, 2013; 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, Queens, recommends approval of this application, on condition that there will be no parking or driving on the sidewalk; and

WHEREAS, the subject site is an irregular corner lot located at the northwest corner of the intersection of 35th Avenue and Bell Boulevard, partially within an R2A zoning district and partially within a C2-2 (R4) zoning district; and

WHEREAS, the site has approximately 133 feet of frontage along 35th Avenue, approximately 32 feet of frontage along Bell Boulevard, and a lot area of 4,435 sq. ft.; and

WHEREAS, the site is occupied by a two-story eating and drinking establishment (Use Group 6) with 4,556 sq. ft. of floor area (2,471 sq. ft. of floor area (0.75 FAR) within the C2-2 (R4) portion of the zoning lot; and 2,085 sq. ft. of floor area (1.82 FAR) within the R2A portion of the zoning lot); and

WHEREAS, the applicant represents that the commercial uses have existed at the site since well before December 15, 1961, when the current R2A portion of the site was zoned R2; therefore, the commercial use in that portion of the lot is legally non-conforming; and

WHEREAS, the applicant notes that, in recent years (since 2005), a portion of the rear alley along the northern border of the site was enclosed and a small enlargement was constructed along the western border of the site; because these additions were located within the R2A portion of the lot, the amount of commercial floor area in the residence district

increased, contrary to ZR § 22-00; and

WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C2-2 (R4) portion of the lot 25 feet to the west along the northern lot line, thereby legalizing the portion of the enclosure of the alley within the R2A portion of the lot; (2) pursuant to ZR § 73-63, enlarge the portion of the restaurant within the C2-2 (R4) portion of the lot from 4,291 sq. ft. (1.02 FAR) to 4,590 sq. ft. (1.09 FAR); and (3) demolish the small enlargement constructed along the western border of the site; and

WHEREAS, as to floor area changes under the proposal, the applicant states that the commercial floor area within the R2A portion of the district will decrease—because of the extension of the district boundary—from 2,085 sq. ft. (1.82 FAR) to 265 sq. ft. (1.09 FAR), while the floor area within the C2-2 (R4) portion of the lot will increase from 2,471 sq. ft. (0.75 FAR) to 4,590 sq. ft. (1.09 FAR); 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 single ownership requirement, the applicant submitted deeds and historic Sanborn maps establishing that the subject property has existed in single ownership since prior to December 15, 1961; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence 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 threshold 50 percent requirement, 3,326 sq. ft. (75 percent) of the site's total lot area of 4,435 sq. ft. is located within the C2-2 (R4) zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the first finding, the applicant represents that it would not be economically feasible to use or develop the R2A portion of the zoning lot for a permitted use; and

WHEREAS, specifically, the applicant states the residential portion of the lot is too small—approximately 35 feet wide and 35 feet deep—to accommodate a complying building; further, a complying use, particularly a residence, would be nearly impossible to market because it would be surrounded by non-residential uses; and

WHEREAS, the Board agrees that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R2A, for a permitted use; and

WHEREAS, as to the second finding, the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, the applicant states that Bell Boulevard is predominantly commercial in nature, including two gasoline stations at the intersection of Bell Boulevard and 35th Avenue; the applicant also notes that the commercial use has existed at the site for decades; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C2-2 (R4) zoning district portion of the lot into the R2A 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, ZR § 73-63 permits the enlargement of a non-complying, non-residential building provided that: (1) such building existing on December 15, 1961; (2) the enlargement does not create any new non-compliance or increase the degree of any existing non-compliance; and (3) the enlargement does not increase the floor area beyond ten percent of the maximum permitted FAR in the underlying district; and

WHEREAS, the applicant represents that DOB records indicate that the building was constructed around 1930 and that the proposal neither creates a new non-compliance, nor increases the degree of any existing non-compliance; and

WHEREAS, the applicant states that the maximum permitted FAR in the C2-2 (R4) district is 1.0 and that the proposal—including the extension of the district boundary pursuant to ZR § 73-52—results in a commercial FAR of 1.09; thus, the enlargement may be permitted under ZR § 73-63; the applicant notes that the remaining commercial floor area (265 sq. ft.) is lawfully non-conforming, as stated above; and

WHEREAS, accordingly, the Board finds that the proposal satisfies the threshold requirements of ZR § 73-63; and

WHEREAS, at hearing, the Board requested clarification regarding the footprint of the building prior to the recent enlargements; and

WHEREAS, in response, the applicant submitted a survey of the building completed prior to 2005 and deeds for the relevant lots covering the time period in question; and

WHEREAS, the Board finds that this action will neither alter the essential character of the surrounding neighborhood, impair the use or development of adjacent properties, nor 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 granting of the proposed special permits 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 §§ 73-52, 73-63, and 73-03; and

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR Part 17.2; 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.13BSA050Q, dated April 5, 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 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, 73-63, and 73-03, to permit, on a site partially within an R2A zoning district and partially within a C2-2 (R4) zoning district, the legalization of an extension of an existing commercial use within portions of an existing building within the R2A portion of the zoning lot, contrary to ZR § 22-00, and the enlargement of a non-complying, non-residential building within the C2-2 portion of the zoning lot, contrary to ZR § 33-121; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 7, 2013" – five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: 265 sq. ft. (1.09 FAR) within the R2A portion of the lot and 4,590 sq. ft. (1.09 FAR) within the C2-2 (R4);

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, October 8, 2013.

322-12-BZ
CEQR #13-BSA-062K
APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.
SUBJECT – Application December 6, 2012 – Variance (§72-21) to permit the enlargement of a single-family residence, contrary to open space and lot coverage (§23-141); less than the minimum required front yard (§23-45) and perimeter wall height (§23-631). R5 (OP) zoning district.
PREMISES AFFECTED – 701 Avenue P, 1679-87 East 7th Street, northeast corner of East 7th Street and Avenue P, Block 6614, Lot 60, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 11, 2012, and acting on Department of Buildings Application No. 320397691 reads, in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required;
2. Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted;
3. Proposed plans are contrary to ZR 113-55 and 23-631 in that the proposed wall height exceeds the maximum permitted; and
4. Proposed plans are contrary to ZR 113-542 and 23-45 in that the proposed front yards are less than the minimum required; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing single-family semi-detached home that does not provide the required open space, lot coverage, perimeter wall height, or front yards, contrary to ZR §§ 23-141, 23-631, 23-45, 113-542, and 113-55; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, with a continued hearing on September 17, 2013, and then to decision on October 8, 2013;

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, Brooklyn, recommends disapproval of this application; and

WHEREAS, certain members of the surrounding community submitted oral and written testimony in opposition to the application, citing concerns about the proposed building's overall bulk and the impact of construction upon surrounding neighbors; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Avenue P and East Seventh Street, within an R5 zoning district within the Special Ocean Parkway District; and

WHEREAS, the site has 90 feet of frontage along East Seventh Street, 17 feet of frontage along Avenue P, and 1,710 sq. ft. of lot area; and

WHEREAS, the site has an irregular shape; its lot width varies from 17 feet at its narrowest point (along the Avenue P frontage) to 27 feet along its northern boundary (running perpendicular to East Seventh Street); and

WHEREAS, the site is currently occupied by a two-story, semi-detached, single-family home with approximately 1,505.30 sq. ft. of floor area (0.88 FAR); and

WHEREAS, the applicant proposes to enlarge the existing first and second stories of the building contrary to the open space, lot coverage, perimeter wall, and front yard requirements, and increase the floor area from 1,505.30 sq. ft. (0.88 FAR) to 2,415.75 sq. ft. (1.41 FAR) (a maximum of 2,565 sq. ft. (1.50 FAR) is permitted); and

WHEREAS, in particular, the applicant proposes to decrease its open space from 52 percent to 39 percent (a minimum open space of 45 percent is required, per ZR § 23-141(b)), increase its lot coverage from 48 percent to 61 percent (a maximum lot coverage of 55 percent is permitted, per ZR § 23-141(b)), maintain its existing non-complying perimeter wall height of 23'-11" (a maximum perimeter wall height of 21'-0" is permitted, per ZR § 113-55), and maintain its existing non-complying front yard depths of 0'-6 ¾" along East Seventh Street and 5'-7 3/16" along Avenue P (two front yards of no less than 10 feet each are required, per ZR § 113-542); the applicant notes that the proposed enlargement complies in all other respects with the applicable bulk regulations; and

WHEREAS, because the proposed enlargement does not comply with the R5/Special Ocean Parkway District regulations, a variance is requested; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations: (1) the lot's small size and narrowness; (2) the underdevelopment of the existing home; and (3) the orientation of the existing home on the corner lot; and

WHEREAS, the applicant represents that with only 1,710 sq. ft. lot area, the site has less lot area than every lot in the R5 district except one; further, the site's lot width of 17 feet (for the majority of the lot) makes it the narrowest corner lot out of the 38 corner lots in the applicant's R5 district study;

WHEREAS, in addition, the applicant states that all other corner lots in the district have at least 2,000 sq. ft. of lot area and the average lot area is 3,335.7 sq. ft. (nearly twice that of the subject site); and

WHEREAS, the applicant represents that based on the lot size and narrow width, and its location as a corner lot, any conforming enlargement would be severely restricted by the underlying yard and open space requirements and would not be able to provide livable space for the enlarged home; and

WHEREAS, the applicant also states that the existing home with a floor area of 1,505 sq. ft (0.88 FAR) is underdeveloped compared to the allowable square footage of 2,565 sq. ft (1.5 FAR); and

WHEREAS, the applicant notes that the existing home is the fifth smallest of 37 homes occupying corner lots, the average being 2,995 sq. ft; and

WHEREAS, as to the orientation of the existing home on the lot, the applicant states that because the home is currently 16'-3 5/8" in width with a non-complying front yard of 0'-6 ¾", an as-of-right enlargement providing the required 10'-0" front yard would result in a building width of only seven feet in the enlarged portion of the building from exterior wall to exterior wall, which yields a livable space with a width of approximately five feet; thus, an as-of-right enlargement would not even yield rooms that meet the minimum dimensional requirements for habitability, let alone accommodate modern living space; and

WHEREAS, the applicant states that because other corner lots in the district have more lot width, the front yard requirements can be satisfied without overwhelming the living space; the subject site, on the other hand, is too narrow to provide complying front yards; and

WHEREAS, the applicant also contrasts the site's as-of-right enlargement limitations with other semi-detached interior lots on the block, noting that such lots generally require one side yard (the equivalent of the site's East Seventh Street front yard because the site is a corner lot) of only four feet; thus, other lots on the block have between three and six more feet of lot width, but have yard requirements that are generally six feet less than the subject lot's; and

WHEREAS, therefore, the applicant asserts that its site is uniquely burdened and cannot realize its potential floor area without the requested waivers to floor area, open space, and lot coverage; and

WHEREAS, further, since the existing home has an existing non-complying perimeter wall of 23'-11", it would be impractical to enlarge the home and, at the same time, provide a complying perimeter wall at 21 feet for the enlarged section without significant structural changes included potentially lowering the existing second floor or creating a floor to ceiling height within the enlarged section of approximately seven feet; 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 Board agrees that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; 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 proposal will maintain the existing non-complying front yards and reduce the existing side yard from a complying 30'-3" to a complying 20 feet; and

WHEREAS, the applicant notes that its design minimizes neighborhood impact by locating the majority of the enlargement at the rear of the site; however, such design required a modest reduction in side yard width; and

WHEREAS, the applicant states that the enlargement will maintain the existing building height of 33'-8" (the maximum permitted height is 35 feet) and pull the ridge toward the rear of the site, which will result in a roofline and streetscape that is compatible with the character of the surrounding area; and

WHEREAS, finally, the applicant notes that the proposed FAR is well within the maximum permitted in the district and that the proposed open space and lot coverage deviate less than 13 and 11 percent, respectively, from the requirements; 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

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, within an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing single-family semi-detached home that does not provide the required open space, lot coverage, perimeter wall height, or front yards, contrary to ZR §§ 23-141, 23-631, 23-45, 113-542, and 113-55; *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 September 3, 2013"- (10) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: two stories, a maximum perimeter wall height of 23'-11", a maximum building height of 33'-8", a maximum floor area of 2,415.75 sq. ft. (1.41 FAR), minimum open space of 39 percent, maximum lot coverage of 61 percent, and front yards with minimum widths of 0'-6 ¾" and 5'-7 3/16", 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 shall be considered approved only for the portions related to the specific relief granted;

THAT significant construction shall 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, October 8, 2013.

169-13-BZ
CEQR #13-BSA-149K
APPLICANT – Greenberg Traurig, for Joseph Schottland, owner.
SUBJECT – Application June 5, 2013 – Special Permit (§73-621) to legalize the enlargement of a two-family residence, contrary to floor area regulations (§23-145). R6 (LH-1) zoning district.
PREMISES AFFECTED – 227 Clinton Street, east side of Clinton Street, 100' north of the corner formed by the intersection of Congress Street and Clinton Street, Block 2297, Lot 5, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 6, 2013, acting on Department of Buildings ("DOB") Application No. 320221309, reads in pertinent part:

> Total proposed zoning floor area of 5,736 square feet, including 366 square feet at the attic level, exceeds maximum allowed in R6 district for Quality Housing development, per ZR 23-145; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R6 zoning district within a limited height district (LH-1) within the Cobble Hill Historic District, the legalization of an enlargement of a two-family

residence, which does not comply with the zoning requirements for floor area ratio ("FAR"), contrary to ZR § 23-145; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in *The City Record*, and then to decision on October 8, 2013; and

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

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

WHEREAS, the subject site is an interior lot located on the east side of Clinton Street, between Amity Street and Congress Street, within an R6 zoning district within a limited height district (LH-1) within the Cobble Hill Historic District; and

WHEREAS, the site has a lot area of 2,261.5 sq. ft. and is occupied by a two-family residence (the "Subject Building") with a floor area of 5,376 sq. ft. (2.38 FAR); and

WHEREAS, the applicant states that in October 2010, the owner filed Application No. 320221309 to perform certain alterations to the Subject Building, including renovations of the first story, rear façade and roof; and

WHEREAS, the applicant states that the increase in floor area is located in the attic and was originally excluded from floor area by DOB when Application No. 320221309 was approved; however, subsequently, DOB determined that the 366 sq. ft. was required to be included in floor area because it was to be used for dwelling purposes; and

WHEREAS, accordingly, the applicant seeks to legalize the increase in the floor area from 4,974 sq. ft. (2.2 FAR) to 5,376 sq. ft. (2.38 FAR); the applicant notes that the maximum floor area permitted is 4,975.3 sq. ft. (2.2 FAR); and

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

WHEREAS, the applicant represents, and the Board accepts, that the Subject Building has existed in its pre-enlarged state since 1957, when DOB issued Certificate of Occupancy No. 156051 in connection with alterations authorized under Alteration Application No. 87/1957; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject two-family 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 floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the floor area ratio, the applicant represents that the proposed floor area is 108 percent of the maximum permitted; and

WHEREAS, as to lot coverage, the applicant represents that the enlargement did not alter the existing, complying lot coverage of 58.2 percent (the maximum permitted lot coverage is 60 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

WHEREAS, the applicant represents that the enlargement will have no negative effects on the community, in that it does not increase the density or use of the building and does not modify the building's envelope in any horizontal direction; further, the applicant asserts that the slight increase in height involved in the enlargement has no appreciable impacts on the privacy, quiet, light or ventilation of the adjacent buildings or the neighborhood; and

WHEREAS, the Landmarks Preservation Commission has approved the enlargement by Certificate of Appropriateness, dated January 24, 2011; 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 R6 zoning district within a limited height district (LH-1) within the Cobble Hill Historic District, the legalization of an enlargement of a two-family residence, which does not comply with the zoning requirements for floor area ratio ("FAR"), contrary to ZR § 23-145; *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 August 29, 2013"– (11) sheets; and *on further condition*:

THAT the maximum floor area of the building will be 5,376 sq. ft. (2.38 FAR), as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 8, 2013.

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 November 19, 2013, at 10 A.M., for adjourned 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 November 19, 2013, at 10 A.M., for continued hearing.

236-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.
SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.
PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.
COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for adjourned hearing.

259-12-BZ
APPLICANT – Davidoff Hutcher & Citron LLP, for 5239 LLC, owner.
SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the development of a single-family house, contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district.
PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, Borough of Bronx.
COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for deferred decision.

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 – Laid over to November 19, 2013, at 10 A.M., for adjourned hearing.

55-13-BZ
APPLICANT – Stuart A. Klein, Esq., for Yeshivas Novominsk, owners.
SUBJECT – Application February 1, 2013 – Variance (§72-21) to permit the enlargement of an existing yeshiva and dormitory (*Yeshiva Novominsk*), contrary to floor area (§24-11), wall height and sky exposure plane (§24-521), and side yard setback (§24-551). R5 zoning district.
PREMISES AFFECTED – 1690 60th Street, north side of 17th Avenue between 60th and 61st Street, Block 5517, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for continued hearing.

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 November 19, 2013, at 10 A.M., for deferred decision.

122-13-BZ
APPLICANT – Law Office of Fredrick A Becker, for Jacqueline and Jack Sakkal, owners.
SUBJECT – Application April 29, 2013 – Special Permit (§73-621) for the enlargement of an existing two-family home to be converted into a single family home, contrary to floor area (§23-141). R2X (OP) zoning district.
PREMISES AFFECTED – 1080 East 8th Street, west side of East 8th Street between Avenue J and Avenue K, Block 6528, Lot 33, Borough of Brooklyn.
COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for continued hearing.

129-13-BZ
APPLICANT – Lewis E. Garfinkel, for Tammy Greenwald, owner.
SUBJECT – Application May 7, 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(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1010 East 22nd Street, west side of East 22nd Street, 264' south of Avenue I, Block 7585, Lot 61, Borough of Brooklyn.
COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

158-13-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Golf & Body NYC, owners.
SUBJECT – Application May 20, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Golf & Body*). C6-6(MID) zoning district.
PREMISES AFFECTED – 883 Avenue of the Americas, southwest corner of the Avenue of the Americas and west 32nd Street, Block 807, Lot 1102, 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 October 29, 2013, at 10 A.M., for decision, hearing closed.

159-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Melvin Friedland & Lawrence Friedland, owners; 3799 Broadway Fitness Group, LLP, lessees.
SUBJECT – Application May 24, 2013 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*); Special Permit (§73-52) to allow the extension of the proposed use into 25' feet of the residential portion of the zoning lot. C4-4 and R8 zoning districts.
PREMISES AFFECTED – 3791-3799 Broadway, west side of Broadway between 157th Street and 158th Street, Block 2134, Lot 180, Borough of Manhattan.
COMMUNITY BOARD #12M
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 October 29, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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New Case Filed Up to October 22, 2013

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285-13-BZ
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286-13-BZ
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287-13-A
525 Durant Avenue, North side of Durant Avenue, 104-13 ft. west of intersection of Durant Avenue and Fielay Avenue, Block 5120, Lot(s) 64, Borough of **Staten Island, Community Board: 3**. Proposed construction of a building that does not front on a legally mapped street contrary to Article 3 of General City Law 36. R3X SRD district . R3X(SRD) district.

288-13-A
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289-13-BZ
473-541 6th Street, Block bounded by 7th Avenue, 6th Street, 8th Avenue and 5th Street., Block 1084, Lot(s) 25,26,28,39-44,46,48, Borough of **Brooklyn, Community Board: 6**. 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. R6,C1-3/R6,R6B, district.

290-13-BZ
2244 Church Avenue, South side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot(s) 42, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-36) to allow for a physical culture establishment (PCE) located on the second-floor level of a four-story building. C4-4A zoning district. C4-4A district.

291-13-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

NOVEMBER 19, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 19, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

774-55-BZ
APPLICANT – Sahn Ward Coschignano & Baker, for FGP West Street, LLC, owner.
SUBJECT – Application July 31, 2013 – Extension of Term (§11-411) of a previously granted variance for the continued operation of a (UG8) parking lot, for more than five cars, for the employees and customers of an existing bank (*Citibank*) on the adjoining lot which expired on January 31, 2013;Waiver of the Rules. R5/C1-1 & R5/C2-2 zoning district.
PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue, betweeen Olmstead Avenue and Castle Hill Avenue, Block 3814, Lot 59, Borough of Bronx.
COMMUNITY BOARD #9BX

17-02-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Abrams Holding LLC, owner; Town Sports International dba New York Sports Club, lessee.
SUBJECT – Application August 7, 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 June 4, 2012; Waiver of the Rules. C4-3 zoning district.
PREMISES AFFECTED – 445-455 Fifth Avenue aka 453 Fifth Avenue, between 9th Street and 10th Street, Block 1011, Lot 5, 8, Borough of Brooklyn.
COMMUNITY BOARD #6BK

248-03-BZ
APPLICANT – Troutman Sanders LLP, for Ross and Ross, owners; Bally Total Fitness of Greater New York Inc., lessee.
SUBJECT – Application July 30, 2013 – Extension of Term of a previously approved variance to permit the continuance operation of the physical culture establishment (*Bally's Total Fitness*) at the site which is located in a C1-5(R8A) & R7A zoning districts and will expire on January 27, 2014.
PREMISES AFFECTED – 1915 Third Avenue, south east corner of East 106th Street and Third Avenue, Block 1655, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #11M

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 filed by the Department of Buildings seeking to revoke the Certificate of Occupancy that was issued in error. 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

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 regulations. R7B zoning district.
PREMISES AFFECTED – 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

156-13-A
APPLICANT – Bryan Cave LLP, for 450 West 31Street 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.
PREMISES AFFECTED – 450 West 31 Street, West 31 Street, between Tenth Avenue and Lincoln Tunnel Expressway, Block 728, Lot 60, Borough of Manhattan.
COMMUNITY BOARD #10M

CALENDAR

ZONING CALENDAR

28-12-BZ
APPLICANT – Eric Palatnik, P.C., for Gusmar Enterprises, LLC, owner.
SUBJECT – Application November 19, 2013 – 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

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 yards §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

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

206-13-BZ
APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for 605 West 42nd Owner LLC, owner.
SUBJECT – Application July 12, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment within an existing building, contrary to Section 32-31. C6-4 zoning district.
PREMISES AFFECTED – 605 West 42nd Street, eastern portion of the city block bounded by West 42nd St, West 43rd Street, 11th Avenue and 12th Avenue, Block 1090, Lot 29, 23, 7501, Borough of Manhattan.
COMMUNITY BOARD #4M

219-13-BZ
APPLICANT – Eric Palatnik, P.C., for 2 Cooper Square LLC, owner; Crunch LLC, lessee.
SUBJECT – Application July 19, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Crunch Fitness*) within a portions of an existing mixed use building contrary to §42-10. M1-5B zoning district.
PREMISES AFFECTED – 2 Cooper Square, northwest corner of intersection of Cooper Square and East 4th Street, Block 544, Lot 65, Borough of Manhattan.
COMMUNITY BOARD #2M

292-13-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.
SUBJECT – Application October 23, 2013 – This application is filed pursuant to §72-21 of the Zoning Resolution of the City of New York, as amended, to request a variance of floor area, open space ratio, front yard waivers, lot coverage, side yards, rear yard, height and setback, side and rear yard setbacks, planting, landscaping and parking regulations in order to permit the construction of a Use Group 4A house of worship Congregation Bet Yaakob. R5 (OP), R6A (OP) and R5 (OP Subdistrict) 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

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, OCTOBER 22, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

606-75-BZ
APPLICANT – Sheldon Lobel, P.C., for Printing House Condominium, owners.
SUBJECT – Application July 3, 2013 – Amendment of a previously approved variance (§72-21) which allowed the residential conversion of a manufacturing building; amendment seeks to permit a reallocation of floor area between the maisonette and townhouse units, resulting in a reduction of total units and no net change in total floor area. M1-5 zoning district.
PREMISES AFFECTED – 421 Hudson Street, corner through lot with frontage on Hudson Street, Leroy Street and Clarkson Street, Block 601, Lot 7501, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance permitting residential use within a manufacturing district; the amendment proposes the relocation of floor area from maisonette units to townhouse units, with no net change in floor area, and a reduction in the total number of dwelling units on the zoning lot; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, and then to decision on October 22, 2013; 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, Manhattan, recommends approval of this application; and

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

WHEREAS, certain members of the surrounding community testified in opposition to the application; and

WHEREAS, the subject site spans the full length of Hudson Street between Leroy Street and St. Luke's Place, within an M1-5 zoning district; and

WHEREAS, the site has approximately 200 feet of frontage along Hudson Street, 150 feet of frontage along Clarkson Street, 125 feet of frontage along Leroy Street, and a lot area of 27,584 sq. ft.; and

WHEREAS, the site is occupied by a ten-story mixed residential and commercial building (the "Main Building") and five, two-story residential buildings (the "Townhouses"), with a total of 184 dwelling units; the ground floor and mezzanine of the Main Building contains eight residential units (the "Maisonettes"); and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 20, 1976 when, under the subject calendar number, the Board granted a use variance authorizing the conversion of an existing eight-story industrial building to a mixed commercial and residential building (Use Group 2) within an M1-5 zoning district; on that same day, under BSA Cal. No. 607-75-A, the Board granted an appeal pursuant to New York State Multiple Dwelling Law § 310 waiving compliance with certain provisions of the MDL governing rear yard, egress, living room depth from a window, and flue projections; and

WHEREAS, on April 5, 2011, under BSA Cal. No. 226-10-BZ, the Board granted a special permit pursuant to ZR § 73-36 to permit a physical culture establishment ("PCE") on the first, ninth and tenth stories of the building; simultaneously, the Board granted an amendment to the subject variance to reflect the floor plan changes associated with the PCE; and

WHEREAS, subsequently, in 2011 and in 2012, the Board issued letters of substantial compliance authorizing various reconfigurations of the residential units, resulting in an overall reduction in the number of units from 184 to 154; and

WHEREAS, the applicant now seeks to amend the grant to decrease the floor area of the mezzanine levels within the Maisonettes by 1,345 sq. ft., increase the floor area of the Townhouses by 1,345 sq. ft. and to alter certain other dwelling units within the Main Building; the proposed relocation of floor area and Main Building alterations will result in a decrease in the number of Maisonette dwelling units from eight to three and a decrease in the number of Townhouse dwelling units from five to two; the alterations not related to the Maisonettes or the Townhouses will result in a decrease in the number of dwelling units from 141 to 138; and

WHEREAS, the applicant states that the amendment will increase the height of the Townhouses from 26'-1" to 29'-9" and will result in new landscaping, walkways and drainage; and

WHEREAS, the applicant asserts that the proposed reduction in the number of dwelling units at the site will decrease the scope of the use variance and will have no adverse effects on the surrounding community; and

WHEREAS, at hearing, the Board requested amended drawings clearly delineating the relocation of the floor area; and

WHEREAS, in response, the applicant submitted

amended drawings; and

WHEREAS, based upon 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 *reopens* and *amends* the resolution, as adopted on July 20, 1976, to permit the relocation of floor area from the Maisonettes to the Townhouses and the reduction in the number of dwelling units at the site; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received October 8, 2013'- seventeen (17) sheets; and *on further condition*:

THAT there will be no increase in the floor area at the site;

THAT Multiple Dwelling Law compliance 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 the Department of Buildings must ensure compliance 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. 121326145)

Adopted by the Board of Standards and Appeals, October 22, 2013.

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 Montanez 5
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. 400322469)

Adopted by the Board of Standards and Appeals, October 22, 2013.

189-96-BZ
APPLICANT – John C Chen, for Ping Yee, owner; Club Flamingo, lessee.
SUBJECT – Application May 14, 2013 – Extension of Term of a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing, which expires on May 19, 2013. C2-3/R6 zoning district.
PREMISES AFFECTED – 85-10/12 Roosevelt Avenue, south side of Roosevelt Avenue, 58' east side of Forley Street, Block 1502, Lot 4, 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 5
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 (Use Group 12A), which expired on May 19, 2013; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in *The City Record*, with a continued hearing on October 8, 2013, and then to decision on October 22, 2013; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

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

WHEREAS, the subject site is located on the northwest corner of the intersection of Roosevelt Avenue and Forley Street, with 40 feet of frontage along Roosevelt Avenue and 50 feet of frontage along Forley Street; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as Flamingo; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 1999, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the legalization of an existing eating and drinking establishment with entertainment and dancing; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on July 27, 2010, the Board authorized an amendment to permit minor changes to the first floor layout and the installation of employee lockers in the cellar and granted an additional three-year term, which expired on May 19, 2013; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, at hearing, the Board questioned whether any changes were being made to the layout of the establishment; and

WHEREAS, in response, the applicant submitted an amended statement clarifying that no changes were being made to the layout of the establishment; and

WHEREAS, based upon the above, the Board finds the requested extension and amendment 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 May 19, 1999, and as subsequently extended and amended, so that as amended the resolution shall read: "to extend the term for a period of three years from May 19, 2013, to expire on May 19, 2016, *on condition*:

THAT the term of this grant will expire on May 19, 2016;

THAT the above condition will be listed on the certificate of occupancy;

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

THAT the Department of Buildings must ensure compliance 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. 420828297)

Adopted by the Board of Standards and Appeals, October 22, 2013.

699-46-BZ
APPLICANT – Eric Palatnik, P.C., for Gurcharan Singh, owner.
SUBJECT – Application September 17, 2012 – Amendment (§11-412) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory use. The amendment seeks to convert existing service bays to a convenience store, increase the number of pump islands, and permit a drive-thru to the proposed convenience store. R3X zoning district.
PREMISES AFFECTED – 224-01 North Conduit Avenue, between 224th Street and 225th Street, Block 13088, Lot 44, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

405-01-BZ
APPLICANT – Eric Palatnik, P.C., for United Talmudcial Academy, owner.
SUBJECT – Application September 18, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a five-story school and synagogue, which expires on February 14, 2014. R5/C2-3 zoning district.
PREMISES AFFECTED – 1275 36th Street, aka 123 Clara Street, between Clara Street and Louisa Street, Block 5310, Lot 1, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

19-05-BZ
APPLICANT – Slater & Beckerman, P.C., for Groff Studios Corp., owner.
SUBJECT – Application August 26, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the change in use of portions of an existing nine-story, mixed-use building to residential use, which expires November 10, 2013. M1-6 zoning district.
PREMISES AFFECTED – 151 West 28th Street, north side of West 28th Street, 101' east of Seventh Avenue, Block 804, Lot 8, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

219-07-BZ
APPLICANT – James Chin & Associates, LLC, for External Sino Dev. Condo, LLC, owner; Shunai (Kathy) Jin, lessee.
SUBJECT – Application June 1, 2012 – Extension of Term of a previously granted Special Permit (§73-36) to permit the continued operation of a physical culture establishment (*Cosmos Spa*), which expired on June 3, 2010. M1-6 zoning district.
PREMISES AFFECTED – 11 West 36th Street, 2nd Floor, north side of West 36th Street between 5th and 6th Avenues, Block 838, Lot 35, Borough of Manhattan.
COMMUNITY BOARD #5M
ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

87-13-A
APPLICANT – Bryan Cave LLP, for 176 Canal Corp., owner .OTR Media Group; lessee
SUBJECT – Application March 6, 2013 – Appeal challenging Department of Buildings' determination that the existing sign is not entitled to non-conforming use status. C6-1G zoning district.
PREMISES AFFECTED – 174 Canal Street, Canal Street between Elizabeth and Mott Streets, Block 201, Lot 13, Borough of Manhattan.
COMMUNITY BOARD #3M
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 Montanez 5
THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the Manhattan Borough Commissioner of the Department of Buildings ("DOB") on February 5, 2013 (the "Final Determination"), which states, in pertinent part:

> By letter dated September 10, 2012, the Department notified you of its intent to revoke the approval and permit issued for work at [174 Canal Street, Manhattan] in connection with [Application No. 104849185]. 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 Section(s) 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 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 October 22, 2013; 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 south side of Canal Street, between Mott Street and Elizabeth Street, within a C6-1G zoning district; and

WHEREAS, the site is occupied by a six-story mixed residential and commercial building (the "Building"), and, on the east façade of the Building, an advertising sign with a height of 30 feet, a width of 26 feet, and a surface area of 780 sq. ft. (the "Sign"); 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

PROCEDURAL HISTORY

WHEREAS, on March 31, 2008, the Appellant filed a permit application for the Sign with DOB under Job. No. 104849185 (the "Permit"); by its terms, the Permit authorized the painting of a 780 sq. ft. (30 feet by 26 feet) advertising wall sign on the east wall of the Building; and

WHEREAS, on April 18, 2008, DOB issued the Permit; and

WHEREAS, by letter dated September 12, 2012, DOB notified the Appellant of its intent to revoke the Permit based on, among other things, its determination that the Sign was not permitted to be repainted because the Permit application did not contain sufficient evidence that the sign was established as a non-conforming use and not discontinued under ZR § 52-61; and

WHEREAS, following a series of meetings between DOB and the Appellant in which the Appellant attempted to establish the Sign's legal use under the Zoning Resolution, on February 5, 2013, DOB issued its Final Determination revoking the Permit; and

RELEVANT ZONING RESOLUTION PROVISIONS

> ZR § 12-10 (*Definitions)*
>
> 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. . .
>
> * * *
>
> 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

THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C6-1G zoning district and that the Sign is not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, the Appellant 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, through the hearing process, DOB and the Appellant came to agree that because the site was located in a Business District (under the 1916 Zoning Resolution) beginning in 1947, the Appellant was required to demonstrate that the Sign existed prior to 1947; and

WHEREAS, the parties also agree that the Appellant must demonstrate that the Sign has existed without any two-year period of discontinuance since its establishment, and that DOB's Technical Policy and Procedure Notice No. 14/1988 (the "TPPN") provides guidelines for DOB's review of whether a non-conforming use has been continuous; and

WHEREAS, the TPPN provides, in pertinent part, that:

> [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

WHEREAS, further, the parties agree that, in the context of non-conforming signs, photographic evidence is given substantial weight; and

LAWFUL ESTABLISHMENT

WHEREAS, the Appellant states that the Sign was established as an advertising sign prior to 1947 in 1932, and submits a 1932 photograph (the "1932 Photograph") in support of that statement; and

WHEREAS, the Appellant notes that while the 1932 Photograph is blurry, the evidence in the record in its totality supports the conclusion that an advertising sign would have been established at the site and maintained through 1947; and

WHEREAS, in addition, the Appellant states that DOB has previously accepted blurry photographs as establishing a non-conforming advertising sign; specifically, the Appellant states that two roof signs at 55 Washington Street, Brooklyn were accepted as established based in part on two photographs as blurry as the 1932 Photograph; and

WHEREAS, as to the Sign's initial existence as an advertising sign, the Appellant states that an advertising sign would have been permitted as-of-right in 1932, because the site was within an Unrestricted District, which contained no restrictions on signs; and

WHEREAS, further, the Appellant contends that, based on the opinion of its media consultant, the wall of the Building—which is visible to pedestrian and vehicle traffic on Canal Street approaching Bowery and the entrance to the Manhattan Bridge—was historically and remains an ideal location for advertising, and was, based on the record, used for advertising for decades; and

WHEREAS, the Appellant states that the Sign is likely to have existed as an advertising sign after its establishment for the same reasons it was likely to have been established as an advertising sign in the first place—its highly visible location on a busy Lower Manhattan street would have made it attractive to advertisers and much more lucrative to the Building's owner than a business sign; and

WHEREAS, likewise, the Appellant contends that the Sign, once established, is not only *likely* to have existed, but also is, pursuant to the presumption of continuity, presumed to have existed through 1947; and

WHEREAS, in particular, the Appellant states that it is proper to 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, accordingly, the Appellant contends that the record demonstrates that the Sign was established prior to 1947 as a non-conforming advertising sign under the 1916 Zoning Resolution; and

WHEREAS, DOB asserts that the 1932 Photograph is insufficient evidence of the Sign's establishment as a non-conforming advertising sign prior to 1947; and

WHEREAS, specifically, DOB states that the photograph is so unclear that it is impossible to even determine whether the building depicted is the Building, let

alone whether a painted sign is depicted or whether such sign has a message that can be identified as advertising; and

WHEREAS, as to determination that the roof signs at 55 Washington Street were established, DOB states that the 55 Washington Street photographs it relied upon were: (1) significantly clearer than the 1932 Photograph; and (2) supported by other evidence, including another more recent photograph, as well as records of DOB inspections in 1978, 1979 and 1980, which documented the existence of the signs; as such, DOB asserts that its rejection of the 1932 photograph in this case is distinguishable from its acceptance of photographs in connection with its determination regarding 55 Washington Street, Brooklyn; and

WHEREAS, moreover, DOB states that even assuming the 1932 Photograph is accepted as demonstrating that the Sign existed as of 1932, there is no evidence of the Sign's existence as of 1947, when the Sign needed to have been in place in order to become established as a non-conforming use; and

WHEREAS, accordingly, DOB asserts that the Appellant has failed to demonstrate that the Sign was established as a non-conforming use; and

CONTINUITY OF THE SIGN

WHEREAS, the Appellant asserts that it has submitted sufficient evidence under the TPPN to demonstrate the continuity of the Sign from 1932 to the present; and

WHEREAS, the Appellant submitted the following evidence of the Sign's continuity: (1) 1959 video showing Wing Furniture Co. advertising sign on the Building and Wing Furniture Co. located across the street at 185 Canal Street; (2) 1959 address book listings for individuals and Eisenfeld clothing store at 174 Canal Street and Wing Furniture Co. at 185 Canal Street; (3) 1960 Yellow Pages with Wing Furniture Co. at 185 Canal Street; (4) 1968 photograph showing a cookbook; (5) 1968 address book listings for individuals and Keen Wah Merchandise Co. at the Building; (6) 1975 Yellow Pages Olins Rent-a-Car with no listing for the Building as a location; (7) 1976 photograph showing Olins Rent-a-Car advertising sign; (8) 1976 address book listings for individuals, a restaurant, and a hosiery store at the Building; (9) 1977 lease with three-year term; (10) a 1980(s) Department of Finance photograph showing the pagoda and Chemical Bank; (11) 1980 address book listings for individuals and hardware company; (12) 1985 photograph showing the pagoda and Chemical Bank; (13) 1993 photograph showing Bank Central Asia; (14) 1993 address book listings for individuals and bakery; (15) 1999 photograph showing Golden Bowl with 800 number, located at 220 Moore Street, Brooklyn; (16) 1999 lease with five-year term; (17) 1999 letter from president of Wonton Food, Inc. expressing interest in the Sign and undated credit application/reference for Wonton Food, Inc.; (18) 2004 photograph showing Malaysia Airlines; (19) 2007 photograph showing Eason's Moving On Stage 3 at Mohegan Sun; (20) 2007 contract between OTR and Mohegan Sun; (21) 2008 photograph showing Coors Light Beer; (22) 2008 media contract between OTR and Coors Brewing Company; (23) 2009 photograph showing Americare, a health care organization located at 171 Kings Highway, Brooklyn; (24) 2010 photograph showing AT&T; (25) 2010 media contract between OTR and AT&T Mobility; (26) 2011 photograph showing *Jumping the Broom* (motion picture); and (27) 2012 photograph showing *The Watch* (motion picture); and

WHEREAS, as for any gaps in evidence, the Appellant contends that because DOB has not submitted evidence of discontinuance, the presumption of continuity dictates that the Sign is presumed to continue to exist; and

WHEREAS, moreover, according to the Appellant's media consultant, the advertising sign industry had irregular recordkeeping practices and where there was paperwork memorializing a deal to display advertising, an advertising sign is "virtually certain" to have existed; and

WHEREAS, therefore, the Appellant states that it has satisfied its burden of demonstrating that the Sign existed from 1947 to the present without any two-year period of discontinuance; and

WHEREAS, DOB states that there are numerous gaps in the Appellant's continuity evidence, as well as evidence that the Sign was removed from the wall in 2003 and in 2007; as such, DOB contends that the Appellant has failed to demonstrate in accordance with the TPPN that the Sign was used for advertising from 1947 to the present without any period(s) of discontinuance for two or more years; and

WHEREAS, as to the gaps, DOB states that the Appellant provides no evidence of the Sign's existence from 1947 to 1959 (a 12-year gap), 1968 to 1976 (an eight-year gap), 1985 to 1993 (an eight-year gap), 1993 to 1999 (a six-year gap), and 1999 to 2004 (a five-year gap); and

WHEREAS, as to the removals of the Sign, DOB submitted "Pictometry" (an online aerial oblique imaging and mapping service) photographs dated April 13, 2003, April 25, 2003, May 31, 2003, June 3, 2003, and May 14, 2007 showing the east wall of the Building without the Sign; and

WHEREAS, accordingly, DOB states that the Appellant has failed to demonstrate that the Sign existed from 1947 to the present without any two-year period of discontinuance; as such, DOB asserts that even if the Sign use was established, such use was discontinued and must terminate pursuant to ZR § 52-61; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the Appellant has not submitted sufficient evidence of the Sign's establishment prior to 1947; and

WHEREAS, specifically, the Board rejects that the 1932 Photograph demonstrates that the Sign existed as early as 1932; on the contrary, the Board agrees with DOB that the 1932 Photograph does not show an advertising sign on the wall of the Building; and

WHEREAS, the Board finds that, at most, the 1932 Photograph shows that the east wall of the Building is a different color than the front façade of the Building, and nothing about the color of the wall "directs attention to attention to a business, profession, commodity, service or entertainment"; as such, the 1932 Photograph does not depict

an "advertising sign" as that term is defined under ZR § 12-10; and

WHEREAS, likewise, the Board agrees with DOB that the Appellant has not demonstrated that the Sign existed prior to 1947, when the site was zoned as a Business District; and

WHEREAS, accordingly, the Board finds that the Sign was not established as a non-conforming use; and

WHEREAS, because the Board finds that the Sign was never established as non-conforming, it is unnecessary to determine whether the presumption of continuity impels the Board to find, based on the Appellant's evidence, that the Sign was not discontinued; and

WHEREAS, in conclusion, the Board finds that DOB properly revoked the Permit for the Sign; and

Therefore it is Resolved, that this appeal, challenging a Final Determination issued on February 5, 2013, is denied.

Adopted by the Board of Standards and Appeals, October 22, 2013.

134-13-A

APPLICANT – Bryan Cave, for Covenant House, owner.

SUBJECT – Application May 9, 2013 – Appeal of NYC Department of Buildings' determination regarding the right to maintain an existing advertising sign. C2-8/HY zoning district.

PREMISES AFFECTED – 538 10th Avenue aka 460 West 41st Street, Tenth Avenue between 41st and 42nd Streets, Block 1050, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

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 Montanez 5

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the First Deputy Commissioner of the Department of Buildings ("DOB") on April 9, 2013 (the "Final Determination") acting on DOB Application No. 121398246, which states, in pertinent part that:

> The request to accept the existing non-illuminated advertising sign at the premises, currently located in a C2-8 zoning district, as lawfully non-conforming is hereby denied . . .
>
> If an advertising sign can be viewed from a specific point on the arterial highway in any direction, 360 degrees (i.e., whether it is the driver of a car who is facing forward, or a passenger in the back seat of a car facing to the side or the rear, or a passenger in the back seat of a convertible facing the side or rear, etc.), the advertising sign is considered within view (hereinafter, the "360 Degrees Standard"); and

WHEREAS, a public hearing was held on this appeal on August 20, 2013 after due notice by publication in *The City Record*, with a continued hearing on October 8, 2013, and then to decision on October 22, 2013; and

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

WHEREAS, the subject site is located on the northeast corner of the intersection of Tenth Avenue and West 40th Street, within a C2-8 zoning district within the Special Hudson Yard District; and

WHEREAS, the site is occupied by an eight-story community facility building and one-story community facility building; a 3,300 sq. ft. non-illuminated advertising sign (the "Sign") is located the south wall of the eight-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

PROCEDURAL HISTORY

WHEREAS, on October 4, 2012, the Appellant filed a permit application with DOB under Job. No. 121398246 to construct the Sign on the south wall of the eight-story building at the site (the "Permit"); the Permit application indicated that the Sign was an existing, non-conforming use; and

WHEREAS, on October 4, 2012, DOB disapproved the Permit application, finding insufficient evidence of the Sign's non-conforming use status; and

WHEREAS, on December 18, 2012, the Appellant submitted a determination request asserting that the Sign was protected pursuant to ZR § 42-58, because a painted sign existed at the site as of December 13, 2000, and, at the time, the site was within a Manufacturing district and not within view of an arterial highway or its approaches, as set forth in Appendix H of the Zoning Resolution; and

WHEREAS, following a series of discussions between DOB and the Appellant in which the Appellant attempted to establish the Sign's legal use under the Zoning Resolution, on April 9, 2013, DOB issued its Final Determination denying the Permit; and

WHEREAS, DOB's Final Determination, the full text of which is available under ZRD1 Control No. 26253, articulates three grounds for its denial of the Permit: (1) the Sign's proximity within 200 feet and within view of the portion of Dyer Avenue between West 39th Street and West 42nd Street, which, at that point, is considered an "approach" to the Lincoln Tunnel, contrary to ZR § 42-55; (2) the Sign's surface area, which is in excess of that permitted under ZR § 42-55 due to the Sign's proximity within view of an approach to the Lincoln Tunnel; and (3) even if the Sign is not subject to the arterial highway restrictions, the Sign cannot achieve non-conforming status pursuant to ZR § 42-58, because that section only applies where a sign has been constructed pursuant to a permit prior to December 13, 2000, and the Sign prior to that date was a painted sign, which did not require a permit; and

WHEREAS, on May 9, 2013, the Appellant filed the instant appeal, which challenges the first and second grounds of the Final Determination1; and

WHEREAS, through the hearing process, the Appellant and DOB came to agree that the Sign existed prior to the establishment of the traffic patterns on Dyer Avenue that, on occasion, render the Sign within 200 feet and within view of an approach to the Lincoln Tunnel2; and

WHEREAS, therefore, the only dispute remaining is whether, beyond 200 feet, the Sign is within view of an approach to the Lincoln Tunnel because it may be seen at some angles by drivers or passengers; 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; 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.

THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that the Sign is not "within view" of an approach to the Lincoln Tunnel; as such, it is not subject to the arterial highway restrictions set forth in ZR § 42-55; and

WHEREAS, the Appellant contends that a motorist traveling along the approach to the Lincoln Tunnel must turn around to view the Sign, and, thus, the Sign is not "within view" of the Lincoln Tunnel; and

WHEREAS, the Appellant states that DOB's interpretation of "within view" (as set forth in the Final Determination) is contrary to principles of statutory construction, does not, given the facts of this case, further the purposes of the arterial highway restrictions, and is inconsistent with comparable provisions of federal and state law; and

WHEREAS, the Appellant asserts that the 360 Degrees Standard—which considers objects behind a viewer to be "within view" of the viewer—offends common senses and is therefore contrary to the settled principles of statutory construction that legislation is presumed to be based in common sense and laws must be construed in the light of common sense, citing McKinney's Statutes § 143, People v. Ahern, 196 NY 221, 227 (1909) and People ex rel. Hallock v. Hennessy, 205 NY 301, 306 (1912); and

1 On appeal, the parties do not address the applicability of ZR § 42-58.

2 Initially, DOB took the position that because an "approach" is, per 1 RCNY 49-01, "that portion of the roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network," and buses could either exit Dyer Avenue and enter the ramp into the Port Authority Bus Terminal or make a U-turn onto West 40th Street, Dyer Avenue was an "approach" whenever it was being used to connect to West 40th Street. Through the hearing process, it was revealed that the Port Authority controls the portion of Dyer Avenue in question and did not allow U-turns onto West 40th Street until 2003. Accordingly, DOB concedes that Dyer Avenue became an "approach" after the Sign was first painted in 2000.

WHEREAS, the Appellant contends that the 360 Degrees Standard when applied to the facts of this case does not further the purposes of the arterial highway restrictions (reducing driver distraction and beautifying public spaces) because a driver or passenger must turn completely around in order to even catch a glimpse of the Sign; and

WHEREAS, the Appellant also states that the 360 Degrees Standard is inconsistent with comparable provisions of federal and state law, which reflect a common sense application of the "within view" concept and indicate that a sign is objectionable only if it is capable of being seen in the ordinary course of traveling along a highway; and

WHEREAS, in particular, the Appellant states that the Highway Beautification Act (23 USC § 131(b)) uses the phrase "visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way" when describing its analog of "within view" and the law's implementing rules as set forth in 23 CFR 750.102(s) define "visible" as "capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity," and New York State's scheme uses the phrase "visible from the main traveled way" in New York State Highway Law § 88(2) and that statute's rule (17 NYCRR § 150.1(vv)) defines "visible" identically to the federal rule; and

WHEREAS, finally, the Appellant asserts that the 360 Degrees Standard should be rejected in favor of a standard that excludes from "within view" a sign that only becomes visible when the traveler along the arterial highway has passed the plane of the sign, is traveling away from the sign, and must turn around in order to view the sign (the "Bypass Standard"); and

WHEREAS, the Appellant asserts that the Bypass Standard is an objective standard that comports with common sense, furthers the objectives of the underlying federal law, is consistent with similar state and federal regulations regarding arterial signs, and can be easily implemented by DOB; and

WHEREAS, as such, the Bypass Standard should be applied in the instant case to support a finding that the Sign: (1) is not within view of an approach to the Lincoln Tunnel; (2) is not subject to the arterial sign restrictions; and (3) therefore became a legal non-conforming advertising sign (as to height and surface area) when the site was rezoned from M1-5 to C2-8 on January 19, 2005; and

WHEREAS, finally, the Appellant states that it has submitted sufficient evidence to demonstrate that the Sign has existed without any two-year period of discontinuance since becoming a non-conforming use in 2005; therefore the Sign is permitted to remain pursuant to ZR § 52-11; and

WHEREAS, accordingly, the Appellant states that DOB's refusal to approve the Permit application must be reversed; and

DOB'S POSITION

WHEREAS, DOB asserts that the Sign is "within view" of an approach to the Lincoln Tunnel; thus, the painting of the Sign in 2000 was contrary to the arterial sign restrictions; and

WHEREAS, DOB states that in 2000 when the Sign was painted in violation of ZR § 42-531, which regulated signs "within view" of an arterial highway and provided that

> [b]eyond 200 feet from such arterial highway or public park, an advertising sign shall be located at a distance of at least as many linear feet therefrom as there are square feet of surface area on the fact of such sign; and

WHEREAS, DOB states that, as noted above, it interprets "within view" using the 360 Degree Standard; and

WHEREAS, DOB contends that the 360 Degree Standard is the only reasonable interpretation of "within view"; and

WHEREAS, DOB states that other measurements of "within view," including the Appellant's Bypass Standard, would be unworkable, necessarily involve some measure of subjectivity in determining the angle of the viewer's sightline, and would result in inconsistent determinations regarding whether a sign was within view; and

WHEREAS, DOB responds to the Appellant's arguments regarding the Federal Beautification Act and New York State Highway Law, which DOB characterizes as applying only where a sign may be viewed by "a driver of a car looking straight ahead," by asserting that there is nothing in the legislative history of the arterial highway restrictions of the Zoning Resolution that suggest they were intended to replicate the federal and state requirements; and

WHEREAS, further, DOB notes that neither the Department of City Planning, nor the City Council has signified an intent to adopt a "within view" standard similar to the state or federal regulation despite opportunities to do so in connection with the various sign regulation amendments over the years; and

WHEREAS, DOB also states that the 360 Degrees Standard is both long-standing and endorsed by the Department of City Planning; and

WHEREAS, DOB asserts that applying the 360 Degrees Standard, the Sign is approximately 520 linear feet from and within view of the Lincoln Tunnel; as such, DOB asserts that when the 3,300 sq.-ft. Sign was painted in 2000, it exceeded its permitted surface area by 2,780 sq. ft.; and

WHEREAS, accordingly, DOB states that the Sign was never lawfully established and could not have become a non-conforming use in 2005, when the site was rezoned from M1-5 to C2-8; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the proper standard in interpreting the meaning of the term "within view" is the 360 Degrees Standard; as such, the Board finds that the Sign was never lawfully established; and

WHEREAS, the Board rejects the Appellant's contention that the 360 Degrees Standard is an interpretation of "within view" that is unreasonable; on the contrary, the Board finds that the standard is the only objective measurement of whether a sign is within view of a motorist

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1 ZR § 42-53 was modified and renumbered as ZR § 42-55 as a result of the February 27, 2001 text amendment.

traveling along an arterial highway; and

WHEREAS, the Board agrees with DOB that other measures of "within view" including the Bypass Standard, would be difficult, if not impossible to apply, and would necessarily involve subjective decision-making by DOB; and

WEHREAS, the Board is not persuaded that the arterial highway restrictions on signs in the Zoning Resolution are intended to replicate the similar provisions of state and federal legislation; as DOB noted, the Board finds that there is nothing in the Zoning Resolution to support such a contention; and

WHEREAS, the Board also finds that the standard furthers the intent of the arterial highway restrictions on signs; and

WHEREAS, in particular, the Board notes that the policy objectives of restrictions on signs near arterial highways include reducing driver distraction and beautifying public spaces, and the Board finds that the 360 Degrees Standard furthers both objectives; indeed, the Board observes that glancing in the rear or side view mirror at a particularly large sign could be more distracting and therefore more dangerous than glancing at a sign while looking straight ahead; and

WHEREAS, the Board also notes that the 360 Degrees Standard is consistent with the Board's decisions in BSA Cal. Nos. 88-12-A and 89-12-A (462 11th Avenue, Manhattan); in those cases, the appellant argued, among other things, that if a sign was only within view of a motorist on an arterial highway for a "fleeting moment," the sign was not "within view" of the arterial highway; the Board rejected this argument, noting that the plain meaning of within view is a more objective and less-nuanced concept; the Board also noted that the goal of the statute was to regulate signs within view of arterial highways and that enforcement would be best-served by applying an objective standard, rather than a subjective standard; likewise, the Board favors DOB's objective, 360 Degrees Standard over the Appellant's subjective, Bypass Standard in the instant matter; and

WHEREAS, thus, applying the 360 Degrees Standard, the Board finds that when the Sign was first painted in 2000, it far exceeded the allowable surface area for a sign approximately 520 feet from and within view of an approach to the Lincoln Tunnel; and

WHEREAS, the Board notes that even if it determined that the Sign was not within view of an approach to the Lincoln Tunnel, the Sign became subject to surface area and height limitations generally applicable within Manufacturing districts pursuant to a February 27, 2001 text amendment; as such, the Sign would have become non-conforming as to height and surface area as of that date, and the rezoning of the site to C2-8 on January 19, 2005 would have merely increased the degree of non-conformity of the Sign; and

WHEREAS, accordingly, the Board finds that the Sign was never established as a non-conforming use and DOB properly refused to issue the Permit; and

Therefore it is Resolved, that this appeal, challenging a Final Determination issued on April 9, 2013, is denied.

Adopted by the Board of Standards and Appeals, October 22, 2013.

194-13-A thru 205-13-A

APPLICANT – Sanna & Loccisano P.C. by Joseph Loccisano, for Leonello Savo, owner.

SUBJECT – Application July 3, 2013 – Construction of single detached residences not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.

PREMISES AFFECTED – 36, 35, 31, 27, 23, 19, 15, 11, 12, 16, 20, 24 Savona Court, west side of Savona Court, 326.76' south of the corner form by Station Avenue and Savona Court, Block 7534, Lot 320, 321, 322, 323, 324, 325, 326, 327, 330, 331, 332, 335, 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 Montanez 5

Negative:.....0

THE RESOLUTION -

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated June 7, 2013, acting on Department of Buildings Application Nos. 520140464, 520140419, 520140400, 520140393, 520140384, 520140375, 520140366, 520140357, 520140428, 520140437, 520140446, 520140455, read in pertinent part:

> The street giving access to the proposed building is not duly placed on the official map of the City of New York therefore:
>
> No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law; and

WHEREAS, this application seeks a waiver to construct twelve (12) two- and three-story detached homes accessed by a proposed private street, Savona Court, contrary to General City Law § 36; 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 22, 2013; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

WHEREAS, the subject site is located within an R3-X zoning district within the Special South Richmond District ("SSRD") not fronting upon a mapped street; and

WHEREAS, the site is bounded by Station Avenue on the north side, a residential development accessed by a private street (Savo Loop) on the west side, a residential development accessed by a private street (Carly Court) on the

east side, and the Staten Island Rapid Transit on the south side; and

WHEREAS, in addition, the applicant states that there are approximately 15 feet of Freshwater Wetlands Buffer located along the south side of the site, along the rear lot lines of lots 320, 321, and 322; and

WHEREAS, the applicant filed an application with the New York State Department of Environmental Conservation indicating that no construction is proposed within the buffer area; as such, the applicant states that that agency will issue a letter of no objection; and

WHEREAS, the applicant states that although there is a drainage easement located along the west side of the site, no present or future use is planned for this easement, and it is in the process of removing the easement by agreement with the New York State Department of Transportation; and

WHEREAS, by letter dated September 5, 2013, the Fire Department recommended approval of the application subject to the following conditions: (1) that the proposed residences fully conform to the New York City Building Code and are fully sprinklered; (2) that there shall be no parking anytime on Savona Court; and (3) that the applicant must stipulate that the Homeowners' Association will be considered in violation of a Fire Commissioner's Order for any private vehicles parked along the proposed private road; and

WHEREAS, in response to the Fire Department's September 5, 2013 letter, the applicant asserted that the conditions were inappropriate because Savona Court would be a minimum of 38 feet in width and include a turn around, in accordance with the New York City Fire Code; and

WHEREAS, by letter dated October 2, 2013, the Fire Department submitted a revised recommendation, superseding its prior conditions with the following conditions: (1) Savona Court must be 38 feet in width curb to curb; (2) there shall be a turnaround with a minimum diameter of 70 feet; and (3) a hydrant shall be installed along the perimeter of the cul-de-sac (in addition to the private hydrant indicated approximately 155 feet south of Station Avenue); 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 June 7, 2013 acting on Department of Buildings Application Nos. 520140464, 520140419, 520140400, 520140393, 520140384, 520140375, 520140366, 520140357, 520140428, 520140437, 520140446, 520140455, 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 will substantially conform to the drawing filed with the application marked "Received October 18, 2013"- (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) only;

THAT the site and roadway will conform with the BSA-approved plans;

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

THAT the required approvals from the City Planning Commission, the New York State Department of Environmental Conservation, and the New York State Department of Transportation will be obtained prior to the issuance of work permits by the Department of Buildings; and

THAT the Department of Buildings must ensure compliance 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 22, 2013.

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 – Laid over to November 26, 2013, 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 November 26, 2013, at 10 A.M., for continued hearing.

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 & 47Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, Borough of

Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

224-13-A

APPLICANT – Slater and Beckerman, P.C., for Michael Pressman, owner.

SUBJECT – Application July 25, 2013 – Appeal challenging the determination by the Department of Buildings that an automatic sprinkler system is required in connection with the conversion of a three family dwelling (J-2 occupancy) to a two-family (J-3 occupancy). R6B zoning district.

PREMISES AFFECTED – 283 Carroll Street, north side of Carroll Street between Smith Street and Hoyt Street, Block 443, Lot 61, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

226-13-A

APPLICANT – Rothrug Rothkrug & Spector LLP, for High Rock Development LLC, owner.

SUBJECT – Application July 26, 2013 – Proposed construction of a one-family dwelling that does not front on a legally mapped street, contrary to Section 36 Article 3 of the General City Law. R3-2 /R2 NA-1 zoning District.

PREMISES AFFECTED – 29 Kayla Court, west side of Kayla Court, 154.4' west and 105.12' south of intersection of Summit Avenue and Kayla Court, Block 951, Lot 23, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

35-11-BZ

CEQR #11-BSA-075Q

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, 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 Montanez 5

Negative:.....0

THE RESOLUTIOn –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 27, 2011, acting on Department of Buildings Application No. 420283730 reads, in pertinent part:

Proposed floor area and lot coverage contrary to ZR 24-111.

Proposed lot coverage is contrary to ZR 24-11.

Proposed front yard contrary to ZR 24-34.

Proposed side yard contrary to ZR 24-35.

Proposed rear yard contrary to ZR 24-36.

Proposed parking is 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 R2A zoning district, the legalization and enlargement of an existing building occupied by a synagogue and accessory uses (Use Group 4) which does not comply with the underlying zoning district regulations for floor area, lot coverage, front yard, side yard, rear yard, and parking, contrary to ZR §§ 24-111, 24-11, 24-34, 24-35, 24-36 and 25-31; and

WHEREAS, a public hearing was held on this application on September 27, 2011, after due notice by publication in *The City Record*, with continued hearings on December 13, 2011, February 28, 2012, April 24, 2012, May 15, 2012, July 23, 2013, and September 17, 2013, and then to decision on October 22, 2013; 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 disapproval of the application and requests that any grant be conditioned on the hours of operation be limited, that garbage removal is not adequately addressed, that visitor conduct be monitored, and that a term be imposed so that oversight can continue; and

WHEREAS, City Council Member Leroy Comrie and New York State Assembly Member Barbara Clark provided testimony citing concerns about traffic and parking, garbage disposal, the use of the overnight accommodations on any days other than the Sabbath and holidays, the use of the outdoor space, the need for a landscape buffer, the poor condition of the site, the conduct of visitors within the community, and the insufficiency of certain aspects of the EAS; and

WHEREAS, the Cambria Heights Civic Association identified the following primary concerns with the operation of the site: improper disposal of garbage, bus traffic and pollution due to idling, safety concerns related to traffic and parking, the incompatibility of transient sleeping accommodations, and the apparent lack of consideration for neighbors; and

WHEREAS, certain members of the community provided testimony in opposition to the operation of the facility and cited the same concerns as the civic association, Community Board, and elected officials; and

WHEREAS, this application is brought on behalf of Congregation Ohel Chabad Lubavitch (the "Congregation"), a non-profit religious entity; and

WHEREAS, the subject site is located on the south side of Francis Lewis Boulevard, between 225th Street and 228th Street, within an R2A zoning district; and

WHEREAS, the site is located adjacent to Montefiore Cemetery where the spiritual leader of the Lubavitch, Rebbe Menachem M. Schneerson, was buried in 1994; the gravesite is approximately 50 feet from the eastern side of the site; the prior Rebbe, Yosef J. Schneerson is also buried there; and

WHEREAS, due to the large number of followers who seek to be in the Rebbe's presence, the cemetery provided a gate adjacent to the site to provide access to the gravesite so that followers did not have to enter through the cemetery's main gate; and

WHEREAS, the Congregation operates the site as a synagogue with a traditional sanctuary and as a facility to accommodate those visiting the gravesite; and

WHEREAS, the Congregation purchased the five homes adjacent to the grave site entry, which it has connected through a series of tents that are used as letter-writing, mediation, prayer, study, light refreshment, and restroom areas; and

WHEREAS, the site has a total width of 252'-1/8", a depth ranging from 79'-9 13/16" to 79'-2 3/16", and a lot area of 20,133.77 sq. ft.; and

WHEREAS, the site is currently occupied by five one-and-one-half-story buildings constructed for residential use, several mobile trailers, and a tented area at the rear of the site; the existing buildings have a total legal floor area of 4,539.55 sq. ft. (0.23 FAR), but an actual floor area of 10,258.5 sq. ft. (0.51 FAR), including the temporary structures; and

WHEREAS, the applicant initially proposed to merge and enlarge the buildings to add a continuous cellar and first story and a second story for a total floor area of 24,150.63 sq. ft. (1.2 FAR) (the maximum permitted floor area is 10,066.89 (0.5 FAR)); a lot coverage of 79.6 percent (a maximum lot coverage of 55 percent is permitted); side yards of 9'-9 5/8" and 1'-0" (two side yards with widths of 24.12' are required); a rear yard with a depth of 0'-10-9/16" (a rear yard with a depth of 30'-0" is required); and no parking (48 spaces are required); and

WHEREAS, the existing buildings have a pre-existing front yard with a depth of 10'-0" that will be maintained (a front yard with a minimum depth of 15'-0" is required); and

WHEREAS, at the Board's direction, the applicant revised the application to reduce the degree of required waiver; first, the applicant reduced the proposal to 21,681.78 sq. ft. of floor area (1.07 FAR) and then to 20,294.34 sq. ft. (1.01 FAR) with just a small cellar for the storage of garbage and an accessory kitchen; and

WHEREAS, the applicant ultimately proposed to maintain both existing side yards – the western 9'-9 5/8" and the eastern 10'-1 1/16" – which are non-complying for community facility use and which results in a further reduction in floor area to 19,719 sq. ft. (0.98 FAR) and 73.79 percent lot coverage; and

WHEREAS, because the proposed building does not comply with the bulk regulations of the underlying zoning district, the subject variance is requested; and

WHEREAS, the applicant asserts that the following are the Congregation's programmatic needs: (1) to meaningfully and comfortably accommodate visitors to the gravesite for prayer and meditation; (2) to accommodate prayer space including separate spaces for men and women as required by religious doctrine; (3) to provide sleeping accommodations for visitors to the site; and (4) to preserve the modest scale of the five existing homes as a show of reverence for the spiritual leader; and

WHEREAS, the applicant notes that an improved facility will also serve the purpose of providing (1) a safe building in compliance with Code and fire safety measures, (2) an aesthetically improved building without temporary trailers and tents, and (3) sufficient space to bring visitors off the street; and

WHEREAS, the applicant asserts that every day several hundred people visit the site at all hours of the day and night, noting that the site is ten minutes from JFK airport and is a pilgrimage site for those arriving by plane and bus to pray and meditate; and

WHEREAS, the applicant represents that the most significant number of visits occur on the Anniversary of the Rebbe's Passing and of the Anniversary of the Previous Rebbe's Passing, the Rebbe's Birthday, the High Holy Day period, and the annual conferences of the men and women emissaries of the Chabad; and

WHEREAS, the applicant asserts that the proposed building is designed to accommodate the current amount of visitors to the site and will not create more traffic; and

WHEREAS, the applicant asserts that the existing conditions are compromised in that they require the use of two trailers and a temporary tent structure to accommodate the rabbi's office, video-viewing room, libraries, restrooms,

conference/study/meeting rooms, administrative office, letter-writing and reflection areas, bedrooms and lounges; and

WHEREAS, the applicant states that the as-of-right design with the required yards and lot coverage would significantly diminish the amount of programming that could be accommodated;

WHEREAS, specifically, the lot coverage and rear yard restrictions would eliminate the entire one-story enlargement at the rear which has a depth of approximately 30 feet and is entirely within the required rear yard; and

WHEREAS, the one-story enlargement allows for several large spaces for multiple uses and essentially all of the Congregation's program would be lost without the new space, currently in the form of tents that do not provide comfortable or safe facilities to the many visitors to the site; and

WHEREAS, the applicant notes that the complying rear yard and lot coverage conditions would not allow it to meet its programmatic needs to improve the existing conditions and promote a more attractive, modern, and safe worship and visitation space; and

WHEREAS, as to the side yard request, the applicant states that the required 24-foot side yards would necessitate the demolition of approximately one-half of the two outer homes which is both impractical and contrary to the programmatic need to maintain the modest homes as a sign of humbleness; and

WHEREAS, the maintenance of the non-complying side yards allows the Congregation to re-purpose the existing homes while preserving the original spiritual center of the pilgrimage site; and

WHEREAS, as to the parking requirement, the applicant states that the constraints of the site do not allow for accommodation of any of the required parking and that the inclusion of parking would require the demolition of the five original homes, again, contrary to the programmatic need to preserve them; and

WHEREAS, the applicant represents that an important part of its program is to provide transient accommodations for followers and that new floor area on the second floor is primarily dedicated to serving that need; and

WHEREAS, the applicant initially sought to allow sleeping accommodations on a daily basis regardless of whether travel was permitted; and

WHEREAS, the Board raised concerns that transient sleeping accommodations were not customary and are beyond the scope of a religious institution's programmatic needs and did not see any basis for allowing the site to include unrestricted transient sleeping accommodations which is a use not permitted in or compatible with the surrounding low density residential zoning district comprising primarily single-family homes; and

WHEREAS, in response, the applicant stated that the transient use was akin to a Shabbos House, which accommodates worshipers on the Sabbath, holidays, and event days; and

WHEREAS, the applicant asserted that the religious purpose and importance of a Shabbos house is supported by case law and cites to Bikur Cholim v. Village of Suffern, 664 F.Supp.2d 267 (2009), in which the Village of Suffern denied a variance for a Shabbos house near a hospital, which allowed patients' family members to stay overnight when arriving or departing on the Sabbath when travel is not permitted; and

WHEREAS, the applicant also cited to the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) for the principle that the government is prohibited from imposing or implementing a land use regulation "in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution" unless the government demonstrates that the imposition is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling government interest; and

WHEREAS, the applicant asserted that a plan without sleeping accommodations would not meet its programmatic needs and would substantially burden its religious exercise; and

WHEREAS, the Board reviewed the case law and the information related to the Shabbos House in Albany and concluded that such facilities provide sleeping accommodations on days when religious doctrine prohibits travel and worshipers must either remain because they cannot travel or must arrive early for the next day; the use of the Shabbos house in Bikur Cholim was limited to "Fridays and approximately 10 Jewish Holidays when travel is not permitted;" and

WHEREAS, the Board did not see any support for the initial claim that the Congregation requires sleeping accommodations on a daily basis or on any day other than those when religious doctrine prohibits travel, including every holiday and event day and that such a model was not in keeping with Shabbos houses in the traditional sense and was not warranted; and

WHEREAS, accordingly, the applicant agreed to limit the use of sleeping accommodations at the site to the following 65 days per year when religious doctrine prohibits travel: 52 Sabbath days, Rosh Hashanah (2 days), Yom Kippur (1 day), Shavuot (2 days), the first two and last two days of Passover (4 days), and the first two and last two days of Sukkot (4 days); and

WHEREAS, the Board finds that requiring the Congregation to follow the traditional Shabbos house model is consistent with RLUIPA and notes that in the Bikur Cholim case, the Village of Suffern denied the variance for a Shabbos house outright and that the court stated that when the Village reconsidered the variance application on remand, it could impose conditions for the use; and

WHEREAS, accordingly, the Board finds it appropriate and consistent with legal authority to impose conditions as to occupancy and number of days the sleeping accommodations may be used; and

WHEREAS, the applicant states that the yard and floor area waivers will enable the Congregation to provide new Code-compliant prayer and synagogue space and improved circulation space, new educational and administrative space,

and improved common facilities such as bathrooms and kitchen space; 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, 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; 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 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 district; and

WHEREAS, the applicant has revised its plans to reduce the bulk by (1) maintaining both existing side yards; (2) removing a lounge are on the second floor; (3) removing a set of egress stairs that are no longer necessary; and (4) removing an office; and

WHEREAS, the noted changes have reduced the FAR to 0.98, which the applicant asserts is consistent with the FAR that could be obtained for a community facility by the Department of City Planning special permit pursuant to ZR § 74-901; and

WHEREAS, as to the yards, the applicant notes that (1) the non-complying front yard condition is existing and will be maintained and is consistent with the neighborhood character; (2) both side yards will be maintained at their existing widths; and (3) the non-complying rear yard abuts cemetery property; and

WHEREAS, additionally, the applicant notes that the encroachments into the rear yard is one story; and

WHEREAS, the applicant states that the proposed height of two stories and 28'-3 5/6" is compatible with the surrounding context and the majority of the excess bulk will be in the rear yard, which is adjacent to the cemetery and creates minimal visual impact; and

WHEREAS, the applicant notes that the second floor enlargements will set back the required 15'-0" at the front; and

WHEREAS, the applicant notes that on the western side of the site, including the neighbor's driveway, there is a space of approximately 20 feet between the proposed building and the adjacent home and that it will provide a landscape buffer along the shared lot line; and

WHEREAS, during the course of the public hearing process and in consideration of the commissioners' own observations on site visits and the community's concerns, the Board directed the applicant to create an operational plan to describe the use of the site and to improve the conditions for the neighbors; and

WHEREAS, specifically, the Board directed the applicant to address concerns about (1) frequent parking of buses in front of nearby homes; (2) excessive bus idling and disruptive loading and unloading; (3) cars blocking nearby driveways and blocking traffic; (4) incompatibility of a 24-hour operation with adjacent residential use; (5) the incompatibility of high volume and continuous transient use; (6) poor maintenance of the site including improper garbage storage and disposal as well as littering nearby property; (7) insufficient support and resources on busy event days ("Event Days"); and (8) lack of consideration for neighbors' property and quiet; and

WHEREAS, in consideration of the potentially incompatible nature of the facility at certain times and the community's interests, the Board suggested and analyzed the following mitigation measures: (1) alternate locations for bus parking; (2) limiting bus idling time; (3) monitoring and direction to prohibit inappropriate car parking; (4) requiring reduced hours of operation; (5) eliminating or reducing the transient use and limiting the days to when religious doctrine prohibits travel; (6) installing refrigerated garbage storage; (7) requiring an operational plan for general use and extra measures for Event Days; and (8) requiring facility management to assume a greater role in controlling visitation to the site; and

WHEREAS, to address the concerns about bus parking, the applicant contacted the Department of Transportation and requested that it install a No Parking Any Time sign on the south side of Francis Lewis Boulevard that applies to an area starting in front of the building and continuing east for a total length of 150 feet, which will accommodate at least three large buses; and

WHEREAS, additionally, DOT, by letter dated April 26, 2013, stated that it will replace the Attention Drivers 3 Minute Idling Law Enforced: $2,000 Fine signs with ones that specify a one minute idling limit; and

WHEREAS, the applicant states that it has communicated with cemetery officials who have informed them that they are not interested in selling the parking lot on Springfield Boulevard or in reserving it for visitors to the site; and

WHEREAS, the applicant states that to encourage the use of buses and reduce individual vehicular trips, the Congregation will provide charter buses from Crown Heights to the site and it will encourage visitors to park in the cemetery parking lot by providing a shuttle service from the cemetery parking lot to the site; and

WHEREAS, the applicant performed a parking study which reflects that there were 258 available parking spaces

during the weekday and 211 available on Sunday and that the patron studies show a peak visitor accumulation of 73 people on weekdays and 122 on Sunday; and

WHEREAS, accordingly, the applicant asserts that there is sufficient on-street parking to accommodate demand on non-Event Days; and

WHEREAS, the Board asked the applicant if it was possible to direct more visitors to the main entrance of the cemetery; and

WHEREAS, the applicant explained that the main entrance on Springfield Boulevard is 3,000 feet from the grave site and the cemetery does not have lights and the roadways are narrow which makes access untenable after dark; further, the cemetery gates are open 8:30 a.m. to 4:30 p.m. Monday to Friday and Sunday, which does not satisfy the visitors' needs; and

WHEREAS, as to the hours of operation, the applicant states that it receives approximately 300 visitors on a typical day between the hours of 7:00 a.m. and 10:00 p.m., with visitation significantly reduced on Saturday, when there are religious restrictions on travel; and

WHEREAS, however, the applicant requests that it be able to maintain its 24 hours of operation because followers seek to be in the Rebbe's presence at all hours; and

WHEREAS, the applicant asserts that prohibiting 24-hour access to the site would interfere with participation in a religious ceremony and would be a substantial burden to visitors; the applicant submitted a letter from the Union of Orthodox Rabbis setting forth the importance of uninhibited access; and

WHEREAS, the applicant states that regardless of the hours of operation, visitors will enter the site beyond those hours; and

WHEREAS, the applicant proposed locking a folding partition wall between the hours of 12:00 a.m. and 6:00 a.m. to discourage people from visiting overnight and would limit access to the minimum spaces that can be provided when visiting the site; and

WHEREAS, the applicant proposed to post the following hours of operation on the website: limited access from 12:00 a.m. to 6:00 a.m. Monday to Saturday and from 2:00 a.m. to 6:00 a.m. on Sunday; and

WHEREAS, the Board carefully considered the position of the Congregation, which says that 24-hour access is necessary, and of the community, seeking a schedule which would allow for a cessation of activity for a portion of each day; and

WHEREAS, the Board concludes that a restriction on the hours of operation from 6:00 a.m. to 10:00 p.m., daily, for the entire site – interior and exterior - is warranted and that access to the entire site will be restricted during that time; and

WHEREAS, the Board notes that (1) the applicant states that visitors typically visit the site between the hours of 7:00 a.m. and 10:00 p.m. and, thus, few visitors would be constrained by the hours; (2) due to the intensity of use and volume of visitors into the area, it is reasonable to allow the neighbors a portion of the day during late and early hours when there will not be any activity; and (3) access to the site will be permitted for 16 hours per day, every day; and

WHEREAS, the Board is not persuaded by the applicant's assertions that a reduction of the hours of operation is an infringement on its religious exercise when the facility has unrestricted access every day of the year except in the late and early hours of the day when the applicant notes few people actually visit the site; and

WHEREAS, at public hearing, the Board asked the applicant to identify up to four days during the year when it anticipates the most visitors and stated that 24-hour operation on those days would be appropriate; and

WHEREAS, in response, the applicant stated that the Anniversary of the Rebbe's Passing, the Anniversary of the Previous Rebbe's Passing, the Rebbe's Birthday, and the Eve of Rosh Hashanah are four days when 24-hour operation is necessary; and

WHEREAS, the Board notes that it has restricted hours of use for certain operations, including the use of outdoor space, on numerous religious use applications; and

WHEREAS, the Board notes that it is standard for religious institutions and shrines to have hours of closure in which case, worshippers plan their trips to arrive at first opening and to leave by closing time; and

WHEREAS, the Board finds that the Congregation's operation is not diminished and the compelling benefit to the community is realized; and

WHEREAS, additionally, the Board finds that the hours of use of the second-floor terrace should be restricted in order to be more compatible with nearby residential use; and

WHEREAS, as to sleeping accommodations, during the hearing process, the Board expressed its concerns about the incompatibility of high volume and consistent use of the site for transient sleeping accommodations; and

WHEREAS, as noted above, the applicant agreed to limit the overnight accommodations to the 65 days per year when religious doctrine prohibits travel; and

WHEREAS, additionally, in response to the Board's concerns about the scale of the transient accommodations, the applicant reduced the number of beds proposed from 52 to 34; and

WHEREAS, the applicant states that the other homes in the area that the community has identified as offering sleeping accommodations are not affiliated with the Congregation; and

WHEREAS, as to garbage storage, the applicant proposes a refrigerated room to store trash until pickups, to assign staff to monitor and maintain the area surrounding the site, and to post signs regarding litter; and

WHEREAS, as to the building mechanicals, the applicant has agreed to move its condensers to the roof (air handlers were already located inside the building) a minimum distance of approximately 150 feet from the closest residential neighbor and specify that they will include sound isolation/vibration dampers and sound attenuation panels; and

WHEREAS, as to visitor conduct, the applicant proposes to place signs near each entrance door reminding

visitors not to block driveways or park illegally and signs near each exit reminding visitors to keep noise to a minimum and be respectful of neighbors; and

WHEREAS, the applicant states that it will maintain a section on its website directing visitors (1) not to block driveways, (2) to dispose of all garbage in the receptacles in or around the site and not on the neighbors' properties or sidewalks, (3) to walk on sidewalks only and not on lawns, and (4) to avoid congregating in front of neighbors' homes and keep noise to a minimum; and will also include information about hours of operation; and

WHEREAS, as to Event Days, the applicant identified the busiest days, as the following: the Eve of Rosh Hashanah, the Day of the Rebbe's Recovery, the Anniversary of the Previous Rebbe's Passing, the Anniversary of the Rebbe's Wife's Passing, the Rebbe's Birthday, and the Anniversary of the Rebbe's Passing, and other busy days identified as the Birthday of Founders of Chassidic and Chabad Movements, Rosh Hashanah, the Anniversary of the Rebbe's Mother's Passing, Eve of Yom Kippur, Yom Kippur, Sukkot, the Rebbe's Wedding Anniversary, Chassidic New Year, Festival of Liberation of the Rebbe's Books, Passover, Lag B'Omer, Shavuot, Liberation of the Previous Rebbe, and the Anniversary of the Rebbe's Father's Passing; and

WHEREAS, the applicant states that on Event Days, it will notify the Community Board and the neighbors by letter that they are anticipating an increased number of visitors; and

WHEREAS, the applicant will also communicate with the MTA to alert them to Event Days when use of its public busses will be increased; and

WHEREAS, the applicant said that it will contact the Department of Sanitation to request that additional trash bins be placed in the area and that there will be a requirement for additional pick ups; and

WHEREAS, the applicant states that it will request additional police presence on Event Days and it will hire three private security personnel for those days; and

WHEREAS, as to the community's suggestion that there be a term imposed to enable the Board to more closely monitor the approval, the applicant states that such action would severely limit its ability to raise funds necessary to construct the building and could ultimately make it financially infeasible; and

WHEREAS, the Board considered the community's suggestion for a term and in light of the history of illegal use of the site and several site conditions that the Congregation has agreed to modify, the Board finds that a term of ten years from the date of the grant is appropriate to allow for oversight of the site conditions and a time to re-evaluate if they have been effective; and

WHEREAS, accordingly, the Board finds that this action, with a series of operational improvement measures, 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 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, the Congregation originally proposed to enlarge the building to an FAR of 1.2 and to excavate a full cellar; and

WHEREAS, at the direction of the Board, the applicant revised its plans to reduce the size of the building to 1.01 FAR and eliminate the cellar space and, ultimately, re-designed the plan to maintain both side yards, which reduced the FAR to 0.98; and

WHEREAS, at the direction of the Board, the applicant analyzed a lesser variance scenario which completely excluded sleeping accommodations and resulted in an FAR of 0.8; and

WHEREAS, the applicant represents that such a scenario would not satisfy its programmatic needs of accommodating those who are at the site on days when religious doctrine prohibits travel; and

WHEREAS, instead, the Board notes that the applicant reduced its sleeping accommodations from 52 to 34-person occupancy; and

WHEREAS, accordingly, the Board finds the requested waivers to be 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. 11BSA075Q, dated April 17, 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, 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 R2A zoning district, the legalization and enlargement of an existing building occupied by a synagogue and accessory uses (Use Group 4) which does not comply with the underlying zoning district regulations for floor area, lot coverage, front yard, side yard, rear yard, and parking, contrary to ZR §§ 24-111, 24-11, 24-34, 24-35, 24-36 and 25-31; *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 16, 2013" – ten (10) sheets, and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 19,719 sq. ft. (0.98 FAR); a maximum lot coverage of 73.79 percent; a maximum front wall height of 20'-8 ¾"; a front yard with a minimum depth of 10'-0"; side yards with minimum widths of 10'-1 1/6" and 9'-9 5/8", as illustrated on the BSA-approved plans;

THAT this grant will be limited to a term of ten years, to expire on October 22, 2023;

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) with accessory uses;

THAT no commercial catering will take place onsite;

THAT use of the sleeping accommodations at the site will be limited to the following 65 days when religious doctrine prohibits travel: 52 Sabbath days, Rosh Hashanah (2 days), Yom Kippur (1 day), Shavuot (2 days), the first two and last two days of Passover (4 days), and the first two and last two days of Sukkot (4 days);

THAT the sleeping accommodations will be limited to a maximum occupancy of 34 people;

THAT the size and conditions of the sleeping conditions will be as reviewed and approved by DOB;

THAT the hours of operation of the entire site will be posted on the Ohel's website and be limited to 6:00 a.m. to 10:00 p.m., daily, except for the Rabbi's quarters, and the use of the sleeping accommodations on the 65 noted days when religious doctrine prohibits travel;

THAT the use of the site is extended to 24 hours per day on the following four days, annually: the Anniversary of the Rebbe's Passing, the Anniversary of the Previous Rebbe's Passing, the Rebbe's Birthday, and the Eve of Rosh Hashanah;

THAT bus and automobile engines are not permitted to idle for longer than one minute as indicated on signage;

THAT bus drop off and pick up will be restricted to the DOT designated no parking area, reflected on the BSA-approved plans and marked by DOT signage;

THAT signs will be posted noting the restriction on blocking neighborhood driveways;

THAT dedicated Ohel staff will monitor and direct traffic and ensure compliance with conditions related to drop off and pick up, idling, and blocking driveways;

THAT the use of the second floor outdoor area will be limited to 7:00 a.m. to 7:00 p.m., daily, except during Sukkot;

THAT no amplification of any kind or permanent structures will be located on the second floor outdoor space;

THAT all garbage awaiting pickup will be stored in the refrigerated room reflected on the BSA-approved plans;

THAT additional private garbage pickup will be provided to accommodate overflow on all days including Event Days;

THAT dedicated Ohel staff will monitor the surrounding area to ensure compliance with all conditions and remove debris daily, with additional staff assigned following the Sabbath and during Event Days;

THAT all lighting will be directed away from adjacent residential uses;

THAT signs will be posted at the site noting the restriction on entering neighbors' property, loitering, littering, and creating noise;

THAT mechanical and HVAC system components will be placed within the building except as required to be on the roof;

THAT the components of HVAC systems placed on the roof will include sound isolation/vibration dampers and sound attenuation panels and it and all other mechanicals outside of the building will be located within 100 feet of the eastern lot line;

THAT the building will be fully-sprinklered, as reflected on the BSA-approved plans;

THAT the western side yard will be well-maintained and landscaped, as reflected on the BSA-approved plans;

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 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, October 22, 2013.

199-12-BZ
CEQR #12-BSA-147K
APPLICANT – Sheldon Lobel, P.C., for Delta Holdings,

LLC, owner.
SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.
PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 27, 2012, acting on Department of Buildings Application No. 310076333, reads in pertinent part:

> Proposed floor area contrary to maximum permitted under ZR 33-122 . . .
> Proposed commercial use in residential zone not permitted as per 22-00.
> Proposed height and setback contrary to allowable under ZR 33-431; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C8-1 zoning district and partially within an R6 zoning district, the proposed development of a self-storage facility (Use Group 16), which is non-complying as to floor area, height, and setback, and non-conforming as to the portion of the use within the R6 zoning district; and

WHEREAS, a public hearing was held on this application on February 12, 2013 after due notice by publication in the *City Record*, with continued hearings on April 23, 2013, May 14, 2013, July 23, 2013, and September 10, 2013, and then to decision on October 22, 2013; 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, waived its right to a hearing and did not take a position on the application; and

WHEREAS, the site is located on the east side of Bushwick Avenue, with frontage on Furman Avenue and Aberdeen Street; and

WHEREAS, the primary frontage is along Bushwick Avenue (200 feet), with side frontage on Furman Avenue (227 feet) and Aberdeen Street (100 feet); and

WHEREAS, the site comprises three tax lots that, although historically used together, were recently merged into Lot 5 and is irregularly shaped with a lot area of 29,272 sq. ft.; and

WHEREAS, the lot area within the R6 zoning district at the northwest corner is 3,343 sq. ft. and the remaining 25,929 sq. ft. of lot area is within the C8-1 zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building which will accommodate a self-storage facility and accessory uses has the following bulk parameters: three stories, a height of 33'-8" (a maximum height of 30'-0" is permitted), a floor area of 68,556 sq. ft. (2.64 FAR) (a maximum floor area of 25,929.56 sq. ft. (1.0 FAR) is permitted), 15 parking spaces, and four loading berths; and

WHEREAS, in addition to the non-complying floor area and height without the required setback, the applicant proposes to locate a portion of the Use Group 16 use within the residential zoning district, thus the applicant seeks a variance; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the irregular shape; (2) the split zoning district condition; (3) the presence of an LIRR tunnel easement below the site; (4) the presence of an MTA subway tunnel below the adjacent playground; and (5) sensitive soil conditions; and

WHEREAS, the applicant asserts that the site's irregular shape which includes one large triangular portion leads to significant design inefficiencies when compared to a regularly-shaped lot; and

WHEREAS, further, the applicant states that the presence of the zoning district boundary line between the C8-1 and R6 zoning districts is profound as the permitted uses in the two zoning districts are distinct; and

WHEREAS, the applicant notes that the split zoning district condition cannot be cured by ZR § 77-11 because of the distance of the lot lines from the district boundary line; and

WHEREAS, additionally, the applicant states that the zoning district change does not allow for the capture of the available floor area on the residential portion of the site for its use with the commercial portion of the site; and

WHEREAS, as to the LIRR tunnel easement, the applicant states that the easement is largely coincident along a significant portion of the site on the southerly diagonal lot extending south from Furman Avenue; and

WHEREAS, the applicant asserts that the tunnel easement burdens more than 50 percent of the site and prohibits the construction of below grade space, which would be customary for a storage facility that does not require access to natural light; and

WHEREAS, as to the MTA subway tunnel easement, the applicant notes that the easement is below the adjacent Rudd Playground, which is just southwest of the large Trinity Cemetery and Cemetery of the Evergreens; the subway tunnel is above the site's level of grade and close enough to the property line as to be within MTA's zone of

influence; and

WHEREAS, the applicant represents that the additional required construction measures attributed to the proximity of the two tunnels include (1) minimizing vibration, auger installed shoring on three street frontages; (2) foundation knuckle and cantilever design; (3) specialized foundation design at MTA and LIRR's direction; (4) various premium soft costs and timing delays; and (5) specialized structural mat foundation for at-grade construction; and

WHEREAS, the applicant asserts that the premium costs include $160,000 associated with the retaining wall regardless of whether a cellar is included, $525,000 of costs associated with the sectional wall construction and underpinning with a cellar, or $200,000 of costs associated with such construction even without a cellar; and

WHEREAS, additionally, the applicant represents that due to the LIRR tunnel, with or without a cellar, the specialized structural mat concrete slab will cost $900,000 compared to $180,000 on a site without the LIRR tunnel; and

WHEREAS, the applicant notes that the subway tunnel is approximately ten feet above the level of grade of the site at a horizontal distance of 17 feet and it is this condition that creates the grade differential between the site and the elevated Rudd Playground; and

WHEREAS, the applicant notes that the sensitive soil conditions include the requirement for a retaining wall adjacent to the playground and a significant amount of urban fill at the site; and

WHEREAS, the applicant notes that the retaining wall is necessary to support the elevated playground, which has two levels and is 12 feet and greater above the level of grade at the site; and

WHEREAS, the applicant notes that the two transportation easements, including the presence of the tunnel, and the change in grade which requires a retaining wall, contribute to the premium construction costs and the inability to feasibly construct below grade; and

WHEREAS, the applicant asserts that a typical site in a C8-1 zoning district can accommodate a self-storage facility on a 30,000 sq. ft. lot by fully utilizing cellar and sub-cellar levels to accommodate the necessary amount of space to make the project viable; and

WHEREAS, as noted, below grade space is ideal for self-storage facilities which do not require windows; and

WHEREAS, the applicant asserts that if it were able to construct below grade, it could accommodate all the necessary floor area that now must be above grade and, similarly, the below grade space would eliminate the requirement for the height/setback waivers which are attributed to the need to construct floors with uniform floorplates; and

WHEREAS, the applicant asserts that the proposed 2.64 FAR allows for the recapture of below grade space as well as for additional revenue to offset the significant premium construction costs; and

WHEREAS, as to the inclusion of the Use Group 16 use on the portion of the site within the R6 zoning district, the applicant asserts that the entire lot has historically been used together for commercial use and that due to its triangular shape, the residential portion cannot feasibly accommodate construction for any use; and

WHEREAS, accordingly, the applicant proposes to allow loading for the facility on the residential portion of the lot, which abuts the dead end of Furman Avenue and is not adjacent to any residential use; and

WHEREAS, the applicant asserts that to include the loading within the C8-1 portion of the site would not be feasible due to the lot's shape and the location on the heavily-trafficked Bushwick Avenue, which would not be compatible with vehicle loading and unloading; and

WHEREAS, as to uniqueness, the applicant represents that the site is the only one in the vicinity that is burdened by the combination of the noted conditions; and

WHEREAS, the Board observes that the applicant has established each of the bases of hardship and uniqueness and has justified the requested waivers; and

WHEREAS, accordingly, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict compliance with applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study that analyzed (1) an as of right self-storage facility with special costs; (2) an as-of-right self-storage without special costs; (3) an alternate variance self-storage facility; and (4) the proposal; and

WHEREAS, the applicant concluded that neither the two noted as of right scenarios nor the alternate variance scenario would realize a reasonable return due to the site's constraints; and

WHEREAS, specifically, the applicant has identified significant premium costs related to the site's unique features that render a complying development infeasible; and

WHEREAS, based upon the above, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with the specified zoning provisions will provide a reasonable return; and

WHEREAS, the applicant states that the proposed variance, if granted, will not negatively affect the character of the neighborhood nor impact adjacent uses; and

WHEREAS, the applicant notes that the self-storage use is permitted as of right within the C8-1 zoning district and only the loading area within the R6 portion of the site is non-conforming; and

WHEREAS, as to the portion of the site within the residential zoning district, the applicant notes that this is a historic condition and that that portion of the site has been used in conjunction with the remainder of the site for commercial use historically; and

WHEREAS, the applicant notes that there are not any residential uses adjacent to the site and that the residential

portion of the site is adjacent to the dead end at Furman Avenue, thus, it is not in proximity to any conforming uses; and

WHEREAS, the applicant notes that the use across Furman Avenue is also not residential in character; and

WHEREAS, the applicant characterizes the site as being located in a small C8-1 enclave which includes a gas service station, a stand-alone auto repair, and a four-story mixed-use residential building with ground floor retail all across Bushwick Avenue; and

WHEREAS, the applicant performed a traffic analysis and concluded that the inclusion of the loading on Furman Avenue adjacent to the dead end was preferable to including it along the Bushwick Avenue or Aberdeen Street where it would interfere with traffic; and

WHEREAS, the applicant asserts that the building's height at three stories is compatible with the surrounding area which includes many three- and four-story buildings along Bushwick Avenue and Aberdeen Street and notes that the adjacent R6 zoning district allows for 3.0 FAR for Quality Housing developments and 4.8 FAR for community facilities; and

WHEREAS, at hearing, the Board directed the applicant to analyze the effect of the building's massing on the adjacent playground, namely as to shadows; and

WHEREAS, in response, the applicant performed a shadow analysis which reflects that there would not be any shadow impact on the playground even on the day of longest shadow in the year; and

WHEREAS, the applicant asserts that there is not any impact due to the two changes in grade at the playground attributed to the MTA subway tunnel's location above the grade level of the subject site; and

WHEREAS, however, at the Board's direction, the applicant revised its plans to include a setback to a depth of five feet at the third floor to pull back away from the playground at the rear of the site and the applicant also replaced its parapet wall with a fence so as to further reduce the perception of bulk; 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 instead results from the above-mentioned unique physical conditions; and

WHEREAS, as noted, at the direction of the Board, the applicant revised the plans to include a setback at the rear of the site, which provided a minimal reduction in the floor area and reduced the height at the rear of the building; and

WHEREAS, the applicant states that it examined several complying scenarios as well as the lesser variance alternative and found that none provide a reasonable return; and

WHEREAS, the applicant represents that without the requested waivers, premium construction costs could not be overcome; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; 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 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. 12BSA147K, dated June 22, 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; Construction Impacts 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 June 2013 Remedial Action Work Plan and site-specific 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, 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 the conditions stipulated below and 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 the required findings under ZR § 72-21, to permit, on a site partially within a C8-1 zoning district and partially within an R6 zoning district, the proposed development of a self-storage facility (Use Group 16), which is non-complying as to floor area, height, and setback, and non-conforming as to a portion of the use within the R6 zoning district, contrary to ZR §§ 33-122, 33-431, and 22-00; *on condition* that all work shall substantially conform to drawings as they apply to the objections above

noted, filed with this application marked "Received October 16, 2013"– ten (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the buildig: a maximum floor area of 68,556.32 sq. ft. (2.64 FAR) and a maximum total height of 33'-8", as illustrated on the BSA-approved plans;

THAT the interior layout and all exiting requirements will be as reviewed and approved by the Department of Buildings;

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

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided them 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;

THAT substantial construction be completed 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 22, 2013.

100-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zipporah Farkas and Zev Farkas, owners.

SUBJECT – Application April 10, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1352 East 24th Street, west side of East 24th Street between Avenue M and Avenue N, Block 7659, Lot 69, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 8, 2013, acting on Department of Buildings Application No. 320572233, 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 yards are 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 rear yard of 30 feet; 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 September 24, 2013, after due notice by publication in *The City Record*, and then to decision on October 22, 2013; 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 24th Street, between Avenue M and Avenue N, 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 2,504.3 sq. ft. (0.63 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 now seeks an increase in the floor area from of 2,504.3 sq. ft. (0.63 FAR) to 4,016 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to reduce the open space from 71 percent to 54 percent; the minimum required open space is 150 percent; and

WHEREAS, the applicant also seeks to maintain the width of one of the existing side yards (3'-5") and decrease the width of the other existing side yard from 12'-11" 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, in addition, the applicant seeks to decrease its rear yard depth from 33'-10" 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 notes that there is one home on the block directly east of the subject block (Block 7660), three homes

on the block that is two blocks directly east of the subject block (Block 7661), and one home on the same block as the premises (Block 7659) with an FAR of 1.0 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 R2 zoning district, the proposed enlargement of a single-family home, 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 October 23, 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 54 percent, a minimum rear yard depth of 20'-0", and side yards with minimum widths of 3'-5" 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) only;

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, October 22, 2013.

133-13-BZ
CEQR #13-BSA-173X
APPLICANT – Sheldon Lobel, PC, for Evangelical Church Letting Christ Be known, Inc., owner.
SUBJECT – Application May 10, 2013 – Variance (§72-21) to permit the construction of a new two-story community facility (UG 4A house of worship) (*Evangelical Church*) building is contrary to parking (§25-31), rear yard (§24-33(b) & §24-36), side yard (§24-35(a)) and front yard requirements (§25-34) zoning requirements. R4 zoning district.
PREMISES AFFECTED – 1915 Bartow Avenue, northwest corner of Bartow Avenue and Grace Avenue, Block 4799, Lot 16, Borough of Bronx.
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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 30, 2013, acting on Department of Buildings ("DOB") Application No. 220201412, reads in pertinent part:

> ZR Section 24-33(b) – the proposed building within the rear yard is contrary to the cited section in that it exceeds the height limitation for permitted obstructions;
> ZR Section 24-35(a) – the proposed side yard is contrary to the cited section in that ten percent of the aggregate street walls is required (15 feet) [however] per the proposed plan, eight feet is indicated;
> ZR Section 24-36 – the proposed rear yard does not comply with the minimum 30 feet required [because] the interior lot portion of the site is not eligible for the shallow lot provision, per ZR Section 24-37(a);
> ZR Section 24-34 – proposed front yard is contrary to the stated section in that [a depth of] 15 feet [is required but] only ten feet [is provided]; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the construction of a two-story house of worship (Use Group 4A) that does not comply with the zoning regulations for rear yard, side yard, front yard, and permitted obstructions in rear yard, contrary to ZR §§ 24-33, 24-34, 24-35, and 24-36; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in the *City Record*, and then to decision on October 22, 2013; and

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

WHEREAS, this application is brought on behalf of Evangelical Church Letting Christ Be Known (the "Church"), a not-for-profit institution; and

WHEREAS, Community Board 12, Bronx, recommends disapproval of this application, citing concerns about traffic and parking; and

WHEREAS, Councilmember Andy King testified in opposition to the proposal, citing concerns about traffic; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, citing concerns about traffic and the requested yard waivers' impacts on adjacent properties; and

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

WHEREAS, the subject site is an irregular corner lot located on the northwest corner of the intersection of Grace Avenue and Bartow Avenue, within an R4 zoning district; and

WHEREAS, the site has approximately 100 feet of frontage along Bartow Avenue, approximately 322 feet of frontage along Grace Avenue, and a lot area of approximately 22,989 sq. ft.; and

WHEREAS, the applicant notes that the site has been vacant since at least 1983; and

WHEREAS, the applicant proposes to construct a two-story house of worship (Use Group 4A) with 12,388 sq. ft. of floor area (0.54 FAR) to accommodate the programmatic needs of the Church, which has been in existence for approximately 16 years; and

WHEREAS, the applicant represents that the proposed building will create the following non-compliances on the zoning lot: (1) the building will obstruct the rear yard for two stories and a height of 31'-0" (the maximum permitted height of this community facility building within the rear yard in this district is one story and 23'-0", per ZR § 24-33(b)); (2) a rear yard with a depth of 8'-8" (a rear yard with a minimum depth of 30'-0" is required for the interior lot portion of the site, per ZR § 24-36); (3) two side yards with depths of 24'-2" and 10'-0" (the requirement, which is based on the width of the street wall, is two side yards with minimum depths of 15'-0", per ZR § 24-35(a)); and (4) a front yard depth of 10'-0" (a front yard depth of 15'-0" is required, per ZR § 24-34); and

WHEREAS, the applicant represents that, since its founding, the Church has leased space at 2111 Starling Avenue, Bronx, a two-story building with approximately 3,976 sq. ft. of floor area; however, that building accommodates neither the Church's current membership of 350 members, nor its projected growth; and

WHEREAS, the applicant states that the proposed building will include the following: (1) in the cellar, a community room, electrical and mechanical rooms, a cafeteria and serving area, and men's and women's restrooms; (2) on the first story, a lobby, a temple, a restroom, dressing area, and a pastor's office; and (3) on the second story, two offices, a coat closet, storage, children's chapel, and men's and women's restrooms; and

WHEREAS, the applicant notes that the community room will be used primarily to provide light meals to congregants after worship services; however, no catered affairs (such as wedding receptions) will be held at the Church; the applicant also states that the Church anticipates a capacity of approximately 300 congregants in the temple on the first story and approximately 100 congregants in the chapel on the second story; and

WHEREAS, the applicant represents that the irregular shape of the site—in particular its jagged western boundary—is a unique physical condition inherent to the zoning lot, which creates practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations, per ZR § 72-21(a); and

WHEREAS, the applicant states that the jaggedness of the western boundary gives rise to no fewer than 13 adjoining rear and side lot lines (none of which is parallel to either Grace Avenue or Bartow Avenue) which results in an as-of-right footprint of only 5,653 sq. ft.; in contrast, a standard, rectangular lot with the site's lot area (22,989 sq. ft.) would yield an as-of-right footprint of 12,500 sq. ft.; the applicant notes that the proposed footprint is approximately 6,194 sq. ft., less than half the size that would be accommodated on a rectangular lot; and

WHEREAS, the applicant notes that although the site is adjacent to a lot with a similarly jagged boundary line, the adjacent lot is significantly larger and therefore would provide greater flexibility in development; further, while there are other lots with jagged lot lines within a 400-foot radius of the site, only the site and the immediately adjacent lot are vacant; and

WHEREAS, the applicant states that the following are the programmatic needs of the Church, which necessitate the requested waivers: (1) the increasing size of the congregation; and (2) the Church's expansive mission, which, includes spiritual outreach and creating support groups for local youth; and

WHEREAS, as to the increasing size of the congregation, the applicant states that the Church has 350 regular members and anticipates that it will have approximately 385 regular members when construction at the site is completed; and

WHEREAS, the applicant represents that the Church's existing facility cannot accommodate the Church's current membership and that an as-of-right building would be similarly inadequate; in particular, based on the as-of-right plans submitted by the applicant, the floor area of the building would decrease from the proposed 12,388 sq. ft. (0.54 FAR) to 9,184 sq. ft. (0.39); further, in the as-of-right scenario, the capacity of the temple on the first story is decreased from 300 congregants to 214 congregants and the capacity of the chapel on the second story is decreased from 100 congregants to 54 congregants; and

WHEREAS, as to the expansive mission of the Church, the applicant represents that an as-of-right facility would not provide the worship, classroom or community outreach space it requires to fulfill it wide-ranging spiritual and pedagogical objectives; and

WHEREAS, further, 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 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 irregular lot shape in combination with 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, since the Church 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant represents that the neighborhood is characterized by its diversity: buildings range in height from one to five stories, and residential, commercial, and manufacturing uses are found within a 400-foot radius of the site; and

WHEREAS, the applicant notes that other nearby uses include a park, a large parking lot for a shopping center, gasoline stations, and the New England Thruway (Interstate 95); and

WHEREAS, the applicant notes that the proposed use is permitted as-of-right and that the proposal complies with the regulations regarding building height, setback, sky exposure plane, lot coverage, and parking; and

WHEREAS, the applicant also notes that at 0.54 FAR, the proposal is 27 percent of the maximum permitted floor area ratio for a community facility in the district (2.0 FAR); and

WHEREAS, as to the adjacent uses, the applicant notes that the site immediately to the west is vacant and significantly larger than the subject site; as such, it can be developed with as-of-right yards that will provide additional separation from the proposed building; further, the site immediately to the north is occupied by a three-story residential building, which will be, because of the odd shape of the side lot line, more than 35 feet from the proposed house of worship; therefore, the requested yard waivers will not impact the adjacent uses; and

WHEREAS, the applicant represents that, contrary to Community Board 12's assertions, the proposal will not adversely impact parking or traffic within the neighborhood; and

WHEREAS, specifically, the applicant states that although the Church expects the majority of congregants to walk or utilize public transportation, the proposal provides 22 off-street parking spaces, which is one more than the required 21 spaces; in addition, the applicant represents that there are a total of 18 on-street parking spaces available along Bartow Avenue and Grace Avenue; and

WHEREAS, as to traffic, the applicant states that it conducted a study of neighborhood traffic patterns and reconfigured the proposed entrances and site circulation in order to minimize congestion; the applicant also notes that services and worship activities will occur on weekday evenings and Sundays; as such, the Church's traffic will not conflict with school-related traffic; and

WHEREAS, finally, in response to Community Board 12's characterization of the proposal as inconsistent with recent down-zonings in the area, the applicant notes that the site has been zoned R4 since 1961; 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 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, in accordance with ZR § 72-21(d); the applicant notes that the site was formed by the combination of historic tax lots 16, 20, 26, and 29, which were originally jagged and irregularly shaped; and

WHEREAS, in addition, the Board finds that the requested relief is the minimum necessary, per 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, CEQR No. 13BSA173X, dated May 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 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 § 72-21 and grants a variance, to permit, within an R4 zoning district, the construction of a two-story house of worship (Use Group 4A) that does not comply with the zoning regulations for rear yard, side yard, front yard, and permitted obstructions in rear yard, contrary to ZR §§ 24-33, 24-34, 24-35, 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 September 3, 2013"– Ten (10) sheets; and *on further condition;*

THAT the following shall be the bulk parameters of the building: a maximum of 12,388 sq. ft. of floor area (0.54 FAR), a maximum building height of 31'-0", a rear yard depth of 8'-8", two side yards with depths of 24'-2" and 10'-0", and a front yard depth of 10'-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, October 22, 2013.

161-13-BZ
CEQR #13-BSA-144M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Bennco Properties, LLC, owner; Soul Cycle West 19th street, lessee.

SUBJECT – Application May 28, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Soul Cycle*) within a portion of an existing building. C6-4A zoning district.

PREMISES AFFECTED – 8 West 19th Street, south side of W. 19th Street, 160' west of intersection of W. 19th Street and 5th Avenue, Block 820, Lot 7503, 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 Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 22, 2013, acting on Department of Buildings Application No. 101905921, reads in pertinent part:

> The proposed PCE in C6-4A zoning district is contrary to ZR 32-10 and requires a special permit from the BSA; 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 operation of a physical culture establishment ("PCE") in portions of the cellar and first story of an existing 11-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, and then to decision on October 22, 2013; 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, has no objection to this application; and

WHEREAS, the subject site is located on the north side of West 19th Street between Fifth Avenue and Sixth Avenue within a C6-4A zoning district within the Ladies' Mile Historic District; and

WHEREAS, the site has approximately 50 feet of frontage along West 19th Street and 4,600 sq. ft. of lot area; and

WHEREAS, the site is occupied by an 11-story mixed residential and commercial building; and

WHEREAS, the proposed PCE would occupy approximately 1,706 sq. ft. of floor space in the cellar and 3,365 sq. ft. of floor area on the first story of the building; and

WHEREAS, the PCE will be operated as SoulCycle; 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 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, at hearing, the Board raised concerns about: (1) the sufficiency of the sound attenuation measures; (2) the notification of the building's residents of the application for the PCE; and (3) open notices of violation from the Environmental Control Board regarding the building; and

WHEREAS, in response, the applicant submitted an

amended plan noting the proposed sound attenuation measures; the applicant also submitted a statement confirming that notices regarding the PCE application were posted near the residential entrances to the building and explaining that the open violations relate to construction of the proposed PCE and that such violations are resolved or will be resolved by the Board's grant of the special permit; and

WHEREAS, the Landmarks Preservation Commission has issued a Certificate of No Effect for the interior alterations, dated July 25, 2013, and a Certificate of No Effect for the exterior signage, dated September 17, 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; 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, CEQR No.13BSA144M, dated May 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 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 located in a C6-4A zoning district within the Ladies' Mile Historic District, the operation of a PCE in portions of the cellar and first story of an existing 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 September 13, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on October 22, 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 hours of operation of 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 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 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, October 22, 2013.

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 December 10, 2013, at 10 A.M., for continued hearing.

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 – Laid over to November 19, 2013, at 10 A.M., for continued hearing.

282-12-BZ
APPLICANT – Eric Palatnik, P.C., for Izhak Lati, owner.
SUBJECT – Application September 24, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard requirements (§23-461), and a variance (§72-21), contrary to front yard requirements (§23-45). R5 zoning district.
PREMISES AFFECTED – 1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, Lot 48, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

90-13-BZ
APPLICANT – Akerman Senterfitt, LLP, for Eleftherios Lagos, owner.
SUBJECT – Application March 18, 2013 – Variance (§72-21) to permit the construction of a single-family dwelling, contrary to open area requirements (§23-89). R1-2 zoning district.
PREMISES AFFECTED – 166-05 Cryders Lane, northeast corner of the intersection of Cryders Lane and 166th Street, Block 4611, Lot 1, Borough of Queens.
COMMUNITY BOARD #7Q
ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for continued hearing.

105-13-BZ
APPLICANT – Law Office of Fred A Becker, for Nicole Orfali and Chaby Orfali, owners.
SUBJECT – Application April 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461); perimeter wall height (§23-631) and less than the minimum rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 1932 East 24th street, west side of East 24th street, between Avenue S and Avenue T, Block 7302, Lot 19, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for adjourned hearing.

120-13-BZ
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 #1SI
ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

121-13-BZ
APPLICANT – Moshe M. Friedman, P.E., for Congregation Beth Aron Moshe, owner.
SUBJECT – Application April 25, 2013 – Variance (§72-21) to permit a UG 4 synagogue (*Congregation Beth Aron Moshe*), contrary to front yard (§24-34), side yards (§24-35) and rear yard (§24-36) requirements. R5 zoning district.
PREMISES AFFECTED – 1514 57th Street, 100' southeast corner 57th Street and the eastside of 15th Avenue, Block 05496, Lot 12, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

162-13-BZ
APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.
SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units, ground floor retail, and 11 parking spaces, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100' south of Spring street, Block 490, Lot 27, 35, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to November 19, 2013, at 10 A.M., for continued hearing.

187-13-BZ

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 – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

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 November 26, 2013, at 10 A.M., for continued hearing.

235-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 132 West 31st Street Building Investors11, LLP, owner; Blink West 31st Street, Inc. owner.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within an existing commercial building. M1-6 zoning district.

PREMISES AFFECTED – 132 West 31st Street, south side of West 31st Street, 350' east of 7th Avenue and West 31st Street, Block 806, Lot 58, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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New Case Filed Up to October 29, 2013

292-13-BZ
2085 Ocean Parkway, Located on the northeast corner of the intersection of Ocean Parkway and Avenue U., Block 7109, Lot(s) 56 &50, Borough of **Brooklyn, Community Board: 15**. Variance (§72-21) to request a waivers for floor area, open space ratio, lot coverage, side yards, rear yard, height and setback, planting landscaping and parking regulations in order to permit the construction of a Use Group 4A house of worship. R5, R6A, & R5(OP) zoning district. R5,R6A,&R5(OP) district.

293-13-BZ
78-04 Conduit Avenue, Westside South Conduit Avenue between Linden Boulevard, and Sapphire Avenue, Block 11358, Lot(s) 1, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-36) to permit the operation of a (PCE) physical culture establishment. C2-2/R4 zoning district. C2-2R/4 district.

294-13-BZ
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295-13-BZY
1137 Dean Street, on the northerly side of Dean Street, 141 feet 8 inches form the corner formed by the intersection of Dean St. And easterly side of Bedford avenue, Block 1206, Lot(s) 73, Borough of **Brooklyn, Community Board: 8**. BUILDING PERMIT RENEWQL 11-332: Extension time to complete construction R6B district.

296-13-A
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297-13-BZ
308 Cooper Avenue, located on the east side of Cooper Street at the corner of Cooper Street and Irving Avenue., Block 3443, Lot(s) 37, Borough of **Brooklyn, Community Board: 4**. Variance (§72-21):to permit the development of a residential building contrary to §42-10. M1-1 zoning district. M1-1 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 26, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 26, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

182-69-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 227 East 19th Street Owner LCL, owner.
SUBJECT – Application September 4, 2013 – ADMENDMENT 23-633: with regard to height and setback, yards distance between buildings and floor area proposed residential conversion and alterations of existing hospital parking pre-1961 is subject to ZR 23-145, ZR-23-711 and ZR23-89 zoning resolution
PREMISES AFFECTED – 211-235 3 East 19th Street aka 224-228 East 20th St & 2nd & 3rd Avenues, midblock portion of block bounded by East 19th and East 20th Street, Block 900, lot 6, Borough of Manhattan.
COMMUNITY BOARD #6M

380-01-BZ
APPLICANT – Law office of Fredrick A. Becker, for 230 West 41st St. LLC, owner;
TSI West 41 LLC dba New York Sports Club, lessee.
SUBJECT – Application April 17, 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*), located in portions of the cellar, first floor and second floor of a 21-story commercial office structure, which expired on April 9, 2012; Waiver of the Rules. C6-6.5 M1-6 (Mid) zoning district.
PREMISES AFFECTED – 230 West 41st Street, south side of West 41st Street, 320' west of Seventh Avenue, through block to West 40th Street, Block 1012, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #5M

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

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 the BSA resolution of 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 which expired on January 10, 2013. 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

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 filed by the Department of Buildings seeking to revoke the Certificate of Occupancy that was issued in error. 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

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 regulations. R7B zoning district.
PREMISES AFFECTED – 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

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

ZONING CALENDAR

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 (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 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

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 mixed use primarily residential building for a 12 story residential and accessory parking contrary to §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

223-13-BZ

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

SUBJECT – Application July 24, 2013 – Special Permit (§73-36) to permit the operation of a physical culture of health establishment (*Kingsbridge Nat'l 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

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 condominium 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

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 that does not comply with the 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

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 permit 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

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, OCTOBER 29, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

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 Montanez 5
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 mezzanine 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.

177-07-BZ
APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.
SUBJECT – Application July 23, 2013 – Extension of time to complete construction of a previously approved variance (§72-21) which permitted the construction of a two-story, two-family residential building, which expired on June 23, 2013. 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, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction of a two-story residential building (Use Group 2); 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 a site and neighborhood examination by Commissioner Montanez; 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 Board has exercised jurisdiction over the subject site since June 23, 2009 when, under the subject calendar number, the Board granted a variance to permit the construction of a two-story, two-family residential building (Use Group 2) that did not comply with the front yard requirement; and

WHEREAS, substantial construction was to be completed by June 23, 2013, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that construction has not yet commenced due to financing issues arising out of the recession; and

WHEREAS, thus, the applicant requests an extension of time to 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 June 23, 2009, so that as amended the resolution will read: "to grant an extension of time to complete construction for a term of two years from the date of the grant, to expire on October 29, 2015; *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 substantial construction will be completed by October 29, 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. 302233189)

Adopted by the Board of Standards and Appeals, October 29, 2013.

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 – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

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

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 December 10, 2013, at 10 A.M., for decision, hearing closed.

647-70-BZ
APPLICANT – Jeffrey A. Chester Esq/GSHLLP, for Channel Holding Company, Inc., owner; Cain Management II Inc., lessee.
SUBJECT – Application August 1, 2013 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation an automotive service station and auto laundry (UG 16B). Amendment seeks to convert accessory space into an accessory convenience store. C2-3/R5 zoning district.
PREMISES AFFECTED – 59-14 Beach Channel Drive, Beach Channel Drive corner of Beach 59th Street, Block 16011, Lot 105, Borough of Queens.
COMMUNITY BOARD #

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

605-84-BZ
APPLICANT – Sheldon Lobel, P.C., for Order Sons of Italy in America Housing Development Fund Company, Inc., owners.
SUBJECT – Application March 26, 2013 – Amendment of a previously granted variance (§72-21) to an existing seven-story senior citizen multiple dwelling to legalize the installation of an emergency generator, contrary to front yard requirements (§23-45). R5 zoning district.
PREMISES AFFECTED – 2629 Cropsey Avenue, Cropsey Avenue between Bay 43rd Street and Bay 44th Street, Block 6911, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #13BK
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 December 10, 2013, 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

ACTION OF THE BOARD – Laid over to December 10, 2013, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

66-13-A
APPLICANT – OTR Media Group, Inc., for Wall & Associates, owner; OTR 161 Street, LLC, lessee.
SUBJECT – Application February 13, 2013 – Appeal challenging Department of Buildings' determination that pursuant to §122-20 advertising signs are not permitted regardless of non-conforming use status. R8/C1-4 Grand Concourse Preservation zoning district.
PREMISES AFFECTED – 111 E. 161 Street, between Gerard and Walton Avenues, Block 2476, Lot 57, Borough of Bronx.
COMMUNITY BOARD #4BX
ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, October 29, 2013.

247-13-A
APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities, LLC, owners.
SUBJECT – Application August 22, 2013 – Common Law Vested Right to continue development of proposed six-story residential building under prior R6 zoning district. R5A zoning district.
PREMISES AFFECTED – 123 Beach 93rd Street, western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot 11, Borough of Queens.
COMMUNITY BOARD #14Q
ACTION OF THE BOARD – Application granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
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 six-story residential building under the common law doctrine of vested rights; 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 subject site is located on the west side of Beach 93rd Street, approximately 211 feet south of Holland Avenue in Rockaway Beach, in an R5A zoning district; and

WHEREAS, the site has 175 feet of frontage along Beach 93rd Street, 157.13 feet of frontage along Beach 94th Street, 107.01 feet of frontage along Shore Front Boulevard, and a total lot area of 18,488 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story residential building with 57 dwelling units and 36 accessory parking spaces (the "Building"); and

WHEREAS, the applicant represents that the Building complies with the parameters of the former R6 zoning district; and

WHEREAS, on January 8, 2007, New Building Permit No. 402483013-01-NB (hereinafter, the "New Building Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, however, on August 14, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Rockaway Neighborhoods Rezoning, which rezoned the site from R6 to R5A; and

WHEREAS, the Building, which is a multiple dwelling with a floor area ratio in excess of 1.10 and a height in excess of 35 feet, does not comply with the current zoning; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the two years subsequent to the Enactment Date, construction was not completed and a certificate of occupancy was not issued; and

WHEREAS, accordingly, an application was filed with the Board for an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, on October 19, 2010, pursuant to ZR § 11-30 *et seq.*, the Board granted, under BSA Cal. No. 110-10-BZY, a two-year extension of time to complete construction and obtain a certificate of occupancy under the subject calendar number; and

WHEREAS, accordingly, the applicant had until October 19, 2012 to complete construction and obtain a certificate of occupancy; and

WHEREAS, as of October 19, 2012, construction had not been completed; and

WHEREAS, accordingly, on March 19, 2013, pursuant to ZR § 11-30 *et seq.*, the Board granted, under BSA Cal. No. 110-10-BZY, an additional two-year extension to complete construction and obtain a certificate of occupancy under the subject calendar number; and

WHEREAS, pursuant to the Board's March 19, 2013 grant, the New Building Permit does not lapse until March 19, 2015; and

WHEREAS, nevertheless, the applicant now seeks a four-year extension to complete construction pursuant to the common law doctrine of vested rights; and

WHEREAS, the applicant states that it seeks a four-year extension because construction will be delayed as a result of the applicant's seeking public financing for the Building from the New York City Housing Development Corporation ("HDC") and the New York City Department of Housing Preservation and Development ("HPD"), which may dictate a change in the number of dwelling units proposed under the New Building Permit; and

WHEREAS, the Board notes that changes to the New Building Permit are subject to DOB approval; 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 August 17, 2010, 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 to substantial construction, the applicant states that the work on the Building subsequent to the issuance of the permits includes: 100 percent of the excavation; 100 percent of the foundation (including the installation of over 300 driven piles); and the installation of a complex drainage system; and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; a foundation survey; copies of cancelled checks; invoices; and photographs of the site; 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 development is $3,011,614 (including $1,474,974 in hard costs), or 17 percent, out of the $17,610,614 cost to complete; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; 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 R5A use regulations are significantly more restrictive than the R6 regulations; specifically, whereas any type of residence is permitted within an R6 district, however, an R5A district is limited to one- and two-family detached residences; and

WHEREAS, the applicant states that if the owner is not permitted to vest the Building under the former R6 district regulations, more than half of the floor area (34,696 sq. ft.) of the Building would be lost, the height of the building would have to be reduced from 65 feet to 35 feet, twice as many accessory parking spaces would be required, and a front yard with a minimum depth of ten feet will be required (no front yard is required in an R6 district), all of which will reduce the livable space within the Building; and

WHEREAS, the applicant also notes that its foundation—which is 100 percent complete—would be useless for any complying and conforming development because it was designed and built for a six-story multiple dwelling; and

WHEREAS, the applicant represents that individually and collectively, the changes to the Building required under the R5A district regulations would significantly decrease the market value of the Building, causing a serious economic loss to the applicant; and

WHEREAS, the Board agrees that complying with the R5A district regulations would result in a substantial reduction of the market value of the site and cause the applicant a serious economic loss; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building 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. 402483013-01-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, October 29, 2013.

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 – Laid over to November 26, 2013, at 10 A.M., for adjourned hearing.

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 January 14, 2014, at 10 A.M., for continued hearing.

90-12-A
APPLICANT – New York City Board of Standards and Appeals
SUBJECT – Application September 11, 2013 – Reopening by court remand for supplemental review of whether the subject wall was occupied by an art installation or an advertising sign. M1-6 zoning district.
PREMISES AFFECTED – 111 Varick Street, Varick Street between Broome and Dominick Street, Block 578, Lot 71, 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 December 17, 2013, at 10 A.M., for decision, hearing closed.

221-13-A
APPLICANT – Law Office of Jay Goldstein, PLLC, for Naseem Ali, owner.
SUBJECT – Application July 22, 2013 – Appeal seeking a determination that the owner has a common law vested right to continue construction under the prior R3A zoning district. R2A zoning district.
PREMISES AFFECTED – 239-26 87th Avenue, south side of 87th Avenue between 241st Street and 239th Street, Block 7966, Lot 54, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

237-13-A thru 242-13-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for RLP LLC, owners.
SUBJECT – Application August 12, 2013 – Construction of six buildings not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.
PREMISES AFFECTED – 11, 12, 15, 16, 19, 20 Nino Court, 128.75 ft. south of intersection of Bedell Avenue and Hylan Boulevard, Block 7780, Lot 22, 30, 24, 32, 26, 34, Borough of Staten Island.
COMMUNITY BOARD #3SI
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 November 19, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

259-12-BZ
APPLICANT – Davidoff Hutcher & Citron LLP, for 5239 LLC, owner.
SUBJECT – Application August 29, 2012 – Reopening of a variance (§72-21) to permit the development of a single-family house, contrary to lot width requirement (§23-32), to allow admission of the Certificate of Appropriateness into the record. R1-1, NA-2 zoning district.
PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 29, 2012, acting on Department of Buildings Application No. 220179376, reads, in pertinent part:

Proposed lot width is contrary to Zoning Resolution Section 23-32; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R1-1 zoning district mapped within a Special Natural Area District (NA-2) within the Riverdale Historic District, the construction of a single-family home on a zoning lot that does not comply with minimum lot width requirements, contrary to ZR § 23-32; and

WHEREAS, a public hearing was held on this application on June 15, 2013, after due notice by publication in *The City Record*, with continued hearings on July 23, 2013, and September 10, 2013, and then to decision on October 8, 2013, which was re-opened and re-adopted on October 29, 2013; and

WHEREAS, the Board notes that it initially voted to approve the variance on October 8, 2013, but that it did so without having a Certificate of Appropriateness from the Landmarks Preservation Commission in the record; accordingly, the Board re-opened the hearing on October 29, 2013 to admit the Certificate of Appropriateness into the

record and to re-adopt its vote to grant; 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 8, Bronx, recommends disapproval of this application; and

WHEREAS, City Council Member G. Oliver Koppell provided written testimony in opposition to the application, citing concerns about any building which does not comply with the R1-1 rezoning, neighborhood character, and the effect on the sewer system; and

WHEREAS, certain neighbors, on behalf of themselves, and represented by counsel, appeared in opposition to the proposal, citing concerns about the incompatibility of the home with the surrounding area, the applicant's failure to satisfy the variance findings including that there is not any hardship, the home disturbs the public welfare through the effect it would have on the sewer system, and specific bulk concerns related to the front yard, lot coverage, the perspective from Sycamore Avenue, and lot frontage are not compatible with neighborhood character; and

WHEREAS, the subject site is an interior lot located on the west side of Independence Avenue, between Blackstone Avenue and West 252nd Street, within an R1-1 zoning district within a Special Natural Area District (NA-2) within the Riverdale Historic District; and

WHEREAS, the site, which is vacant, has 92.85 feet of frontage along Independence Avenue and a lot area of 15,877 sq. ft.; and

WHEREAS, the applicant seeks to construct a single-family home on the site with the following bulk parameters: three stories, 4,549 sq. ft. of floor area (0.28 FAR), a front yard depth of 20'-0", side yards with widths of 21'-1" and 15'-11", a rear yard depth of 97'-6", and two accessory off-street parking spaces; and

WHEREAS, the applicant notes that the proposal complies in all respects with the bulk regulations applicable in the subject zoning district, except that the proposed lot width of 92.85 feet is less than the minimum required lot width pursuant to ZR § 23-32 (100 feet is the minimum required); accordingly, the applicant seeks a variance of that requirement; and

WHEREAS, the applicant notes that the site was formerly located within an R2-1 zoning district and fully compliant with all zoning regulations, but was rezoned in 2005 to R1-1, which has a minimum required lot width of 100 feet; and

WHEREAS, the applicant states that the following are unique physical conditions inherent to the zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations, per ZR § 72-21(a): (1) disproportionate lot depth in relation to width; (2) extreme slope; (3) vacancy; and (4) historic configuration and zoning; and

WHEREAS, as to the depth/width ratio, the applicant notes that the lot has an average width of 92.9 feet, with 92.85 feet of frontage on Independence Avenue and a width of 92.94 feet at its rear lot line, in contrast to its depth of 171 feet, which results in a lot area of 15,877 sq. ft. (well in excess of the minimum required lot area of 9,500 sq. ft. pursuant to ZR § 23-32), but none of the floor area can be realized due to the approximately seven-ft. insufficiency of the width for residential development; and

WHEREAS, the applicant notes that the width requirement for residential development does not apply to community facility development; and

WHEREAS, however, the existing terrain poses a significant hardship in accommodating a complying community facility development with efficient floor plates; and

WHEREAS, specifically, the applicant notes that the area of the lot that is affected by steep sloping sections measures approximately 3,635 sq. ft., which is approximately 22.9 percent of the total lot area, and another 2,593.33 sq. ft. of lot area is steep slope buffer (approximately 16.3 percent); two areas of steep slope are at the extreme west end of the site and the other is in the middle, which leaves only the eastern end of the site closest to Independence Avenue viable for construction; and

WHEREAS, the applicant asserts that the extreme slope requires that the footprint be kept to a minimum and moved as close as possible to the street; and

WHEREAS, the applicant analyzed the feasibility of an as of right community facility use, which is not subject to minimum lot width requirements and concluded that the extreme slope and Special Natural Area District (SNAD) regulations prohibit such use; and

WHEREAS, specifically, the applicant's analysis concluded that the natural topography would have to be greatly modified to accommodate the necessary accessory parking for a community facility use and that such contouring would not be consistent with SNAD requirements to minimize topographic modifications; and

WHEREAS, additionally, the applicant asserts that the site's slope limits the building footprint, which cannot accommodate a community facility building given that the maximum lot coverage on the site would be 12.5 percent or 1,984 sq. ft. and as such a 1,984 sq. ft. footprint would not be sufficient for a community facility building; and

WHEREAS, the applicant asserts that the standard footprint associated with community facility buildings within the surrounding area is substantially greater than the 1,984 sq. ft. that would be possible at the site; and

WHEREAS, specifically, the average footprint for a community facility building in the area measures 19,673 sq. ft.; and

WHEREAS, further, the applicant notes that 43 percent of the ground floor of a community facility would be dedicated to Code-compliant restrooms, stairwells, an elevator, and accessory space; and

WHEREAS, as to vacancy, the applicant notes that the lot is one of three within a 600-ft. radius that is not developed; all of the three have lot widths of less than 100 feet, but the

other two lots are either so small or irregularly-shaped that no development would be feasible; and

WHEREAS, further, the applicant states that of the 21 other lots located within the 600-ft. radius, with widths less than 100 feet, all are developed with single family homes; and

WHEREAS, accordingly, the applicant notes that lots with widths of less than 100 feet are not unique in the immediate area and are, in fact, developed with single-family homes; however, a vacant lot with a width of less than 100 feet is unique; and

WHEREAS, as to the history of the lot, at the Board's direction, the applicant reviewed the ownership history of the adjoining lots and found that on December 15, 1961, it was in common ownership with the adjacent lots and, thus, the ZR § 23-33 exception for small lots is not available; and

WHEREAS, the applicant states that on December 15, 1961, Tax Lot 458 was part of the former larger Lot 350 (which included Lots 350, 374, 450, and 463); the tax lot subdivision appears to have occurred between 1971 and 1974 and the first deed of record that references Tax Lot 458 as apportioned from Lot 350 was April 4, 1978; and

WHEREAS, accordingly, the applicant asserts that the zoning lot has been owned separately and individually from all adjoining zoning lots since 1978; and

WHEREAS, the applicant states that in 1978 and until 2005, the site was within an R1-2 zoning district which permitted construction of single-family detached homes on lots with widths of at least 60 feet; thus, the insufficient width condition was not self-created as it pre-dates the zoning change; and

WHEREAS, thus, the applicant asserts that until 2005, when the lot had been in existence for approximately 27 years, it could have constructed a single-family home on the lot in full accordance with zoning; and

WHEREAS, the Board notes that the lot dimensions and sloping conditions contribute to a hardship in developing the site with a complying building and that the applicant has submitted evidence in the record to establish that the lot has existed in its current configuration and was owned separately and apart from all adjacent lots at the time of the 2005 adoption of the lot width restriction, and at the time of the subject application; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the applicant represents that the proposed home 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 home complies with all R1-1 (NA-2) zoning district parameters aside from lot width and that the lot area far exceeds the minimum required within the zoning district; and

WHEREAS, specifically, the applicant notes that there are 21 lots within a 600-ft. radius of the site with widths less than 100 feet that are occupied by single-family homes, thus, the home is compatible with that context; and

WHEREAS, as to bulk, the applicant states that the home complies with all R1-1 zoning district requirements including its 4,549 sq. ft. of floor area (0.28 FAR), a front yard depth of 20'-0", side yards with widths of 21'-1" and 15'-11", and rear yard depth of 97'-6"; and

WHEREAS, the applicant notes that, in fact, the floor area is just more than half of the maximum permitted floor area of 0.5 FAR; and

WHEREAS, additionally, the applicant notes that the proposed home will have a wall height of 20'-11", while the maximum permitted wall height is 25'-0" (ZR § 23-631); a rear yard measures 97'-6", while the minimum required is 30'-0" (ZR § 23-47); and an open space ratio of 305.6 percent, while a minimum open space ratio of 150 percent is required (ZR § 23-141); and

WHEREAS, the applicant provided responses to the Opposition's concerns about compatibility with the area including the front yard, lot coverage, perspective from Sycamore Avenue, lot frontage, and the sewer system; and

WHEREAS, as to lot coverage, the applicant notes that it proposes 12.5 percent, not the 70 percent that the Opposition alleges and that the open space ratio of 305.6 percent is substantially greater than the minimum required 150 percent; and

WHEREAS, as to the front yard depth of 20'-0", the applicant notes that this meets the underlying zoning regulations and that of the homes at 5225 and 5271 Independence Avenue are located closer to the street; and

WHEREAS, as to the perspective from Sycamore Avenue, the applicant provided a streetscape to reflect the view from the rear of the site at the Board's direction, which reflects that the home is designed to fit within the steep slope while not overwhelming the street below and the applicant notes that the Landmarks Preservation Commission (LPC) and City Planning Commission (CPC) approved the design within the hillside; and

WHEREAS, additionally, the applicant notes that the rear of the home is 97'-6" from the rear property line and 130 feet from the curb on Sycamore Avenue; and

WHEREAS, the applicant proposes additional plantings in the rear yard to buffer the rear of the home and notes that the plantings were approved by the CPC and are required to be planted in accordance with a Notice of Restrictions recorded against the property; and

WHEREAS, as to the lot frontage, the applicant notes that of the 24 lots within the 600-ft. radius of the lot with widths less than 100 feet, the average lot width is 68'-11", significantly less than the subject lot's width; and

WHEREAS, as to the concerns about the impact the home will have on the area's vulnerable sewer system, the applicant states that it has agreed to enter into a written understanding before the sewer investigation work is commenced to enable both the applicant and neighboring property owners to understand the sewer condition and capacity; and

WHEREAS, further, the applicant has already reviewed a draft agreement concerning the investigatory work to be undertaken and is working with the Opposition's counsel to resolve any concerns; and

WHEREAS, the applicant also notes that after the completion of the sewer investigation, it will be required to submit a permit application to the Department of Environmental Protection for approval of the sewer work plan before commencing any sewer-related construction work, notwithstanding that the connection will be to the private sewer line; and

WHEREAS, by Certificate of Appropriateness, dated October 15, 2013, LPC approved the proposal; and

WHEREAS, by authorization, dated August 19, 2013, CPC approved the proposal as compliant with all relevant SNAD regulations; 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 unique conditions, which existed in 1978 and at the time of the 2005 adoption of ZR § 23-32's lot width requirement along the street frontage; and

WHEREAS, the applicant notes that it complies with all R1-1 zoning district parameters except for the minimum lot width, of which it is only deficient by approximately seven feet (or seven percent of the required width of 100 feet); 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 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 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, within an R1-1 zoning district mapped within a Special Natural Area District (NA-2) within the Riverdale Historic District, the construction of a single-family home on a zoning lot that does not comply with minimum lot width requirements, contrary to ZR § 23-32; *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 May 29, 2013"– (9) sheets; and *on further condition*:

THAT the bulk will be limited to 4,549 sq. ft. of floor area (0.28 FAR), a front yard depth of 20'-0", side yards with widths of 21'-1" and 15'-11", a rear yard depth of 97'-6", and two accessory off-street parking spaces, as reflected on the BSA-approved plans;

THAT substantial construction will be completed pursuant to ZR § 72-23;

THAT construction will be in strict conformance with Landmarks Preservation Commission and City Planning Commission approvals;

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, October 29, 2013.

77-13-BZ
CEQR #13-BSA-102M

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 45 Great Jones Street LLC, for Joseph Lauto, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit residential use, contrary to ZR 42-00 and ground floor commercial use contrary to ZR§42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 45 Great Jones Street, between Lafayette and Bowery Streets, on the south side of Great Jones Street, Block 530, Lot 29, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings, dated July 15, 2013, acting on Department of Buildings Application No. 121329026, reads, in pertinent part:

Proposed UG 2 residential use is not permitted in an M1-5B and is contrary to ZR 42-10;

Proposed UG 6 retail use is not permitted in M1-5B below the floor level of the second story and is contrary 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 NoHo Historic District Extension, the construction of an eight-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor retail, contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on August 13, 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 Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 2, Manhattan, recommends approval of the application on condition that the ground floor not be used as an eating and drinking establishment; and

WHEREAS, the subject site is an interior lot located on the south side of Great Jones Street between Lafayette Street and Bowery, within an M1-5B zoning district within the NoHo Historic District Extension; and

WHEREAS, the site has 27 feet of frontage along Great Jones Street, a lot depth of 100 feet, and a lot area of 2,700 sq. ft.; and

WHEREAS, the site is occupied by a three-story building that was built in 1915 and has historically been occupied by commercial and light industrial uses; the applicant represents that the building has been vacant since 2008 and its most recent use was as a lumber yard; and

WHEREAS, the applicant represents that the proposed mixed residential (Use Group 2) and commercial (Use Group 6) building, which will incorporate the existing building façade and certain existing structural elements, will have a total floor area of 13,500 sq. ft. (5.0 FAR), a residential floor area of 11,697 sq. ft. (4.33 FAR), a commercial floor area of 1,803 sq. ft. (0.67 FAR), a street wall height of 91.75 feet, a building height of 100 feet, and a rear yard depth of 30 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 eighth stories will be occupied by a total of six 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 site has a small lot area, narrow lot width, and is occupied by an underdeveloped building, which is classified by the Landmarks Preservation Commission ("LPC") as contributing to the character of the NoHo Historic District Extension; and (2); the site is surrounded on all three sides by significantly overbuilt buildings, creating a "canyon effect" that reduces the lots marketability for conforming uses; and

WHEREAS, the applicant states that the site's lot area of 2,700 sq. ft., lot width of 27 feet, and underdevelopment (2.7 FAR) make it unique in the M1-5B district; and

WHEREAS, in support of this statement, the applicant submitted its analysis of the 157 tax lots within the M1-5B district north of Houston Street to Astor Place and between Broadway and Bowery; based on the analysis, the applicant states that while there are 23 lots that share the site's small lot area (2,700 sq. ft. or less), narrow lot width (27 feet or less), and underutilization (3.0 FAR or less where the maximum permitted FAR is 5.0 for commercial and manufacturing uses and 6.5 for community facility uses), only ten such lots are not already occupied by residential or mixed uses; further, when vacant lots, lots that are clearly part of a larger development assemblage, and inherently unbuildable lots are eliminated from consideration, only five lots (six including the subject site) remain; and

WHEREAS, the applicant distinguishes the remaining five lots from the subject site based on various factors, including: location on a corner, already-transferred development rights, and shared historic characteristics with neighbors that make independent development unlikely; and

WHEREAS, further, the applicant notes that even if the other five lots are considered uniquely burdened by the same factors affecting the subject lot, six lots out of the 157 lots within the study area represents only approximately four percent of the lots; and

WHEREAS, the applicant also contends that the site is further constrained by being occupied by a building designated as contributing to the NoHo Historic District Extension; as such, it cannot demolish the building and replace it with a new building that is better suited to modern conforming uses; and

WHEREAS, as to the "canyon effect," the applicant asserts that the existence of a seven-story building to the east, a six-story building to the west, and seven-story building to the south, each with a rear yard depth of significantly less than 30 feet, further constrain conforming development on the site; and

WHEREAS, specifically, the applicant states that although a rear yard would not be required for certain conforming uses, the canyon effect would compel it to provide one in order to supply natural light to the rear windows of the buildings (an essential, in terms of marketability, for certain uses such as offices); and

WHEREAS, consequently, the applicant states that the site's small lot area, narrow lot width, and overbuilt neighbors leave it with the following as-of-right scenarios, which it deems equally undesirable: (1) it could create a full lot coverage building by demolishing the rear wall, which would

yield floorplates of approximately 2,700 sq. ft., a building depth of 100 feet, and limited windows for light and ventilation except along Great Jones Street; or (2) it could preserve the existing rear yard and enlarge vertically, which would provide more windows, but would result in floorplates of 2,423 sq. ft. (which is essentially what the site offers now and cannot rent); and

WHEREAS, the Board notes that it is not persuaded that the "canyon effect" is a unique condition; on the contrary, the Board finds that such condition is characteristic of numerous lots within the district; and

WHEREAS, nevertheless, the Board finds that the remaining 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 proposal, the applicant examined the economic feasibility of: (1) an as-of-right 5.0 FAR commercial scenario (offices); (2) an as-of-right 5.0 FAR hotel scenario (22 hotel rooms); and (3) a lesser variance scenario (mixed residential and commercial within the existing building); and

WHEREAS, the applicant concluded that both as-of-right scenarios 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 the only economically viable scenario; 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 43.2 percent of the 535 tax lots within the subject M1-5B district are either residential or mixed residential and commercial; thus, the applicant asserts that the existing context includes a significant amount of residential use; and

WHEREAS, similarly, the applicant states that the street-level residential lobby and retail facade will enhance the Great Jones Street frontage, which today, with the exception of the few remaining underutilized sites and parking lots, consists of small retail shops, restaurants and residential lobby entrances; and

WHEREAS, the applicant also notes that the proposal will be a natural complement to several recently approved LPC and BSA applications on Great Jones Street and Bond Street, and has the support of the community, which has historically shown an aversion to certain as-of-right uses such as hotels; and

WHEREAS, similarly, the community has, both historically and in this case, been opposed to the creation of eating and drinking establishments in the area; accordingly, the applicant has agreed not to allow an eating or drinking establishment to occupy the ground floor of the proposed building; 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, 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 upon a finding that the owner has made a good faith effort to rent the space to a conforming use at fair market rentals; and

WHEREAS, the applicant represents that one part-owner of the site has operated industrial businesses on the subject block for more than 50 years and is intimately knowledgeable regarding the real estate trends and availability of commercial and manufacturing space in the vicinity, and the other part-owner is a real estate development company that has had offices on Great Jones Street for more than ten years and maintains a database of conveyances and leases in the neighborhood; the owners have held the site for many years and have been unable to rent for conforming uses; and

WHEREAS, as to bulk, the applicant states that the building's street wall height of 91.75 feet and building height of 100 feet are comparable to buildings in the immediate vicinity; and

WHEREAS, LPC has approved the proposal by Certificate of Appropriateness, dated January 8, 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 size and narrowness, the limited economic potential of conforming uses on the lot, and the fact the site is occupied by a building designated as contributing to the NoHo Historic District Extension; 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. 13BSA102M, dated February 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, 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 October 2013 Remedial Action Work Plan and site-specific 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, 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 an M1-5B zoning district within the NoHo Historic District Extension, the construction of an eight-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 July 17, 2013"- eighteen (18) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a total floor area of 13,500 sq. ft. (5.0 FAR), a residential floor area of 11,697 sq. ft. (4.33 FAR), a commercial floor area of 1,803 sq. ft. (0.67 FAR), eight stories, a street wall height of 91.75 feet, a building height of 100 feet, and a rear yard depth of 30 feet beginning at the second story;

THAT an eating and drinking establishment (Use Group 6) will not be permitted at the site;

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 them 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, October 29, 2013.

158-13-BZ
CEQR #13-BSA-141M
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Golf & Body NYC, owners.
SUBJECT – Application May 20, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Golf & Body*). C6-6(MID) zoning district.
PREMISES AFFECTED – 883 Avenue of the Americas, southwest corner of the Avenue of the Americas and west 32nd Street, Block 807, Lot 1102, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 6, 2013, acting on Department of Buildings Application No. 121115881, reads in pertinent part:

> Proposed physical culture establishment use is not permitted as-of-right in a C6-6 district, per ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-6 zoning district within the Special Midtown District, the operation of a physical culture establishment ("PCE") located in portions of the third story and third story mezzanine of a 48-story mixed residential and commercial building, contrary to ZR § 32-10; 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 Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is an irregular lot located at the southwest corner of the intersection of Avenue of the Americas and West 32nd Street, with 98.75 feet of frontage along Avenue of the Americas, 141.67 feet of frontage along West 32nd Street, and 41.67 feet of frontage along West 31st Street; and

WHEREAS, the site has a lot area of approximately 18,104 sq. ft., and is occupied by a 48-story mixed residential and commercial building with approximately 422,255 sq. ft. of floor area (13.87 FAR); and

WHEREAS, the PCE will occupy 17,586 sq. ft. of floor area on portions of the third story and third-story mezzanine; and

WHEREAS, the PCE will be operated as Golf & Body; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 6:00 a.m. to 10:00 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, 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 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 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 also finds that the PCE is consistent with the purposes and provisions of the Special Midtown District, in accordance with ZR § 81-13; 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. 13BSA141M, 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 C6-6 zoning district within the Special Midtown District, the operation of a PCE located in portions of the third story and third-story mezzanine of a 48-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 20, 2013" – Four (4) sheets and "Received August 29, 2013" – Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on October 29, 2023;

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 all massages must be performed by New York State licensed massage therapists;

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

THAT accessibility for persons with certain physical disabilities 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 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, October 29, 2013.

159-13-BZ
CEQR #13-BSA-142M
APPLICANT – Sheldon Lobel, P.C., for Melvin Friedland & Lawrence Friedland, owners; 3799 Broadway Fitness Group, LLP, lessees.
SUBJECT – Application May 24, 2013 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*); Special Permit (§73-52) to allow the extension of the proposed use into 25' feet of the residential portion of the zoning lot. C4-4 and R8 zoning districts.
PREMISES AFFECTED – 3791-3799 Broadway, west side of Broadway between 157th Street and 158th Street, Block 2134, Lot 180, Borough of Manhattan.
COMMUNITY BOARD #12M
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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 6, 2013, acting on Department of Buildings ("DOB") Application No. 121607083, reads in pertinent part:

> Proposed use as Physical Culture Establishment, as defined by ZR 12-10, in a C4-4 zoning district, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36;
> Proposed extension of use as Physical Culture Establishment, as defined by ZR 12-10, into R8 portion of zoning lot is contrary to ZR 77-11 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-52; 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 R8 zoning district, the legalization of a physical culture establishment ("PCE") in portions of the cellar and first floor, and entire second floor, of an existing two-story commercial use building, contrary to ZR § 32-10, and to permit the legalization of an extension of the proposed PCE use within the existing two-story commercial use 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 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 Ottley-Brown; and

WHEREAS, Community Board 12, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped lot located on the west side of Broadway and bordered to the north by West 158th Street, to the south by West 157th Street, and to the west by Edward Morgan Place, partially within a C4-4 zoning district and partially within an R8 zoning district; and

WHEREAS, the site has approximately 200 feet of frontage along Broadway, approximately 33 feet of frontage along West 157th Street, approximately 210 feet of frontage along Edward Morgan Place, and approximately 210 feet of frontage along West 158th Street, with a lot area of 26,713 sq. ft.; and

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

WHEREAS, the PCE occupies approximately 20,376 sq. ft. of floor area in portions of the cellar and first floor, and the entire second floor; and

WHEREAS, the Board has exercised jurisdiction over the site since October 27, 1921, when under BSA Cal. No. 972-21-BZ, the Board granted a variance to permit an extension of a business building from a business district into a residential district; subsequently, on July 1, 1924, under BSA Cal. No. 571-24-BZ, the Board granted a variance to permit an extension of a business building located in both a business district and residential district; lastly, on October 5, 1965, under BSA Cal. No. 757-64-A, the Board granted an appeal from the decision of the fire commissioner requiring installation of a non-automatic sprinkler system in the cellar and installation of an automatic fire alarm with central office connection throughout the building; and

WHEREAS, the applicant notes that the PCE has been in operation since July 8, 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 lot six feet to the west along the southern lot line, thereby legalizing a six foot sliver of the existing two-story commercial building within the R8 portion of the lot; and (2) pursuant to ZR § 73-36, legalize a PCE in portions of the cellar and first floor, and the entire second floor, of an existing two-story commercial use building; 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 issues of single ownership and the 50 percent lot area requirement, the applicant submitted deeds showing that the zoning lot was in single ownership prior to December 15, 1961 and continuously from that time onward, as well as a site plan indicating that 19,913 sq. ft. (75 percent) of the site's total lot area of 26,713 sq. ft. is located within the C-4-4 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 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 two-story building that is too small—approximately six feet wide—to accommodate a separate residential or community facility tenant; as such, absent the requested extension of the PCE into the residential space, the six foot wide portion would remain vacant; and

WHEREAS, the applicant also asserts that because there is an existing, two-story community facility building on the R8 portion of the lot, redevelopment of the R8 portion is impractical because it would necessitate demolition of the existing building; and

WHEREAS, finally, the applicant states that the small size and triangular shape of the R8 portion of the lot make it unsuitable for residential use; 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 commercial and high-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 decades; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C4-4 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, turning to the substantive 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, the Board, therefore, has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36, 73-03, and 73-52; and

WHEREAS, the Board reduces the term of the grant for the period since the PCE began operation on July 8, 2013 to the date of the grant; 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. 13BSA142M, 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, 73-03, and 73-52 to permit, on a site partially

within a C4-4 zoning district and partially within an R8 zoning district, the legalization of an existing PCE in portions of the cellar and first floor, and entire second floor of an existing two-story commercial use building, contrary to ZR § 32-10, and the legalization of an extension of an existing commercial use within portions of an existing building within 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 "August 28, 2013" – Five (5) sheets and "Received October 16, 2013" – One (1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on July 8, 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 bulk parameters of the building will be as follows: 6,800 sq. ft. within the R8 portion of the lot and 19,913 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 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 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, October 29, 2013.

16-12-BZ

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

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 November 26, 2013, at 10 A.M., for decision, hearing closed.

50-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.

PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, 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 November 26, 2013, at 10 A.M., for decision, hearing closed.

236-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.

SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

262-12-BZ

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 – Laid over to

November 26, 2013, at 10 A.M., for continued hearing.

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 4, 2013, at 10 A.M., for continued 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
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 December 17, 2013, at 10 A.M., for decision, hearing closed.

339-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Lion Bee Equities, LLC., owner.
SUBJECT – Application December 12, 2012 – Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.
PREMISES AFFECTED – 252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway, Block 8129, Lot p/o 53, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to November 26, 2013, 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, 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 – Laid over to December 10, 2013, at 10 A.M., for continued hearing.

13-13-BZ & 14-13-BZ
APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.
SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

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 December 10, 2013, at 10 A.M., for deferred decision.

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 – Laid over to December 10, 2013, at 10 A.M., for continued hearing.

106-13-BZ
APPLICANT – Law office of Fredrick A Becker, for Harriet and David Mandalaoui, owners.
SUBJECT – Application April 18, 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 yard (§23-461) and perimeter wall height (§23-631); R3-2 zoning district.
PREMISES AFFECTED – 2022 East 21st Street, west side of East 21st Street between Avenue S and Avenue T, Block 7299, Lot 18, 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 November 26, 2013, at 10 A.M., for decision, hearing closed.

129-13-BZ
APPLICANT – Lewis E. Garfinkel, for Tammy Greenwald, owner.
SUBJECT – Application May 7, 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(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1010 East 22nd Street, west side of East 22nd Street, 264' south of Avenue I, Block 7585, Lot 61, 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 November 26, 2013, at 10 A.M., for decision, hearing closed.

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
ACTION OF THE BOARD – Laid over to December 10, 2013, at 10 A.M., for continued hearing.

167-13-BZ
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 – Laid over to November 26, 2013, at 10 A.M., for continued hearing.

168-13-BZ
APPLICANT – Lewis E Garfinkel, for Dovie Minzer, owner.
SUBJECT – Application June 4, 2013 – Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(a); side yard (§23-461(a); less than the required rear yard; (§23-47) and perimeter wall height (§23-631. R3-2 zoning district.
PREMISES AFFECTED – 1323 East 26th Street, east side of East 26th Street, 180' south of Avenue M, Block 7662, Lot 39, 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 November 26, 2013, at 10 A.M., for decision, hearing closed.

173-13-BZ
APPLICANT – Greenberg Traurig, LLP, for 752 UWS, LLC, owner; 752 Paris Gym LLC, lessee.
SUBJECT – Application June 14, 2013 – Variance (§72-21) to legalize the existing Physical culture establishment (*Paris Health Club*), which occupies the cellar, first floor and the first floor mezzanine of a 24-story residential building, contrary to use regulations (§22-00). R10A zoning district.
PREMISES AFFECTED – 752-758 West End Avenue aka 260-268 West 97th Street, southeast corner of West End Avenue and West 97th Street, Block 1868, Tentative Lot 1401 (f/k/a part of 61), 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 November 26, 2013, at 10 A.M., for decision, hearing closed.

229-13-BZ
APPLICANT – Rothkrug Rothrug & Spector LLP, for Country Leasing Limited Partnership, owner; Blink Nostrand Avenue, Inc., lessee.
SUBJECT – Application August 6, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 3779-3861 Nostrand Avenue, 2928/48 Ave Z, 2502/84 Haring Street, Block bounded by Nostrand Avenue, Avenue Z, Haring Street and Avenue Y, Block 7446, Lot 1, 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 November 26, 2013, at 10 A.M., for decision, hearing closed.

232-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for SDF12 Bay Street, LLC, owner; Staten Island Fitness, LLC, lessee.
SUBJECT – Application August 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within portions of proposed commercial building. M1-1 zoning district.
PREMISES AFFECTED – 364 Bay Street, northwest corner of intersection of Bay Street and Grant Street, Block 503, Lot 1 and 19, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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DOCKETS

New Case Filed Up to November 19, 2013

298-13-BZ
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299-13-BZ
4299 Hylan Boulevard, Between Thomycroft Avenue and Winchester Avenue, Block 5292, Lot(s) 37, 39, & 41, Borough of **Staten Island, Community Board: 3**. 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 district.

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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: 1**. Proposed construction of a Mixed use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street in Manhattan contrary to General City law Section 35 .C5-5/C6-4 Zoning District C5-5/C6-4 district.

301-13-BZ
1502 Avenue N, Southeast Corner of East 15th Street and Avenue N., Block 6753, Lot(s) 1, Borough of **Brooklyn, Community Board: 14**. The application is filed pursuant to section 72-21 of the zoning Resolution as amended to vary sections 24-11,24-521,24-52,24-34(a),24-06 of the resolution. If approved the proposal would add (3) floors in a line enlargement upon the existing one story and basement use group 4 synagogue. It would allow for the creation of an accredited religious based educational institution of higher education(college and post graduate)(use group3)with (10) dormitory rooms and Variance (§72-21) to permit the enlargement of an existing synagogue(UG 4) and the creation religious based educational institution (UG 3) with dormitory rooms. R5B zoning district. R5b district.

302-13-BZ
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303-13-BZ
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304-13-A
517-519 West 19th Street,New York,NY, North Side of West 19th Street between 10th and 11th Avenues., Block 691, Lot(s) 22, Borough of **Manhattan, Community Board: 4M**. 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 . C6-2 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

DECEMBER 10, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 10, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

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 previously granted 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

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 previously approved Special Permit (§73-36) which permitted the operation of physical culture establishment, on portions of the first and second floors, 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

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 for a previously granted 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

25-08-BZ
APPLICANT – Eric Palatnik, P.C., for Torah Academy for Girls, owner.
SUBJECT – Application February 14, 2013 – Application is filed on behalf of the (Torah Academy for Girls). The Bais of Long Island, federally recognized, religious based, not-for-profit 501©(3) organization pursuant to ZR§72-01 to request an amendment to two (2) earlier issued variances pursuant to Z.R.§72-21.
PREMISES AFFECTED – 444 Beach 6th Street, Beach Street and Meehan Avenue, Block 15591, Lot 1, Borough of Queens.
COMMUNITY BOARD #14Q

APPEALS CALENDAR

75-11-A & 119-11-A
APPLICANT – NYC Board of Standards and Appeals
SUBJECT – Application May 25, 2011 – To consider Dismissal for Lack of Prosecution.
PREMISES AFFECTED – 2230-2234 Kimball Street, Kimbal Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #18BK

348-12-A & 349-12-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Starr Avenue Development LLC, owner.
SUBJECT – Application December 28, 2012 – Appeal from decision of Borough Commissioner denying permission for proposed construction of two one-family dwellings within the bed of a legally mapped street. 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

287-13-A & 288-13-A
APPLICANT – Rothkrug Rothkrug & Spec tor 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 Article 3 of General City Law 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

ZONING CALENDAR

6-12-BZ
APPLICANT – Syeda Laila, owner.
SUBJECT – Application January 13, 2013 – Variance (§72-21) to permit a new three family home, contrary to bulk 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

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. 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

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, ZR§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

130-13-BZ
APPLICANT – Rothkrug Rothdrug & Spector, for Venetian Management LLC, owner.
SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a previously approved variance which permitted a one-story storage garage for more than five motor vehicles with motor vehicle repair shop (UG 16B) limited to vehicles owned by tenants in an R6 zoning district which expired on February 14, 1981; Amendment (§11-413) to change the previously approved 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

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

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

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 fitness center physical culture establishment (*Ultrafit*) on portions of the existing building pursuant §32-10. 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

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, NOVEMBER 19, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

699-46-BZ
APPLICANT – Eric Palatnik, P.C., for Gurcharan Singh, owner.
SUBJECT – Application September 17, 2012 – Amendment (§11-412) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory use. The amendment seeks to convert existing service bays to a convenience store, increase the number of pump islands, and permit a drive-thru to the proposed convenience store. R3X zoning district.
PREMISES AFFECTED – 224-01 North Conduit Avenue, between 224th Street and 225th Street, Block 13088, Lot 44, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for an amendment to a prior grant to permit the conversion of automotive service bays to an accessory convenience store, the elimination of automobile repair use, and an increase in the number of gasoline pumps from three to eight; 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 22, 2013, and then to decision on November 19, 2013; and

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

WHEREAS, Community Board 13, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is a corner lot spanning the full length of 224th Street, between North Conduit Avenue and 143rd Avenue, within an R3X zoning district; and

WHEREAS, the site has 133.06 feet of frontage along North Conduit Avenue, 185.6 feet of frontage along 224th Street, 120 feet of frontage along 143rd Street, and a lot area of 18,864 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 28, 1947, when, under the subject calendar number, the Board granted a variance to permit the reconstruction, enlargement, and continued use of an existing gasoline service station, and the addition of an automobile sales showroom, a repair shop, an auto laundry, a lubritorium, and an office; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, on November 13, 1968, the Board granted an amendment to allow for a total of 12 gasoline storage tanks and the relocation of pumps and pump islands at the site; 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 elimination of the automobile repair use; and (3) an increase in the number of pumps from three to eight; and

WHEREAS, pursuant to ZR § 11-412, the Board may amend the grant; and

WHEREAS, the applicant represents that the proposed convenience store complies with Department of Buildings' Technical Policy and Procedure Notice No. 10/1999, in that the selling floor of the convenience store will be located on the same lot as the gasoline station and have less than 2,500 sq. ft. of floor area; and

WHEREAS, the Board notes that, initially, the applicant also sought to construct a drive-thru for the convenience store; however, in response to concerns raised by the Board, that portion of the proposal was abandoned; and

WHEREAS, in addition, at hearing, the Board expressed concerns over: (1) the site's towing-related operations, which are not authorized under any of the Board's grants; and (2) the signage calculations provided; and

WHEREAS, in response, the applicant acknowledged that towing-related operations were not permitted; the also applicant submitted: (1) an affidavit from the operator of the site, which attested to the recent cessation of towing-related operations; and (2) signage calculations by frontage, which reflects that the signage is in accordance with the C1 regulations; and

WHEREAS, based upon the above, the Board finds that the requested amendment 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 January 28, 1947, so that as amended the resolution reads: "to allow for the conversion of automotive service bays to an accessory convenience store, the elimination of automobile repair use, an increase in the number of gasoline pumps from three to eight, and other related site changes; *on condition* that all use and operations shall substantially conform to plans filed with this application marked 'Received November 1, 2013' – nine (9) sheets; and *on further condition*:

THAT all signage will comply with the C1 zoning

district regulations;

THAT the above condition and all relevant conditions from prior grants will appear on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by May 19, 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."

(DOB Application No. 420594315)

Adopted by the Board of Standards and Appeals, November 19, 2013.

405-01-BZ

APPLICANT – Eric Palatnik, P.C., for United Talmudcial Academy, owner.

SUBJECT – Application September 18, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a five-story school and synagogue, which expires on February 14, 2014. R5/C2-3 zoning district.

PREMISES AFFECTED – 1275 36th Street, aka 123 Clara Street, between Clara Street and Louisa Street, Block 5310, Lot 1, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a five-story school and synagogue; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 2013; 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 southeast corner of the intersection of Clara Street and 36th Street, within a C2-3 (R5) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 12, 2002 when, under the subject calendar number, the Board granted a variance to permit the construction of a five-story school building and synagogue (Use Groups 3 and 4); and

WHEREAS, substantial construction was to be completed by November 12, 2006, in accordance with ZR § 72-23; however, as of that date, substantial construction had not been completed due to financial hardship and an inability to obtain financing; and

WHEREAS, accordingly, by resolution dated February 9, 2010, the Board granted an extension of time to complete construction, to expire on February 9, 2014; and

WHEREAS, the applicant represents that although substantial construction has not been completed, it has made the following progress on the project: demolition of the existing building, acquisition of the new building permit from the Department of Buildings, and ordering of steel trusses for the building; and

WHEREAS, accordingly, the applicant states that work will not be substantially complete by February 9, 2014; and

WHEREAS, as such, the applicant requests an extension of time to complete construction; and

WHEREAS, at hearing, the Board expressed concern about open DOB violations and the excessive debris and poor maintenance of the site; and

WHEREAS, in response, the applicant stated that it has removed the conditions that gave rise to the DOB violations, but has not yet certified correction of such violations; therefore, the the outstanding violations reflect an administrative duty, rather than a safety problem; and

WHEREAS, as to the maintenance of the site, the applicant submitted photographs showing that the site had been cleaned up; 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 November 12, 2002, so that as amended the resolution reads: "to grant an extension of time to complete construction for a term of four years, to expire on November 19, 2017; *on condition*:

THAT substantial construction will be completed by November 19, 2017;

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); 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. 301234251)

Adopted by the Board of Standards and Appeals, November 19, 2013.

19-05-BZ
APPLICANT – Slater & Beckerman, P.C., for Groff Studios Corp., owner.
SUBJECT – Application August 26, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the change in use of portions of an existing nine-story, mixed-use building to residential use, which expires November 10, 2013. M1-6 zoning district.
PREMISES AFFECTED – 151 West 28th Street, north side of West 28th Street, 101' east of Seventh Avenue, Block 804, Lot 8, 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 Montanez 5
Negative:.....0
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 M1-6 zoning district, the change in use of portions of an existing nine-story, mixed-use building to residential use (Use Group 2), which expired on November 10, 2013; and

WHEREAS, a public hearing was held on this application on January 22, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 2013; 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 north side of West 28th Street, between Sixth Avenue and Seventh Avenue, within an M1-6 zoning district; and

WHEREAS, the site is currently occupied by a nine-story mixed-use commercial/ residential building, with a total floor area of 39,950 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 24, 1981 when, under BSA Cal. No. 768-81-ALC, the Board granted an application pursuant to ZR § 15-021 to permit the conversion of 24,776 sq. ft. of commercial floor area on the second through ninth floors of the subject building to residential floor area, with the exception of half-floor units on the second, third, fifth and seventh floors; and

WHEREAS, on October 18, 2005, under the subject calendar number, the Board granted a variance to permit the conversion of four units constituting 8,750 sq. ft. of floor area on the second, third, fifth and seventh floors from commercial use to residential use; and

WHEREAS, substantial construction was to be completed by October 18, 2009, in accordance with ZR § 72-23; however, as of that date, substantial construction was not complete; and

WHEREAS, accordingly, on November 10, 2009, the Board granted an extension of time to complete construction for a term of four years, to expire on November 10, 2013; and

WHEREAS, the applicant represents that work has proceeded as follows: (1) work has been completed and a temporary certificate of occupancy has been obtained for Units 5W and 7W; and (2) work has been performed on Unit 2W, but the Department of Buildings ("DOB") has not yet inspected and signed off the work; and

WHEREAS, accordingly, the applicant states that additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant notes that completion of the project has been slowed by delays in purchasing the units, obtaining co-op approval of the construction documents for the renovation of the units, and acquiring DOB permits for the work; in addition, it has not even completed the purchase of Unit 3W, which is necessary prior to the conversion authorized by the subject variance; 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 18, 2005, 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 November 10, 2017; *on condition*:

THAT substantial construction will be completed by November 10, 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. 103993270)

Adopted by the Board of Standards and Appeals, November 19, 2013.

219-07-BZ
APPLICANT – James Chin & Associates, LLC, for External Sino Dev. Condo, LLC, owner; Shunai (Kathy) Jin, lessee.
SUBJECT – Application June 1, 2012 – Extension of Term of a previously granted Special Permit (§73-36) to permit the continued operation of a physical culture establishment (*Cosmos Spa*), which expired on June 3, 2010. M1-6 zoning district.
PREMISES AFFECTED – 11 West 36th Street, 2nd Floor, north side of West 36th Street between 5th and 6th Avenues, Block 838, Lot 35, Borough of Manhattan.
COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, November 19, 2013.

774-55-BZ

APPLICANT – Sahn Ward Coschignano & Baker, for FGP West Street, LLC, owner.

SUBJECT – Application July 31, 2013 – Extension of Term (§11-411) of a previously granted variance for the continued operation of a (UG8) parking lot for the employees and customers of an existing bank (*Citibank*), which expire d on January 31, 2013; Waiver of the Rules. R5/C1-2 & R5/C2-2 zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue, between Olmstead Avenue and Castle Hill Avenue, Block 3814, Lot 59, Borough of Bronx.

COMMUNITY BOARD #9BX

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 December 17, 2013, at 10 A.M., for decision, hearing closed.

519-57-BZ

APPLICANT – Eric Palatnik, P.C., for BP Amoco Corporation, owner.

SUBJECT – Application June 19, 2013 – Extension of term (§11-411) of an approved variance which permitted the operation and maintenance of a gasoline service station (Use Group 16B) and accessory uses, which expired on June 19, 2013. R3-1/C2-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, northwest corner of Bradley Avenue and Victory Boulevard, Block 462, Lot 35, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

17-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Abrams Holding LLC, owner; Town Sports International dba New York Sports Club, lessee.

SUBJECT – Application August 7, 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 June 4, 2012; Waiver of the Rules. C4-3 zoning district.

PREMISES AFFECTED – 445-455 Fifth Avenue aka 453 Fifth Avenue, between 9th Street and 10th Street, Block 1011, Lot 5, 8, 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 December 17, 2013, at 10 A.M., for decision, hearing closed.

248-03-BZ

APPLICANT – Troutman Sanders LLP, for Ross and Ross, owners; Bally Total Fitness of Greater New York Inc., lessee.

SUBJECT – Application July 30, 2013 – Extension of Term of a previously approved variance to permit the continuance operation of a physical culture establishment (*Bally's Total Fitness)* which will expire on January 27, 2014. C1-5(R8A) & R7A zoning districts.

PREMISES AFFECTED – 1915 Third Avenue, south east 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, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 10, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

71-13-A

APPLICANT – Goldman Harris LLC, for Tuck-It-Away Associates-Deegan, LLC, owners; OTR Media Group, Inc., lessee.

SUBJECT – Application February 13, 2013 – Appeal of Department of Buildings' determination that the subject advertising sign is not entitled to non-conforming use status. M1-4 /R6A (MX-13) zoning districts**.**

PREMISES AFFECTED – 261 Walton Avenue, through-block lot on block bounded by Gerard and Walton Avenues and East 138th and 140th Streets, Block 2344, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, November 19, 2013.

221-13-A
APPLICANT – Law Office of Jay Goldstein, PLLC, for Naseem Ali, owner.
SUBJECT – Application July 22, 2013 – Appeal seeking a determination that the owner has a common law vested right to continue construction under the prior R3A zoning district. R2A zoning district.
PREMISES AFFECTED – 239-26 87th Avenue, south side of 87th Avenue between 241st Street and 239th Street, Block 7966, Lot 54, Borough of Queens.
COMMUNITY BOARD #13Q
ACTION OF THE BOARD – Application granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
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 October 29, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 2013; and

WHEREAS, the subject site is located on the south side of 87th Avenue, between 239th Street and 241st Street, within an R2A zoning district; and

WHEREAS, the site has 40 feet of frontage along 87th Avenue, and a total lot area of 4,696 sq. ft.; and

WHEREAS, the site is proposed to be developed with a two-story residential building with 2,812.38 sq. ft. of floor area (0.6 FAR) and two dwelling units (the "Building"); and

WHEREAS, the applicant represents that the Building complies with the parameters of the former R3A zoning district; and

WHEREAS, on April 23, 2013, Alteration Permit No. 420577753-01-AL (hereinafter, the "Alteration Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, however, on June 24, 2013 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Bellerose, Floral Park, and Glen Oaks Rezoning, which rezoned the site from R3A to R2A; and

WHEREAS, the Building, which is a two-family residence with 2,812.38 sq. ft. of floor area (0.6 FAR), does not comply with the current zoning, which allows only single-family residences with a maximum FAR of 0.5; 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 August 20, 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 to substantial construction, the applicant states that it performed the following prior to the Enactment Date: (1) demolition of the existing garage at the site; (2) partial demolition of the existing two-family building at the site, including roof, attic, and interior partitions; (3) capping of electrical and plumbing; (4) bracing of the existing walls at the cellar and first and second stories; (5) bracing and installation of subflooring for the existing second story; (6) 40 percent of the framing for the enlargement; and (7) three percent of the excavation (the applicant notes that because the majority of the project is developing the first story, the limited amount of excavation work is not reflective of the progress of 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; invoices; and photographs of the site; 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 development is $62,542.85 (including $37,708.64 in hard costs), or 25 percent, out of the $250,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; 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 R2A use regulations are significantly more restrictive than the R3A regulations; specifically, whereas a two-family residence is permitted in an R3A zoning district, only a single-family residence is permitted in an R2A zoning district; and

WHEREAS, in addition, the applicant states that the bulk regulations for an R2A are more restrictive; whereas 0.6 FAR is permitted in an R3A zoning district, only 0.5 FAR is permitted in an R2A zoning district; and

WHEREAS, accordingly, the applicant states that, in order to comply with the R3A regulations, it would have to revert to the prior one-family residence at the site; and

WHEREAS, the applicant represents that the changes to the Building required under the R2A district regulations would significantly decrease the market value of the Building and the site, and result in a loss of all expenditures made to date (since the Building would have to be restored to its pre-construction size and occupancy), which would result in a serious economic loss to the applicant; and

WHEREAS, the Board agrees that complying with 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 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. 420577753-01-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, November 19, 2013.

224-13-A

APPLICANT – Slater and Beckerman, P.C., for Michael Pressman, owner.

SUBJECT – Application July 25, 2013 – Appeal challenging the determination by the Department of Buildings that an automatic sprinkler system is required in connection with the conversion of a three family dwelling (J-2 occupancy) to a two-family (J-3 occupancy). R6B zoning district.

PREMISES AFFECTED – 283 Carroll Street, north side of Carroll Street between Smith Street and Hoyt Street, Block 443, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Adoption of the Resolution to grant the application in part and deny in part.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the First Deputy Commissioner, dated June 28, 2013, acting on Department of Buildings Application No. 320378088 reads, in pertinent part:

> The request to confirm that an automatic sprinkler system is not required throughout the existing building when changing the occupancy group class from R-2 to R-3 is hereby denied.
>
> Where the above referenced Alteration Type I application was reviewed under the 1968 Building Code, the use of the 1968 Building Code or a prior Code for the alteration of existing buildings is permitted subject to the conditions listed under AC 28-101.4.3. Item 2 of AC 28-101.4.3 requires that "the installation, alteration and additions to fire protection systems regulated by Chapter 9 of the New York city building code, including a change of occupancy group that would require such systems, shall be governed by applicable provisions of such chapter and related referenced standards." The subject building with a proposed reduction in the total number of dwelling units from 3 to 2 dwelling units, because of the change in the occupancy of the building from R-2 to R-3, requires compliance with the fire protection systems regulated by Chapter 9, including the sprinkler systems. In accordance with BC 903.2.7, "an automatic sprinkler system shall be installed in Group R fire areas." Since the exceptions under BC 903.2.7 do not apply for the subject building, an automatic sprinkler system is

required to be installed throughout the building.

In addition the Building Code requirement for the sprinkler system is regardless of any sprinkler system exemptions permitted under the New York City Fire Code.

Furthermore, the request to propose a fire escape and hard-wired interconnected smoke and carbon monoxide detectors and alarms in lieu of the required automatic sprinkler system does not provide an equally safe or safer alternative; and

WHEREAS, this is an appeal, pursuant to New York City Charter § 666(6), of DOB's requirement to install a sprinkler system in connection with the building's conversion, and, in the alternate, if the Board agrees with DOB that there is such a requirement, a request pursuant to New York City Charter § 666(7), to vary the requirement; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, with a continued hearing on October 22, 2013, and then to decision on November 19, 2013; 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 occupied by a four-story brick townhouse, which was builtoccupied as a two-family home, later converted to a three-family home, and recently converted back to a two-family home under the subject alteration application; and

Application History

WHEREAS, due to the age of the building, the applicant was able to file its alteration application under the 1968 Building Code to renovate and convert the building from a three-family home to a two-family home; and

WHEREAS, under 1968 Building Code classifications, a three-family home is J-2 and a two-family home is J-3 (neither of which require sprinklers under the 1968 Building Code) and under 2008 Building Code classifications a three-family home is R-2 and a two-family home is R-3 (both of which require sprinklers under the 2008 Building Code with limited exceptions); and

WHEREAS, on October 31, 2011, DOB issued objections to the alteration application, which included a requirement for "Carbon monoxide and smoke detector" but did not include a requirement for sprinklers; and

WHEREAS, on January 26, 2012, DOB approved and permitted the application; and

WHEREAS, the applicant asserts that DOB verbally identified a sprinkler requirement but concluded that it could be waived; and

WHEREAS, in February 2012, the conversion work was completed; and

WHEREAS, on February 23, 2012, DOB denied a request to waive the sprinkler requirements for the change of occupancy group, stating that compliance with the 2008 Building Code is required for the change in occupancy; and

WHEREAS, in connection with the conversion, the property owner installed hard-wired interconnected smoke and carbon monoxide detectors and alarms, which are required under the 1968 Code for J-3 occupancies, and the building has a rear yard fire escape, which provides an additional means of egress; and

WHERAS, the applicant notes that by approval dated April 15, 2012, the Fire Department stated that the 2008 Building Code should not be interpreted to require sprinklers in buildings being converted to one- or two-family homes under the 1968 Building Code, and approved a waiver of the sprinkler requirement, noting the inclusion of the proposed fire safety measures; and

WHEREAS, in June and August 2012, DOB denied the applicant's request to approve the construction without a sprinkler; and

Relevant Statutory Provisions

Building Code § 28-101.4.3 *Optional use of the 1968 building code for alteration of existing buildings*

At the option of the owner, and subject to appropriate approval, a permit may be issued after the effective date of this code authorizing work on existing buildings constructed in accordance with the 1968 building code or with the building laws in effect prior to the effective date of the 1968 building code to be performed in accordance with the requirements and standards set forth in the 1968 building code, subject to the following conditions: . . .

2. The installation, alteration and additions to fire protection systems regulated by Chapter 9 of the [2008] New York city building code, including a change of occupancy group that would require such systems, shall be governed by applicable provisions of such chapter and related referenced standards. With respect to existing buildings, references to occupancy classifications in Chapter 9 of the New York city building code shall be deemed to refer to the equivalent occupancy classification of the 1968 building code; and

The Applicant's Interpretation of Building Code § 28-101.4.3

WHEREAS, the applicant makes the following three primary points in support of its position that sprinklers are not required: (1) the 1968 Building Code does not require sprinklers for two-family homes; (2) the plain reading of Section 28-101.4.3 reflects that the 2008 Building Code is not triggered because the conversion from a three- to a two-family dwelling is not a change of occupancy that would require a sprinkler; and (3) the standards and specifications of the 2008 Building Code only apply to the portion of the fire protection system that is installed as a result of the change in occupancy group; and

WHEREAS, the applicant asserts that the change in occupancy group must be analyzed under the occupancy classifications of the 1968 Building Code to determine whether there is a change in occupancy group that would

require the installation of fire protection systems; and

WHEREAS, the applicant notes that the occupancy group is changing from J-2 (multi-family) to J-3 (one- and two-family) and that under the 1968 Building Code (Table 17-2), J-3 occupancies do not require sprinklers, nor does the change of occupancy to J-3 trigger any requirement for fire protection systems under the 1968 Building Code, other than smoke detectors; and

WHEREAS, the applicant states that since J-3 occupancy does not require a sprinkler under the 1968 Building Code, there is no "change of occupancy group" that "would require such systems" pursuant to Section 28-101.4.3 and therefore the fire protection standards of the 2008 Building Code do not apply to a change in occupancy group from J-2 (multi-family) to J-3 (one- and two-family); and

WHEREAS, the applicant asserts that DOB's interpretation of Section 28-101.4.3 would require the installation of sprinklers for any change of occupancy group rather than only a change that would require it; and

WHEREAS, the applicant states that the requirement to install a sprinkler system does not apply in this case because it is triggered only when the 1968 Code would require the installation of a fire protection system; and

WHEREAS, the applicant asserts that the basic premise of Section 28-101.4.3 is that existing buildings may be altered under the 1968 Building Code instead of the 2008 Building Code, subject to a list of exceptions; and

WHEREAS, the applicant suggests that the interpretation of Section 28-101.4.3 with or without the phrase: "including a change of occupancy group that would require such systems" the provision should read the same way and that is that "the installation, alteration and additions to fire protection systems regulated by Chapter 9 of the New York city building code . . . shall be governed by applicable provisions of such chapter and related referenced standards;" and

WHEREAS, accordingly, the applicant asserts that the provision states that if an owner is installing a fire protection system or altering or adding to an existing one then that work is governed by the 2008 Building Code; and

WHEREAS, the applicant states that the second paragraph of Section 28-101.4.3 – specifically the phrase "including a change of occupancy group that would require such systems" - must mean that if an owner is installing a fire protection system in an existing building because a change in occupancy group would require it under the 1968 Building Code, then the installation must adhere to the requirements of the 2008 Building Code, not the 1968 Building Code; and

WHEREAS, the applicant asserts that the phrase referring to a change in occupancy group cannot be read independently to impose a requirement to install a fire protection system, because it begins with the word "including"; and

WHEREAS, the applicant asserts that of all the sections in Chapter 9 of the 2008 Building Code that cover fire safety systems, only the sprinkler requirements are specifically identified as applying to new buildings as opposed to the other sections that apply to all buildings, existing and new; and

WHEREAS, the applicant asserts that an owner must look to the 2008 Building Code simply to determine the particular requirements of the fire protection system being installed, but not to determine whether or not the installation itself is required; and

WHEREAS, the applicant asserts that nothing in Section 28-101.4.3 contains an independent requirement to install a sprinkler system when there is a change of occupancy group and nothing in 28-101.4.3 says to look to the 2008 Building Code to determine when a change of occupancy group would impose the requirement; and

DOB's Interpretation of Building Code § 28-101.4.3

WHEREAS, DOB asserts that Section 28-101.3.4 requires a new sprinkler system be installed for the following primary reasons: (1) the sprinkler requirement for a change in occupancy group is not within the scope of exemption from the 2008 Building Code; and (2) 2008 Building Code regulations are the sole subject of sub-paragraph 2; and

WHEREAS, DOB states that Section 28-101.4.3 allows construction on existing buildings to follow the 1968 Building Code, except that changes of occupancy groups requiring a fire protection system under Chapter 9 of the 2008 Building Code must follow the 2008 code's fire protection requirements; and

WHEREAS, DOB asserts that Section 28-101.4.3 then clarifies that occupancy groups mentioned in Chapter 9 of the 2008 Building Code using the 2008 Building Code terminology apply to the equivalent occupancy groups listed under the former 1968 Building Code classifications in existing buildings as follows: "[w]ith respect to existing buildings, references to occupancy classifications in Chapter 9 of the New York city building code shall be deemed to refer to the equivalent occupancy classification of the 1968 building code;" and

WHEREAS, DOB states that the applicant's argument that Section 28-101.4.3(2)'s clarification of terminology between the 1968 and 2008 codes means that pre-existing buildings should be analyzed using the 1968 occupancy classifications and applicable 1968 regulations is unreasonable as the second sentence of Section 28-101.4.3(2) would negate the effect of the first sentence, which specifically applies the 2008 Building Code fire protection systems requirements to changes in occupancy even when the rest of the job is allowed to comply with the 1968 Building Code; and

WHEREAS, DOB notes that there is an inherent conflict in the applicant's interpretation, combined with Applicant's lack of reasons to adopt such interpretation; and

WHEREAS, DOB asserts that the applicant's grammatical analysis of Section 28-101.4.3's "participial clause" (i.e., the portion that reads "including a change of occupancy group that would require such systems") does not add to the interpretive dispute at issue because whether this phrase is (in applicant's words) a "specific example within the overall meaning of the sentence" or if it "independently [] impose[s] a requirement to install a fire protection system,"

this section means that changes of occupancy groups requiring fire protection systems are "governed by applicable provisions of [2008 Code Chapter 9] and related referenced standards;" and

WHEREAS, DOB states that the issue remains whether the language "changes of occupancy groups requiring fire protection systems" refers to systems required under the 2008 or 1968 codes and the context of the section clearly points to the 2008 Building Code; and

WHEREAS, DOB states that under Section 28-101.4.3, existing buildings may be altered under the 1968 Building Code instead of the 2008 Building Code but for some exceptions where the 2008 Building Code must apply; and

WHEREAS, DOB states that the first sentence of sub-paragraph 2 addresses work on fire protection systems governed by 2008 Building Code Chapter 9, and it specifies that such work must comply with "such chapter and related referenced standards;" and

WHEREAS, DOB states that since the specific legal references at the beginning and end of the sentence are about Chapter 9 of the 2008 Code, the reference in the middle of this sentence to a "change in occupancy group that would require such [fire protection] systems" must refer to Chapter 9 as well; and

WHEREAS, DOB states that without any indication that this phrase refers to the 1968 Building Code, it would be impossible to infer such meaning from this language; while the applicant claims one can infer its proffered interpretation from this text because the 1968 Building Code governs the work in that building, the paragraph under consideration specifically dictates the exception to the 1968 Building Code's application in favor of the 2008 Building Code and, thus, applicant's interpretation is untenable; and

WHEREAS, additionally, DOB states that the fact that the applicant was granted a waiver of the sprinkler requirement of Fire Code 503.8.2 (a statute requiring sprinklers due to restricted fire apparatus access) has no bearing on the proper interpretation of Section 28-101.4.3 as it is a different statute with different purposes; and

WHEREAS, further, DOB does not find it relevant that applicant's allegations that a Fire Department representative does not interpret the 2008 Building Code to require a sprinkler in this case nor is such a position binding interpretation upon DOB or the Board; and

WHEREAS, as to the applicant's request that the Board vary the sprinkler requirement, DOB notes that it has found that the proposed "fire escape and hard-wired interconnected smoke and carbon monoxide detectors and alarms in lieu of the required automatic sprinkler system does not provide an equally safe or safer alternative;" and

The Board's Conclusion

WHEREAS, the Board agrees with DOB that Section 28-101.4.3 reflects a requirement for sprinklers pursuant to the 2008 Building Code when there is a change in occupancy group, including from a three- to two-family home; and

WHEREAS, the Board concurs with DOB's interpretation and notes specifically that Section 28-101.4.3(2) addresses the circumstances when the allowance to follow the 1968 Building Code does not apply and it is strained to read that a portion of the provision then actually addresses the 1968 Code rather than the applicable 2008 Building Code, which is otherwise the subject of the sub-paragraph; and

WHEREAS, the Board finds that there is meaning to the entire provision and that, under the applicant's interpretation, the language "refer to the equivalent occupancy classification of the 1968 building code" would be redundant but under DOB's interpretation that language provides instruction about how to translate the 2008 Building Code occupancy classifications; and

WHEREAS, the Board also notes that the provision's language "shall be governed by such applicable provisions of such chapter and related reference standards" immediately following "including a change of occupancy group that would require such systems" must be read with it to recognize that reference standards and the other "provisions" of the 2008 Building Code's Chapter 9 apply in situations where there is a change of occupancy group, as here; and

WHEREAS, the Board is not persuaded by the applicant's argument that only the 2008 Building Code's technical standards are applied to sprinkler systems and that the substantive requirements arise from the 1968 Building Code; and

WHEREAS, accordingly, the Board upholds DOB's requirement for sprinklers in the subject building; and

The Applicant's Request to Vary the Building Code

WHEREAS, the applicant requests that in the alternate, if the Board supports DOB's interpretation, then a waiver of a sprinkler requirement in Section 28-101.4.3 pursuant to the Board's authority under City Charter § 666(7) is appropriate; and

WHEREAS, the applicant represents that the building otherwise complies with all relevant regulations; and

WHEREAS, the Board notes that it has authority to hear appeals of final determinations of the Department of Buildings, as set forth in Charter § 666(6) and that the basis for the subject application is a final determination from the Department of Buildings, with an objection that cites to the Building Code; and

WHEREAS, the subject application seeks a modification of the 2008 Building Code provision, pursuant to the Board's authority under Charter § 666(7); and

WHEREAS, if all other requirements of Charter § 666 are met, including the subject matter and source of the final determination, the Board may grant a modification pursuant to Charter § 666(7), if it finds that (1) there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law; (2) the spirit of the law shall be observed; (3) public safety shall be secured; (4) substantial justice is done; and (5) if the Housing Maintenance Code is varied it shall be limited to the extent permitted by the code and only in the manner provided for in it; and

WHEREAS, as to the practical difficulties and hardship, the applicant represents that all of the conversion work has been completed pursuant to DOB approvals and installing a

sprinkler system now and new service line from the water main, after all the walls, ceiling, and floor have been finished will cost approximately $124,780 to install the sprinkler and make associated repairs and interior finishing work; the applicant provided a construction professional's estimate, which enumerates the necessary work and reflects that figure; and

WHEREAS, the applicant represents that the work includes 25 sprinkler heads throughout the building; and

WHEREAS, the applicant represents that the supplemental costs represent close to 50 percent of the $298,800 in costs to renovate the building; and

WHEREAS, additionally, the applicant represents that there are significant costs associated with connecting to the water service line leading to the building from the street and increasing the diameter of the pipe from the service line in order to accommodate the water supply a sprinkler requires; and

WHEREAS, the applicant submitted documentation to support its claims about the hardship associated with installing the sprinklers in the building which was recently renovated; and

WHEREAS, the Board agrees that due to the supplemental work and expense the applicant has established that there are practical difficulties in installing sprinklers now after all of the renovation work has been completed pursuant to DOB's approval that did not include a sprinkler requirement; and

WHEREAS, as to the spirit of the law, the applicant represents that neither the Building Code nor the Fire Code intend for a sprinkler requirement to apply retroactively to existing one- and two-family buildings which are being converted to their original occupancy classification; and

WHEREAS, rather, the applicant states that the intent of Section 28-101.4.3 is to require compliance with the 2008 standards for sprinklers for existing buildings only when the 1968 Building Code requires their installation; and

WHEREAS, the Board recognizes a broader intent of Section 28-101.4.3 to include increasing fire safety for buildings that undergo significant renovations with occupancy changes; however, it notes that the applicant has actually reduced the density of the building from three to two units and that the smoke detectors, alarms, and fire escape provide a level of fire safety that satisfies the Fire Department; and

WHEREAS, accordingly, the Board finds that the proposed waiver does not conflict with the spirit of the law; and

WHEREAS, as to public safety, the applicant states that hardwired interconnected smoke detectors and alarms, and fire escape provide an equally safe alternative under the Fire Code, as evidenced by the Fire Department's waiver of the sprinkler requirement; and

WHEREAS, additionally, the applicant notes that its renovation of the building includes the following significant improvements to the infrastructure which contribute to safer conditions: the installation of new electrical systems; gas main, and meter bars along with all risers and branch piping; fireproof 5/8-inch sheetrock in the vast majority of the ceilings and walls; and fire blanket insulation in the vast majority of ceilings and walls; and

WHEREAS, the applicant asserts that the 2008 Building Code requires the Buildings' commissioner to "act in consultation with the fire commissioner on matters relating to fire safety," so the opinion of the Fire Department that the site is adequately fire protected should carry a great deal of weight in determining whether the current protection is an equally safe alternative; and

WHEREAS, the applicant adds that there is a fire station less than two minutes travel time from the building; and

WHEREAS, the Board notes the existing condition prior to the conversion was a three-family building without a sprinkler system; and

WHEREAS, the Board agrees that the proposal includes sufficient improved measures and will not compromise public safety; and

WHEREAS, as to substantial justice, the applicant asserts that the reduction in density from three to two units should not trigger a requirement to install an expensive sprinkler system; and

WHEREAS, further, the applicant represents that all construction was performed pursuant to DOB approvals and DOB verbally waived a sprinkler requirement with the project architect; and

WHEREAS, the applicant states that it is unjust for DOB to require a sprinkler system now as a prerequisite to a Certificate of Occupancy after all the conversion work has been completed when there were verbal assurances that the sprinkler would not be required and no such requirement was listed as an objection on the application or on the plans; and

WHEREAS, the Board concurs that substantial justice is maintained if the sprinkler requirement is waived; and

WHEREAS, the Board notes that the applicant does not seek a variance of the Housing Maintenance Code and, thus, that finding is not relevant to the subject application; and

WHEREAS, additionally, the Board notes that, according to the applicant, the proposal will be in full compliance with all other provisions of the Administrative Code and the Building Code, as well as the Zoning Resolution; and

WHEREAS, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under Charter § 666(7) and varies Building Code § 28-101.3.4; and

WHEREAS, in reaching this determination, the Board notes that its finding is based on the unique facts related to the physical conditions of the building and the sequence of DOB's approvals as presented in the instant application, and that this decision does not have general applicability to any pending or future Board application.

Therefore it is Resolved, that the appeal of the decision of the First Deputy Commissioner, dated June 28, 2013, is denied but the request for waiver is granted, limited to the decision noted above, on condition that construction will be maintained in conformance with the plans approved by DOB

dated January 24, 2012 – seven (7) 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 all conditions, including the hardwired interconnected smoke detectors and alarms, be maintained in accordance with the January 24, 2012 DOB plans; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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 19, 2013.

226-13-A

APPLICANT – Rothrug Rothkrug & Spector LLP, for High Rock Development LLC, owner.

SUBJECT – Application July 26, 2013 – Proposed construction of a one-family dwelling that does not front on a legally mapped street, contrary to Section 36 Article 3 of the General City Law. R3-2 /R2 NA-1 zoning District.

PREMISES AFFECTED – 29 Kayla Court, west side of Kayla Court, 154.4' west and 105.12' south of intersection of Summit Avenue and Kayla Court, Block 951, Lot 23, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 24, 2013, acting on Department of Buildings Application Nos. 520053058, reads in pertinent part:

> The street giving access to proposed buildings is not duly placed on the official map of the City of New York; therefore, no Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law; and

WHEREAS, this is an application to allow the construction of a single-family home not fronting a legally mapped street contrary to General City Law ("GCL") § 36; and

WHEREAS, Lot 23 is part of a larger lot that was previously subdivided into five independent lots, two of which were the subject of previous GCL § 35 waivers from the Board under BSA Cal. Nos. 332-05-A and 333-05-A.; and

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

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the subject site is located at the west side of Kayla Court, 154.4 feet west and 105.12 feet south of the intersection of Summit Avenue and Kayla Court, partially within an R3-2 and partially within an R2 zoning district within the Special Natural Area District, Lower Density Growth Management Area District; and

WHEREAS, the applicant notes that the proposed development was the subject of a Department of City Planning certification, which: (1) indicated that no authorization or special permit was required for the Special Natural Area District pursuant to ZR § 105-41; and (2) authorized the subdivision of the property into five zoning lots pursuant to ZR § 105-90; and

WHEREAS, the applicant states that the proposed building will front on Kayla Court, a private street with sidewalks, planting strips, and a roadway width of 34 feet, which was created in connection with the above-mentioned subdivision; the applicant notes that Kayla Court will be accessed via a 30-foot curb cut from Summit Avenue, and that a Homeowners' Association was created for the maintenance of Kayla Court; and

WHEREAS, the applicant also states that the site plan includes a new fire hydrant located at the southerly terminus of Kayla Court, in front of the proposed building; and

WHEREAS, finally, the applicant represents that the proposed building will be fully-sprinklered; and

WHEREAS, by letter dated November 11, 2013, the Fire Department indicated that it has no objections and no further requirements regarding the application; 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 June 24, 2013, acting on Department of Buildings Application No. 520053058, 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 November 12, 2013"- (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 site and roadway will conform with the BSA-approved plans;

THAT the building will be fully-sprinklered;

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

THAT the Department of Buildings must ensure compliance 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 19, 2013.

237-13-A thru 242-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for RLP LLC, owners.

SUBJECT – Application August 12, 2013 – Construction of six buildings not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.

PREMISES AFFECTED – 11, 12, 15, 16, 19, 20 Nino Court, 128.75 ft. south of intersection of Bedell Avenue and Hylan Boulevard, Block 7780, Lot 22, 30, 24, 32, 26, 34, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 2, 2013, acting on Department of Buildings Application Nos. 520143602, 520143559, 520143586, 520143540, 520143577, and 520143531, reads in pertinent part:

> The proposed two-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 six one- and 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 October 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2013, and then to decision November 19, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the subject site is located on Nino Court east of Bedell Avenue, 128.75 feet south of the intersection of Bedell Avenue and Hylan Boulevard, within an R3X (SRD) zoning district within the Special South Richmond District; and

WHEREAS, the applicant states that the proposed development comprises eight one- and two-family homes, six of which do not front on a mapped street and thus are the subject of the applications before the Board; and

WHEREAS, the applicant states that the proposed dwellings will front on Nino Court, a proposed private road with a roadway width of 34 feet and seven feet of sidewalk and landscaped areas on each side of the roadway; and

WHEREAS, the applicant states that Nino Court will be a two-way road running from the east side of Bedell Avenue, a final mapped street, to the eastern border of proposed Lots 26 and 34; and

WHEREAS, the applicant represents that Nino Court will be maintained pursuant to a Homeowners' Association agreement; and

WHEREAS, by letter dated September 3, 2013, the Fire Department approved the site plan subject to the following conditions: (1) that the proposed residences fully conform to the New York City Building Code and are fully sprinklered; (2) that no parking be permitted on the private street, as indicated on signs throughout the development that read "No Parking – Fire Lane"; and (3) that the Homeowners' Association will be considered in violation of a Fire Commissioner's Order for any private vehicles parked along the proposed private road; 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 August 2, 2013, acting on Department of Buildings Application Nos. 520143602, 520143559, 520143586, 520143540, 520143577, and 520143531, 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 September 24, 2013"-(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 site and roadway will conform with the BSA-approved plans;

THAT the homes will be fully sprinklered;

THAT signs stating "No Parking-Fire Lane" will be posted along the street throughout the development;

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

THAT the Department of Buildings must ensure compliance 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 19, 2013.

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 26, 2013, at 10 A.M., for postponed 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 26, 2013, at 10 A.M., for postponed 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 14, 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 January 28, 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

ACTION OF THE BOARD – Laid over to November 26, 2013, at 10 A.M., for adjourned 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 December 17, 2013, at 10 A.M., for deferred decision.

156-13-A

APPLICANT – Bryan Cave LLP, for 450 West 31Street 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 – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

ZONING CALENDAR

121-13-BZ
CEQR #13-BSA-130K
APPLICANT – Moshe M. Friedman, P.E., for Congregation Beth Aron Moshe, owner.
SUBJECT – Application April 25, 2013 – Variance (§72-21) to permit a UG 4 synagogue (*Congregation Beth Aron Moshe*), contrary to front yard (§24-34), side yards (§24-35) and rear yard (§24-36) requirements. R5 zoning district.
PREMISES AFFECTED – 1514 57th Street, 100' southeast corner 57th Street and the eastside of 15th Avenue, Block 05496, Lot 12, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 11, 2013, acting on Department of Buildings Application No. 320715534 reads, in pertinent part:

> Proposed House of Worship (UG 4) in an R5 district is contrary to ZR 24-34 (front yard), ZR 24-36 (rear yard), and ZR 24-35 (side yard); and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R5 zoning district, the conversion and enlargement of a three-story residential building to be occupied as a synagogue (Use Group 4), which does not comply with the zoning district regulations for front yard, side yards and rear yard, contrary to ZR §§ 24-34, 24-35, and 24-36; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 2013; 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, Brooklyn, recommends approval of the application; and

WHEREAS, Councilman David G. Greenfield recommends approval of the application; and

WHEREAS, this application is brought on behalf of Congregation Beth Aron Moshe (the "Congregation"); and

WHEREAS, the subject site is a rectangular lot with 28 feet of frontage along 57th Street, between 15th Avenue and 16th Avenue, within an R5 zoning district; and

WHEREAS, the subject site has a lot area of 2,804.7 sq. ft. and is currently occupied by a three-story, semi-detached residential building with 4,236 sq. ft. of floor area (1.51 FAR); and

WHEREAS, the applicant proposes to convert the residential building to a synagogue, mikvah, and rabbi's apartment, and construct a one-story rear enlargement with a complying floor area of 5,119 sq. ft. (1.83 FAR) (a maximum FAR of 2.0 is permitted), a complying lot coverage of 50 percent (a maximum lot coverage of 55 percent is permitted), and a complying front wall and building height of 29'-4" (a maximum height of 35'-0" is permitted with a 1:1 sky exposure plane); and

WHEREAS, in addition, the proposal includes the following non-compliances: maintaining the existing front yard depth of 2'-11½" (a minimum front yard of 10'-0" is required); maintaining a portion of the existing side yard at its existing 7'-10" width (two side yards are required, with a minimum width of 8'-0" each); and maintaining the existing rear yard depth of 27'-2½" (a minimum rear yard depth of 30'-0" is required; however, a one-story permitted obstruction is permitted for a community facility); and

WHEREAS, the proposal would allow for the following uses: (1) synagogue and mikvah at the cellar level; (2) synagogue at the basement level; and (3) a rabbi's apartment at the first and second stories; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Congregation, which necessitate the requested variances: (1) to accommodate its membership, which currently consists of approximately 50 to 60 individuals on a daily basis and 98 individuals on the Sabbath and high holidays; (2) to provide adult religious education classes and lectures to the community on a regular basis; (3) to hold special events such as Kiddush for a Bar or Bat Miztvah; (4) to provide the necessary sanctuary and worship space for the congregants; (5) to provide an apartment for the rabbi who maintains a close relationship to the congregants through holding religious services and pastoral counseling; and (6) to satisfy the religious requirement that members of the Congregation be within walking distance of the synagogue; and

WHEREAS, the applicant states that the synagogue will be used daily for morning and evening services, as well as the Sabbath and high holidays, with daily services beginning at 6:10 a.m. and ending at 10:00 p.m. and Sabbath and high holiday services beginning at 9:15 a.m. and ending at 10:00 p.m.; and

WHEREAS, the applicant states that the mikvah space in the cellar will accommodate up to 20 people and will be open daily from 4:30 a.m. to 10:30 p.m. and on Friday and holiday evenings from 4:30 p.m. to 7:00 p.m.; and

WHEREAS, the applicant states that the two-story rabbi's apartment is necessary because of the rabbi's close ties with the congregants and his programmatic requirements to provide daily religious services and pastoral counseling; and

WHEREAS, the applicant states that the non-complying yards are existing conditions, and that, absent the requested yard waivers, it would be unable to maintain and re-use the existing building or accommodate an appropriate worship area, necessary sanctuary space, proper separate entrances for men and women, and a functional apartment for the rabbi; and

WHEREAS, the applicant asserts that the enlargement is

necessary because the size of the existing building is inadequate for the current and projected needs of the Congregation, especially on high holidays, when the number of congregants that attend services increases; and

WHEREAS, the applicant states that, due to the narrowness of the site, an as-of-right enlargement, which requires two, eight-foot side yards, results in a building width in the enlarged portion of only 12 feet; and

WHEREAS, as to the requested front and rear yard waivers, the applicant notes that they are necessary not because of any proposed construction (a synagogue is a permitted obstruction within a rear yard up to a height of 23 feet and one story), but because of the existing conditions; and

WHEREAS, finally, the applicant states that it seeks to utilize as much of the existing building as possible, in order to minimize costs, and that the proposal accomplishes this; 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 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 Congregation 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 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 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 states that the surrounding neighborhood is characterized by low- to medium density residential and community facility uses, and that, as such, the proposal is consistent with the use and bulk of the area; and

WHEREAS, the applicant states that immediately west of the site is a large, six-story multiple dwelling, which provides an open area adjacent to the proposed one-story enlargement, and immediately east of the site is a three-story, two-family dwelling that is already attached to the building at the subject site; thus, the impact of the proposed one-story enlargement on its immediate neighbors is minimal; and

WHEREAS, the applicant notes that the proposed FAR is less than the maximum permitted as-of-right for a community facility in the R5 district; and

WHEREAS, the applicant also states, as noted above, that the existing non-complying front and rear yards will be not be altered and that the side yard waivers will visually affect only the rear of the site on the west side, where the one-story enlargement is proposed, and an open area of 7'-10" will continue to be provided for the majority of the lot; and

WHEREAS, finally, the applicant represents that the synagogue will be used by members of the surrounding community and that the application has received a letter of support from an adjoining neighbor; 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, the applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Congregation'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. 13BSA130K, dated April 18, 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.

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 in an R5 zoning district, the conversion and enlargement of an existing three-story

building to be occupied by a synagogue, mikvah, and a rabbi's apartment, which does not comply with the zoning district regulations for front yard, side yards, and rear yard, contrary to ZR §§ 24-34, 24-35, 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 July 25, 2013" – Eleven (11) sheets; and *on further condition*:

THAT the building parameters will be: a floor area of 5,119 sq. ft. (1.83 FAR); a minimum front yard depth of 2'-11½"; a minimum rear yard depth of 27'-2½" above the first story; and three stories, as illustrated on the BSA-approved plans;

THAT the use will be limited to a synagogue with a mikvah (Use Group 4), and an accessory rabbi's apartment;

THAT no commercial catering 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; 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, November 19, 2013.

235-13-BZ
CEQR #14-BSA-020M
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 132 West 31st Street Building Investors11, LLP, owner; Blink West 31st Street, Inc. owner.
SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within an existing commercial building. M1-6 zoning district.
PREMISES AFFECTED – 132 West 31st Street, south side of West 31st Street, 350' east of 7th Avenue and West 31st Street, Block 806, Lot 58, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 120904174, reads in pertinent part:

Proposed use as a Physical Culture Establishment, as defined by ZR 12-10, is contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-6 zoning district, the operation of a physical culture establishment ("PCE") in portions of the first and second floors of an existing 17-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 2013; 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, recommends approval of this application; and

WHEREAS, the subject site is a through lot spanning the north side of West 30th Street to the south side of West 31st Street, between Avenue of the Americas and Seventh Avenue, within an M1-6 zoning district; and

WHEREAS, the site has 90 feet of frontage along West 30th Street, 125 feet of frontage along West 31st Street and 23,050 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 17-story commercial building; and

WHEREAS, the PCE is proposed to occupy 22,114 sq. ft. of floor area on the first floor and second floor of the building; and

WHEREAS, the PCE will be operated as Blink Fitness; 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 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 9:00 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 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. 14BSA020M, dated August 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 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 an M1-6 zoning district, the operation of a PCE on portions of the first and second floors of an existing 17-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 8, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on November 19, 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, November 19, 2013.

282-12-BZ

APPLICANT – Eric Palatnik, P.C., for Izhak Lati, owner.

SUBJECT – Application September 24, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard requirements (§23-461), and a variance (§72-21), contrary to front yard requirements (§23-45). R5 zoning district.

PREMISES AFFECTED – 1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 21, 2012, acting on Department of Buildings Application No. 320444444, 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; and

WHEREAS, this is an application under ZR §§ 72-21 and 73-622, to permit, within an R5 zoning district, the enlargement of an existing, detached single-family home that does not provide the required front yard, contrary to ZR §§ 23-45 and 23-461; and

WHEREAS, a public hearing was held on this application June 11, 2013, after due notice by publication in *The City Record*, with continued hearings on August 13, 2013, September 24, 2013, and October 22, 2013, and then to decision on November 19, 2013; 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 a corner lot located on the northeast corner of the intersection of Avenue T and East 14th Street, within an R5 zoning district; and

WHEREAS, the site has 24 feet of frontage along East 14th Street, 100 feet of frontage along Avenue T, and 2,400 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a two-story, detached, single-family home with 1,490 sq. ft. of floor area (0.57 FAR), and an attic; and

WHEREAS, the applicant proposes to enlarge the existing first and second stories, and the attic of the building contrary to the side and front yard requirements, and increase the floor area from 1,490 sq. ft. of floor area (0.57 FAR) to 2,794 sq. ft. (1.16 FAR) (a maximum of 3,000 sq. ft. (1.25 FAR) is permitted); and

WHEREAS, in particular, the applicant proposes to maintain its existing, non-complying front yard with a depth of 3'-11" (a minimum front yard depth of ten feet is required), and its existing, non-complying side yard with a width of 3'-11" (a minimum side yard width of five feet is required) in the enlarged portion of the building; and

WHEREAS, the premises is within the boundaries of a designated area in which the special permit pursuant to ZR § 73-622 is available, and under that section, the applicant seeks approval of the proposed side yard; however, ZR § 73-622 is not available for a waiver of the front yard requirement; accordingly, the applicant seeks a variance pursuant to ZR § 72-21 for that portion of the proposal; and

WHEREAS, the applicant states that the following, when considered together, are unique physical conditions, which creates practical difficulties and unnecessary hardship in developing the site in compliance with underlying zoning regulations: (1) the obsolete size and underdevelopment of the existing home; and (2) the site's narrowness and location on a corner; and

WHEREAS, the applicant submitted a study of the 117 sites within a 400-foot radius of the site to support this statement; and

WHEREAS, the applicant represents that the size of the home at 1,490 sq. ft. is one of the smallest homes in the surrounding area; the applicant notes that the home has only two small bedrooms, which renders it obsolete as a modern, single-family home; and

WHEREAS, further, the applicant states that the site itself is significantly underdeveloped at 0.57 FAR where 1.25 FAR is permitted; and

WHEREAS, the applicant represents that despite such underdevelopment, the site's corner location and narrow width (24 feet) create a practical difficulty in enlarging the existing building in accordance with yard requirements of the R5 district; and

WHEREAS, specifically, the applicant states that an enlargement of the home with complying yards would result in the enlarged portion of the building having an outer dimension of only 9'-0" feet; the applicant states that a 9'-0" width would yield inefficient floorplates and room sizes not suited to modern living; and

WHEREAS, as to uniqueness, the applicant states that the study indicates that of 117 sites studied, only 20 sites are occupied by homes with less than 1,500 sq. ft. of floor area; of these 20 sites, 18 sites are interior lots with two side yards and are eligible for a side yard waiver under ZR § 73-622; the subject site cannot obtain similar relief because it has two front yards rather than two side yards; and

WHEREAS, in addition, the applicant notes that the study shows that there is only one other site with a home of 1,500 sq. ft. or less that is on a corner lot; however, that site is distinguishable from the subject site because it has significantly less lot area 1,575 sq. ft. of lot area (35 percent less than the subject site's 2,400 sq. ft. of lot area); therefore, that home's smaller size is attributable less to its location on a narrow, corner lot and more to its significantly smaller lot size; and

WHEREAS, finally, the applicant also notes that three of the sites are occupied by attached or semi-detached homes, which are not required to provide two side yards; and

WHEREAS, therefore, only one other underdeveloped site is comparable to the subject site in terms of lot width, location on corner, and existing non-compliances exists in the study area; and

WHEREAS, in addition, the applicant explored the feasibility of an as-of-right enlargement of the home; such an enlargement would not yield any additional bedrooms, and would result in a modest increase in floor area from 1,490 sq. ft. (0.57 FAR) to 2,074 sq. ft. (0.69), which the applicant notes is well below the maximum permitted FAR of 1.25; thus, the applicant asserts that an as-of-right enlargement is impractical; and

WHEREAS, accordingly, the applicant asserts that the site's unique conditions create practical difficulties in developing in accordance with the front yard regulations; 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 Board agrees that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; 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 side yard depths; 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 non-complying front and side yards and will comply in all other respects with the R5 bulk regulations; and

WHEREAS, the applicant also states, as noted above,

that the site is within the boundaries of a designated area in which the special permit pursuant to ZR § 73-622 is available, and that several homes have utilized the special permit to enlarge; and

WHEREAS, in addition, the applicant asserts that three corner lots in the area have similar yard sizes, but are occupied by even larger homes than the proposal; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the lack of landscaping at the site; and (2) the proposed wrap-around porch; and

WHEREAS, in response, the applicant submitted a plan indicating: (1) additional plantings along Avenue T and East 14th Street; and (2) that the porch would be subject to Department of Buildings approval; 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 73-622; and

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 ZR §§ 72-21 and 73-622, to permit, within an R5 zoning district, the enlargement of an existing, detached single-family home that does not provide the required front yard, contrary to ZR §§ 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 October 11, 2013"- nine (9) 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 2,794 sq. ft. (1.16 FAR), a front yard with minimum width of 3'-11", and side yards with minimum widths of 3'-11" and 20'-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, November 19, 2013.

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 January 14, 2014, at 10 A.M., for adjourned hearing.

28-12-BZ

APPLICANT – Eric Palatnik, P.C., for Gusmar Enterprises, LLC, owner.

SUBJECT – Application November 19, 2013 – Special Permit (§73-49) to legalize the off street rooftop parking on 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

ACTION OF THE BOARD – Off-Calendar.

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

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for deferred decision.

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 February 11, 2014, at 10 A.M., for adjourned 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 January 14, 2014, at 10 A.M., for adjourned hearing.

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
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 December 17, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to December 17, 2013, 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 November 26, 2013, at 10 A.M., for adjourned hearing.

55-13-BZ
APPLICANT – Stuart A. Klein, Esq., for Yeshivas Novominsk, owners.
SUBJECT – Application February 1, 2013 – Variance (§72-21) to permit the enlargement of an existing yeshiva and dormitory (*Yeshiva Novominsk*), contrary to floor area (§24-11), wall height and sky exposure plane (§24-521), and side yard setback (§24-551). R5 zoning district.
PREMISES AFFECTED – 1690 60th Street, north side of 17th Avenue between 60th and 61st Street, Block 5517, Lot 39, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

90-13-BZ
APPLICANT – Akerman Senterfitt, LLP, for Eleftherios Lagos, owner.
SUBJECT – Application March 18, 2013 – Variance (§72-21) to permit the construction of a single-family dwelling, contrary to open area requirements (§23-89). R1-2 zoning district.
PREMISES AFFECTED – 166-05 Cryders Lane, northeast corner of the intersection of Cryders Lane and 166th Street, Block 4611, Lot 1, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

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 December 17, 2013, at 10 A.M., for continued hearing.

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 January 14, 2014, at 10 A.M., for deferred decision.

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

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

105-13-BZ
APPLICANT – Law Office of Fred A Becker, for Nicole Orfali and Chaby Orfali, owners.
SUBJECT – Application April 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461); perimeter wall height (§23-631) and less than the minimum rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 1932 East 24th street, west side of East 24th street, between Avenue S and Avenue T, Block 7302, Lot 19, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

122-13-BZ
APPLICANT – Law Office of Fredrick A Becker, for Jacqueline and Jack Sakkal, owners.
SUBJECT – Application April 29, 2013 – Special Permit (§73-621) for the enlargement of an existing two-family home to be converted into a single family home, contrary to floor area (§23-141). R2X (OP) zoning district.
PREMISES AFFECTED – 1080 East 8th Street, west side of East 8th Street between Avenue J and Avenue K, Block 6528, Lot 33, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

162-13-BZ
APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.
SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units, ground floor retail, and 11 parking spaces, contrary to use regulations (§42-00). M1-5B zoning district.
PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100' south of Spring street, Block 490, Lot 27, 35, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

206-13-BZ
APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for 605 West 42nd Owner LLC, owner.
SUBJECT – Application July 12, 2013 – Special Permit (§73-36) to allow a physical culture establishment within an existing building. C6-4 zoning district.
PREMISES AFFECTED – 605 West 42nd Street, eastern portion of the city block bounded by West 42nd St, West 43rd Street, 11th Avenue and 12th Avenue, Block 1090, Lot 29, 23, 7501, 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 December 17, 2013, at 10 A.M., for decision, hearing closed.

219-13-BZ
APPLICANT – Eric Palatnik, P.C., for 2 Cooper Square LLC, owner; Crunch LLC, lessee.
SUBJECT – Application July 19, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Crunch Fitness*) within a portions of an existing mixed use building contrary to §42-10. M1-5B zoning district.
PREMISES AFFECTED – 2 Cooper Square, northwest corner of intersection of Cooper Square and East 4th Street, Block 544, Lot 65, 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 December 17, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on October 22, 2013, under Calendar No. 133-13-BZ and printed in Volume 98, Bulletin Nos. 42-43, is hereby corrected to read as follows:

133-13-BZ
CEQR #13-BSA-173X
APPLICANT – Sheldon Lobel, PC, for Evangelical Church Letting Christ Be known, Inc., owner.
SUBJECT – Application May 10, 2013 – Variance (§72-21) to permit the construction of a new two-story community facility (UG 4A house of worship) (*Evangelical Church*) building is contrary to rear yard (§24-33(b) & §24-36), side yard (§24-35(a)) and front yard (§25-34) zoning requirements. R4 zoning district.
PREMISES AFFECTED – 1915 Bartow Avenue, northwest corner of Bartow Avenue and Grace Avenue, Block 4799, Lot 16, Borough of Bronx.
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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 30, 2013, acting on Department of Buildings ("DOB") Application No. 220201412, reads in pertinent part:

> ZR Section 24-33(b) – the proposed building within the rear yard is contrary to the cited section in that it exceeds the height limitation for permitted obstructions;
> ZR Section 24-35(a) – the proposed side yard is contrary to the cited section in that ten percent of the aggregate street walls is required (15 feet) [however] per the proposed plan, eight feet is indicated;
> ZR Section 24-36 – the proposed rear yard does not comply with the minimum 30 feet required [because] the interior lot portion of the site is not eligible for the shallow lot provision, per ZR Section 24-37(a);
> ZR Section 24-34 – proposed front yard is contrary to the stated section in that [a depth of] 15 feet [is required but] only ten feet [is provided]; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the construction of a two-story house of worship (Use Group 4A) that does not comply with the zoning regulations for rear yard, side yard, front yard, and permitted obstructions in rear yard, contrary to ZR §§ 24-33, 24-34, 24-35, and 24-36; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in the *City Record*, and then to decision on October 22, 2013; and

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

WHEREAS, this application is brought on behalf of Evangelical Church Letting Christ Be Known (the "Church"), a not-for-profit institution; and

WHEREAS, Community Board 12, Bronx, recommends disapproval of this application, citing concerns about traffic and parking; and

WHEREAS, Councilmember Andy King testified in opposition to the proposal, citing concerns about traffic; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, citing concerns about traffic and the requested yard waivers' impacts on adjacent properties; and

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

WHEREAS, the subject site is an irregular corner lot located on the northwest corner of the intersection of Grace Avenue and Bartow Avenue, within an R4 zoning district; and

WHEREAS, the site has approximately 100 feet of frontage along Bartow Avenue, approximately 322 feet of frontage along Grace Avenue, and a lot area of approximately 22,989 sq. ft.; and

WHEREAS, the applicant notes that the site has been vacant since at least 1983; and

WHEREAS, the applicant proposes to construct a two-story house of worship (Use Group 4A) with 12,388 sq. ft. of floor area (0.54 FAR) to accommodate the programmatic needs of the Church, which has been in existence for approximately 16 years; and

WHEREAS, the applicant represents that the proposed building will create the following non-compliances on the zoning lot: (1) the building will obstruct the rear yard for two stories and a height of 31'-0" (the maximum permitted height of this community facility building within the rear yard in this district is one story and 23'-0", per ZR § 24-33(b)); (2) a rear yard with a depth of 8'-8" (a rear yard with a minimum depth of 30'-0" is required for the interior lot portion of the site, per ZR § 24-36); (3) two side yards with depths of 24'-2" and 10'-0" (the requirement, which is based on the width of the street wall, is two side yards with minimum depths of 15'-0", per ZR § 24-35(a)); and (4) a front yard depth of 10'-0" (a front yard depth of 15'-0" is required, per ZR § 24-34); and

WHEREAS, the applicant represents that, since its founding, the Church has leased space at 2111 Starling Avenue, Bronx, a two-story building with approximately 3,976 sq. ft. of floor area; however, that building accommodates neither the Church's current membership of 350 members, nor its projected growth; and

WHEREAS, the applicant states that the proposed building will include the following: (1) in the cellar, a community room, electrical and mechanical rooms, a cafeteria and serving area, and men's and women's restrooms; (2) on the first story, a lobby, a temple, a restroom, dressing area, and

a pastor's office; and (3) on the second story, two offices, a coat closet, storage, children's chapel, and men's and women's restrooms; and

WHEREAS, the applicant notes that the community room will be used primarily to provide light meals to congregants after worship services; however, no catered affairs (such as wedding receptions) will be held at the Church; the applicant also states that the Church anticipates a capacity of approximately 300 congregants in the temple on the first story and approximately 100 congregants in the chapel on the second story; and

WHEREAS, the applicant represents that the irregular shape of the site—in particular its jagged western boundary—is a unique physical condition inherent to the zoning lot, which creates practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations, per ZR § 72-21(a); and

WHEREAS, the applicant states that the jaggedness of the western boundary gives rise to no fewer than 13 adjoining rear and side lot lines (none of which is parallel to either Grace Avenue or Bartow Avenue) which results in an as-of-right footprint of only 5,653 sq. ft.; in contrast, a standard, rectangular lot with the site's lot area (22,989 sq. ft.) would yield an as-of-right footprint of 12,500 sq. ft.; the applicant notes that the proposed footprint is approximately 6,194 sq. ft., less than half the size that would be accommodated on a rectangular lot; and

WHEREAS, the applicant notes that although the site is adjacent to a lot with a similarly jagged boundary line, the adjacent lot is significantly larger and therefore would provide greater flexibility in development; further, while there are other lots with jagged lot lines within a 400-foot radius of the site, only the site and the immediately adjacent lot are vacant; and

WHEREAS, the applicant states that the following are the programmatic needs of the Church, which necessitate the requested waivers: (1) the increasing size of the congregation; and (2) the Church's expansive mission, which, includes spiritual outreach and creating support groups for local youth; and

WHEREAS, as to the increasing size of the congregation, the applicant states that the Church has 350 regular members and anticipates that it will have approximately 385 regular members when construction at the site is completed; and

WHEREAS, the applicant represents that the Church's existing facility cannot accommodate the Church's current membership and that an as-of-right building would be similarly inadequate; in particular, based on the as-of-right plans submitted by the applicant, the floor area of the building would decrease from the proposed 12,388 sq. ft. (0.54 FAR) to 9,184 sq. ft. (0.39); further, in the as-of-right scenario, the capacity of the temple on the first story is decreased from 300 congregants to 214 congregants and the capacity of the chapel on the second story is decreased from 100 congregants to 54 congregants; and

WHEREAS, as to the expansive mission of the Church, the applicant represents that an as-of-right facility would not provide the worship, classroom or community outreach space it requires to fulfill it wide-ranging spiritual and pedagogical objectives; and

WHEREAS, further, 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 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 irregular lot shape in combination with 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, since the Church 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant represents that the neighborhood is characterized by its diversity: buildings range in height from one to five stories, and residential, commercial, and manufacturing uses are found within a 400-foot radius of the site; and

WHEREAS, the applicant notes that other nearby uses include a park, a large parking lot for a shopping center, gasoline stations, and the New England Thruway (Interstate 95); and

WHEREAS, the applicant notes that the proposed use is permitted as-of-right and that the proposal complies with the regulations regarding building height, setback, sky exposure plane, lot coverage, and parking; and

WHEREAS, the applicant also notes that at 0.54 FAR, the proposal is 27 percent of the maximum permitted floor area ratio for a community facility in the district (2.0 FAR); and

WHEREAS, as to the adjacent uses, the applicant notes that the site immediately to the west is vacant and significantly larger than the subject site; as such, it can be developed with as-of-right yards that will provide additional separation from the proposed building; further, the site immediately to the north is occupied by a three-story residential building, which will be, because of the odd shape of the side lot line, more than 35 feet from the proposed house of worship; therefore,

the requested yard waivers will not impact the adjacent uses; and

WHEREAS, the applicant represents that, contrary to Community Board 12's assertions, the proposal will not adversely impact parking or traffic within the neighborhood; and

WHEREAS, specifically, the applicant states that although the Church expects the majority of congregants to walk or utilize public transportation, the proposal provides 22 off-street parking spaces, which is one more than the required 21 spaces; in addition, the applicant represents that there are a total of 18 on-street parking spaces available along Bartow Avenue and Grace Avenue; and

WHEREAS, as to traffic, the applicant states that it conducted a study of neighborhood traffic patterns and reconfigured the proposed entrances and site circulation in order to minimize congestion; the applicant also notes that services and worship activities will occur on weekday evenings and Sundays; as such, the Church's traffic will not conflict with school-related traffic; and

WHEREAS, finally, in response to Community Board 12's characterization of the proposal as inconsistent with recent down-zonings in the area, the applicant notes that the site has been zoned R4 since 1961; 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 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, in accordance with ZR § 72-21(d); the applicant notes that the site was formed by the combination of historic tax lots 16, 20, 26, and 29, which were originally jagged and irregularly shaped; and

WHEREAS, in addition, the Board finds that the requested relief is the minimum necessary, per 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, CEQR No. 13BSA173X, dated May 9, 2013; and

WHEREAS, the EAS documents that the proposed project 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 § 72-21 and grants a variance, to permit, within an R4 zoning district, the construction of a two-story house of worship (Use Group 4A) that does not comply with the zoning regulations for rear yard, side yard, front yard, and permitted obstructions in rear yard, contrary to ZR §§ 24-33, 24-34, 24-35, 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 September 3, 2013"– Ten (10) sheets; and *on further condition;*

THAT the following shall be the bulk parameters of the building: a maximum of 12,388 sq. ft. of floor area (0.54 FAR), a maximum building height of 31'-0", a rear yard depth of 8'-8", two side yards with depths of 24'-2" and 10'-0", and a front yard depth of 10'-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, October 22, 2013.

***The resolution has been Amended. Corrected in Bulletin Nos. 45-47, Vol. 98, dated November 28, 2013.**

BULLETIN

OF THE
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AND APPEALS

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New Case Filed Up to November 26, 2013

305-13-BZ
30-50 Witestone Expressway, College Point, Bounded by Ulmer Street to the north,Whitestone Expressway to the East and 31st Avenue to the south., Block 4363, Lot(s) 100, Borough of **Queens, Community Board: 7**. Special Permit (§73-36) to allow physical culture establishment(PCE). M1-1 zoning district. M1-1 district.

306-13-BZ
3766 Bedford Avenue, West side of Bedford Avenue distant 350 feet south of corner of Bedford Avenue and Avenue p., Block 6787, Lot(s) 23, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home, seeking to extend the south side of an existing two family dwelling at first and second floors to be converted to a one family dwelling. R3-2 zoning district. R3-2 district.

307-13-A
96 Bell Street, East Side of Bell Street 72.09' South of Reynolds Street., Block 2989, Lot(s) 24, Borough of **Staten Island, Community Board: 01**. Proposed construction of a detached two family residence fronting upon a street that is not legally mapped, which is contrary to section 36 article3 of the general city law. R3A district.

308-13-A
100 Bell Street, East Side of Bell Street 105.42' South of Reynolds Street, Block 2989, Lot(s) 26, Borough of **Staten Island, Community Board: 01**. Proposed construction of a detached detached one family residence fronting upon a street that is not legally mapped, which is contrary to section 36 article3 of the general city law. R3A district.

309-13-BZ
965 East 24th Street, East side of East 24th Street between Avenue I and Avenue J., Block 7588, Lot(s) 17, Borough of **Brooklyn, Community Board: 14**. This application is filed pursuant to section 73-622 of the Zoning Resolution of the city of New York, as amended, to request a special permit to allow the enlargement of a single family residence located in a residential(R2) zoning district. R2 district.

310-13-BZ
459 East 149th Street, Northwest corner of Brook Avenue and East 149th Street., Block 2294, Lot(s) 60, Borough of **Bronx, Community Board: 1**. 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 zoning district (M-1). M1-1/C4-4 district.

311-13-BZ
325 Avenue Y, N/E corner of Shell Road & Avenue Y., Block 7192, Lot(s) 45, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-36) to allow physical culture establishment (PCE). M1-1 zoning district. M1-1 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

DECEMBER 17, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 17, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

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 previously approved Special Permit (§73-243) permitting 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 expires 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

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 to allow the operation of a physical culture establishment (PCE) on portions of the cellar, first floor and second floor of the existing five story mixed use loft building expiration date 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

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 special permit allowing a physical culture establishment (PCE) in a 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

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 previously granted variance (§72-21) for the continued operation of physical culture establishment (*Exhale Spa*) located in a portion of the cellar, first floor and second floor of a 37 story residential building which expires 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

176-09-BZ
APPLICANT – Bryan Cave LLP/Margery Perlmutter, for NYC Fashion of Institute of Technology, owner.
SUBJECT – Application October 4, 2013 – Extension of time to complete construction of a previously granted Special Permit (73-64) to waive height and setback regulations (ZR 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

APPEALS CALENDAR

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

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

ZONING CALENDAR

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 Street, Block 2892, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #1BK

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 in an M1-1 zoning district contrary to §42-10 zoning resolution.
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

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

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

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)). 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

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

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, NOVEMBER 26, 2013
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 – Laid over to January 14, 2014, at 10 A.M., for adjourned hearing.

182-69-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 227 East 19th Street Owner LCL, owner.
SUBJECT – Application September 4, 2013 – Amendment to previous special permit which allowed construction of a hospital building, contrary to height and setback, yards, distance between buildings, and floor area (§§ 23-145, ZR-23-711 and ZR23-89). Amendment proposes a residential conversion of existing buildings. R8B zoning district.
PREMISES AFFECTED – 211-235 3 East 19th Street aka 224-228 East 20th St & 2nd & 3rd Avenues, midblock portion of block bounded by East 19th and East 20th Street, Block 900, lot 6, Borough of Manhattan.
COMMUNITY BOARD #6M
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 December 17, 2013, at 10 A.M., for decision, hearing closed.

647-70-BZ
APPLICANT – Jeffrey A. Chester Esq/GSHLLP, for Channel Holding Company, Inc., owner; Cain Management II Inc., lessee.
SUBJECT – Application August 1, 2013 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation an automotive service station and auto laundry (UG 16B). Amendment seeks to convert accessory space into an accessory convenience store. C2-3/R5 zoning district.
PREMISES AFFECTED – 59-14 Beach Channel Drive, Beach Channel Drive corner of Beach 59th Street, Block 16011, Lot 105, Borough of Queens.
COMMUNITY BOARD #
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 December 10, 2013, at 10 A.M., for decision, hearing closed.

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 – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

380-01-BZ
APPLICANT – Law office of Fredrick A. Becker, for 230 West 41st St. LLC, owner;
TSI West 41 LLC dba New York Sports Club, lessee.
SUBJECT – Application April 17, 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*), located in a 21-story commercial office building, which expired on April 9, 2012; Waiver of the Rules. C6-6.5 M1-6 (Mid) zoning district.
PREMISES AFFECTED – 230 West 41st Street, south side of West 41st Street, 320' west of Seventh Avenue, through block to West 40th Street, Block 1012, Lot 15, 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 December 17, 2013, at 10 A.M., for decision, hearing closed.

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
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 January 14, 2014, at 10 A.M., for decision, hearing closed.

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
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 January 14, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

126-13-A
APPLICANT – Sheldon Lobel, PC, for Woodmere Development LLC, owner.
SUBJECT – Application April 30, 2013 – Appeal of NYC Department of Buildings' determination that a rear yard is required at the boundary of a block coinciding with a railroad right-of-way. R7B Zoning District.
PREMISES AFFECTED – 65-70 Austin Street, 65th Road and 66th Avenue, Block 3104, Lot 101, Borough of Queens.
COMMUNITY BOARD # 6Q
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 Montanez 5
THE RESOLUTION –

WHEREAS, this is an appeal of a Department of Buildings ("DOB") final determination dated April 19, 2013, issued by the First Deputy Commissioner (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

> The request to confirm that the Long Island Railroad right-of-way that runs parallel to Austin Street meets the definition of a "street," as per the zoning definition in ZR 12-10, is hereby denied.
> Contrary to the ZR 12-10 "street" definition, the existing railroad right-of-way is not shown as a mapped street on the City Map, zoning maps, or the Department of Finance's tax maps. Therefore, the zoning lot for the proposed new building cannot be considered a "through lot," as per the definition in ZR 12-10, and requires a 30'-0" rear yard, as per ZR 23-47; and

WHEREAS, the appeal was brought on behalf of the owners of 65-70 Austin Street (the "Appellant"); 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 October 8, 2013, and then to decision on November 26, 2013; 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, DOB appeared and made submissions in opposition to this appeal; and

WHEREAS, the subject site is located on the south side of Austin Street between 65th Road and 66th Avenue, within an R7B zoning district and is currently occupied by a one-story commercial building; the site abuts a railroad right-of-way for the Long Island Railroad ("LIRR ROW"); and

WHEREAS, the Appellant seeks to build a six-story residential building at the site with a rear yard with a depth of

less than 30 feet; and

WHEREAS, the site has an average depth of approximately 80 feet and, based on the premise that the lot is a through lot, the Appellant proposes a yard with a depth of approximately 19 feet at the rear of the building adjacent to the LIRR ROW abutting the site; and

Relevant Zoning Resolution Provisions

WHEREAS, the following provisions read in pertinent part:

Street (ZR § 12-10 Definitions)

A "street" is:

(a) a way established on the City Map; or

(b) a way designed or intended for general public use, connecting two ways established on the City Map, that:

(1) performs the functions usually associated with a way established on the City Map;

(2) is at least 50 feet in width throughout its entire length; and

(3) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or

(c) any other open area intended for general public use and providing a principal means of approach for vehicles or pedestrians from a way established on the City Map to a #building or other structure#, that:

(1) performs the functions usually associated with a way established on the City Map;

(2) is at least 50 feet in width throughout its entirelength;

(3) is approved by the City Planning Commission as a "street" to satisfy any requirement of this Resolution; and

(4) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or

(d) any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map; or . . .

* * *

Lot, through (ZR § 12-10 Definitions)

A "through lot" is any zoning lot, not a corner lot, which adjoins two street lines opposite to each other and parallel or within 45 degrees of being parallel to each other. Any portion of a through lot which is not or could not be bounded by two such opposite street lines and two straight lines intersecting such street lines shall be subject to the regulations for an interior lot; and

* * *

ZR § 23-531

Excepted through lots

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

(a) In all districts, as indicated, no #rear yard# regulations shall apply to any #through lots# that extend less than 110 feet in maximum depth from #street# to #street#; and

The Appellant's Position

WHEREAS, the Appellant seeks for DOB to consider the site a "through lot" because it adjoins two "street lines" opposite to each other and parallel - Austin Street and the LIRR ROW; and

WHEREAS, the subject R7A zoning district regulations do not require a front yard and, thus, the Appellant proposes to construct its building to the front lot line and, based on the premise that it is a through lot with a depth less than 80 feet, the Appellant does not propose a rear yard, but proposes a building setback from the rear lot line of between approximately 19'-3 ½" and 38'-5 ¾"; and

WHEREAS, in support of its position, the Appellant makes the following primary arguments: (1) the LIRR ROW meets the ZR § 12-10 definition of street; (2) even if the LIRR ROW is not a "street," it functions like a street and should be viewed as such; and (3) the principles of Equal Protection and fairness require that the application be approved; and

WHEREAS, the Appellant asserts that the LIRR ROW is a street either pursuant to the ZR § 12-10(a) or § 12-10(d) definitions of "street" as it is "a way established on the City Map" and "any other public way that on December 15, 1961 was performing the functions usually associated with a way established on the City Map"; and

WHEREAS, additionally, the Appellant cites to Webster's Dictionary definition of "street" as "a public way, with buildings on one or both sides, in a city, town or village" and lists "road" as a synonym; and

WHEREAS, the Appellant posits that the inclusion of the word "road" as part of the term "railroad" by definition implies that the LIRR ROW is in effect a "street" for trains; and

WHEREAS, the Appellant notes that the ZR § 12-10(a) provision was changed by the February 2, 2011 Key Terms Text Amendment from the prior "a way shown on the City Map" to the current "a way established on the City Map"; and

WHEREAS, the Appellant asserts that the LIRR ROW is both a way *shown* and a way *established* on the City Map, so the revision to the text does not implicate its analysis; and

WHEREAS, additionally, the Appellant states that neither DOB nor the Board have limited the application of the definition of street to ways shown (or established) on the City Map; and

WHEREAS, specifically, the Appellant notes that the Corporation Counsel has declared streets not shown on the City May as Prescriptive Streets and the Board has waived the requirement for compliance with GCL § 36 for unmapped streets to facilitate construction fronting on such streets; and

WHEREAS, the Appellant notes that pursuant to BSA Cal. No. 229-06-A (Bayside Drive, Queens), the Board

determined that a private service road entirely on private property was a street for purposes of application of zoning yard requirements; and

WHEREAS, during the hearing process, the Appellant adopted the alternate approach that if the LIRR ROW did not meet the definition of street, it functions like a street and should, thus, be treated as one; and

WHEREAS, the Appellant states that DOB's formerly followed a reasonable interpretation that it recognized that the LIRR ROW could be "considered to be a street" for the purposes of applying ZR § 23-531(a) to other lots abutting the LIRR ROW; and

WHEREAS, the Appellant revised its position to assert that it is a technicality that the LIRR ROW does not meet the strict definition of "street" in ZR § 12-10; and

WHEREAS, the Appellant asserts that the LIRR ROW serves the purpose of a street in that it provides access to light and air for the benefit of the site similar to an established street for automobile traffic on the City Map, but which cannot be developed as-of-right; and

WHEREAS, as to DOB's history of approvals, the Appellant states that DOB issued approvals for the construction of two buildings adjacent to the site, which similarly abut the LIRR ROW; and

WHEREAS, the Appellant asserts that the first approval arose from DOB's Borough Commissioner Technical Meeting (BCTM) No. 168 on February 11, 1993 (the "1993 BCTM") in which DOB determined that the LIRR ROW can be considered a street with reference to 69-40 Austin Street; and

WHEREAS, second, the Appellant states that on July 26, 2006, the Borough Commissioner accepted the 1993 precedent for the adjacent property at 65-60 Austin Street, a decision that was upheld by the Borough Commissioner in Queens during an audit two years later; and

WHEREAS, the Appellant further notes that DOB approved the construction of two other multiple dwellings within the last two decades with rear yards with depths less than 30 feet at 65-84 and 66-08 Austin Street; and

WHEREAS, the Appellant notes that all four of the noted buildings on Austin Street have obtained certificates of occupancy; and

WHEREAS, as to the Constitutional arguments, the Appellant asserts that DOB's actions have limited the property owner's use and enjoyment of his property and caused financial hardship, in conflict with the U.S. Constitution's Fifth and Fourteenth Amendments; and

WHEREAS, specifically, the Appellant states that recent U.S. Supreme Court cases (including Koontz v. St. Johns River Waste Management District, 570 U.S. ___(2013)) uphold the Fifth Amendment's fundamental right to property and directs that land use agencies may not exercise unbridled discretion during decision-making processes; and

WHEREAS, additionally, the Appellant asserts that DOB has been arbitrary and inconsistent and that such practices raise a Constitutional issue under the Equal Protection Clause of the Fourteenth Amendment which provides that state government will not "deny to any person within its jurisdiction the equal protection of the laws" and provides protection to every person "against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by improper execution through duly constituted agents"; and

WHEREAS, the Appellant asserts that principles of Equal Protection require that the owner of the subject 65-70 Austin Street be afforded the same approval as the owners of the other four Austin Street sites; and

WHEREAS, further, the Appellant cites to Village of Willowbrook v. Olech, 528 U.S. 1071 (2000) (quoting Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 441 (1923)) to support its position and for the point that the local government's action cannot have been "irrational and wholly arbitrary"; and

WHEREAS, the Appellant states that it does not have any knowledge of intentional discrimination against it but it contends that DOB has been arbitrary in denying to approve the subject building yet choosing to remedy its mistake on the four approvals on similarly-situated properties; and

WHEREAS, the Appellant asserts that DOB has singled its building out and has selectively enforced against it; and

WHEREAS, finally, the Appellant asserts that in the event the appeal is denied, the Board has an obligation to conduct hearings pursuant to ZR § 72-11 and NYC Charter § 645 to consider revocation of the Certificates of Occupancy issued for the adjacent sites and that DOB is obliged to pursue appropriate actions as it cannot be estopped from correcting its erroneous issuance of Certificates of Occupancy for the other Austin Street sites; and

DOB's Position

WHEREAS, DOB states that the site is not a through lot because: (1) the LIRR ROW is not a street, as defined by ZR § 12-10; (2) there is no basis to approve the application even if the LIRR ROW functions as a street; and (3) the Constitutional claims are meritless; and

WHEREAS, DOB states that because the LIRR ROW is not a "street," and the site does not adjoin two "street lines," a rear yard of 30 feet is required; and

WHEREAS, DOB states that the "through lot" definition requires the lot to be between "street lines," not between something that is not a "street" but may have some similarities to a street (i.e. a railroad right-of-way) and the definition specifically states that if a lot is not bounded by street lines, the lot is an interior lot; and

WHEREAS, DOB states that while the LIRR ROW is depicted on the City Map, it does not meet the ZR § 12-10(a) definition of "street" because it is not "a way shown" or "established" on the City Map; and

WHEREAS, DOB acknowledges that on February 2, 2011, through its Key Terms Text Amendment, the Department of City Planning (DCP) amended the ZR § 12-10(a) definition of street to replace the word "shown" with "established;" and

WHEREAS, DOB and DCP, by separate letter, state that the change in text was a clarification and not a substantive change in that the wording was modified to be consistent with

the terminology for streets on the City Map; prior to the text change and now, the LIRR ROW would not satisfy the definition of street because it is not a way *shown* or *established* on the City Map; and

WHEREAS, DOB states that although the change in wording is subtle, this clarification was necessary in order to address confusion that may have been occurring from seeing certain depictions, such as railroads, on the City Map; and

WHEREAS, DOB notes that, according to DCP, the purpose of the change was to clarify the intent of the "street" definition by emphasizing that, while there are some features shown on the City Map for informational purposes, only specific map elements, such as streets, are "established" on the City Map; and

WHEREAS, DOB states that Chapter 1 of Title 25 of the Administrative Code of the City of New York governing DCP specifically defines what features are required to be "established" on the City Map; Administrative Code § 25-102 entitled "City map; what to include", states that "[t]here shall be located and laid out on the city map all parks, playgrounds, streets, courtyards abutting streets, bridges, tunnels and approaches to bridges and tunnels, and improvements of navigation in accordance with bulkhead and pierhead lines established pursuant to section seven hundred five of the charter…"; and

WHEREAS, DOB asserts that this list of legally established map elements that must be included on the City Map includes ways, such as streets, bridges, tunnels and approaches to bridges and tunnels, but does not include railroads; and

WHEREAS, DOB states that the legend on the City Map, indicates that streets and railroad rights of way are treated differently; specifically, the straight line indicates a street and the City Map legend states "street line heretofore established" or "street line hereby "established", while a broken line specifically identifies the "LIRR Right of Way" but leaves out the language "heretofore established" or "hereby established"; and

WHEREAS, DOB states that while streets are "established" on the City Map, railroads are not and are only included for informational purposes; and

WHEREAS, DOB also states that if a railroad right-of-way is a "street," other inconsistencies arise in the zoning such as the definition of "block" including "streets" and "railroad rights-of-way" as separate items; and

WHEREAS, in response to the Appellant's reliance on the 1993 BCTM which noted that the LIRR ROW did meet the ZR § 12-10 definition of "street" for construction of 69-40 Austin Street, the 2006 determination from Terrence Lin (then-Technical Compliance Unit Auditor in the Queens Borough Office), which accepted the LIRR ROW as a ZR § 12-10 "street" for construction at 65-60 Austin Street and the addresses for three other buildings with rear lot lines abutting the LIRR, DOB states that those permits were issued in error and cannot be relied on to support the Appellant's case; and

WHEREAS, DOB states that it is unclear whether the attendees at the 1993 BCTM thought that the LIRR ROW met the ZR § 12-10 definition of "street" or whether they thought the LIRR ROW was something similar to a "street" when adopting their conclusion; and

WHEREAS, DOB notes that the one sentence used in the 1993 BCTM notes stating "[t]he applicants request to consider the Rail Road right-of-way a street is granted per Section 12-10 (definition of Block and Street)" is not convincing one way or the other and more importantly, even if the 1993 BCTM decision was made on the basis that they thought the LIRR ROW was something similar to a "street," such a decision was erroneous and is not supported by the ZR § 12-10 definition of "street"; and

WHEREAS, accordingly, DOB states that it is irrelevant which rationale the 1993 BCTM used to come to their conclusion since their conclusion was erroneous and not supported by the text of the Zoning Resolution; and

WHEREAS, DOB states that it has described the reasons for reaching a different result in this case in that the LIRR ROW does not satisfy the definition of "street" and that any prior decision made by DOB finding that the LIRR is a "street" was erroneous, as it is not supported by the text of the Zoning Resolution; and

WHEREAS, DOB asserts that the statutory language is unambiguous and no interpretation is required; and

WHEREAS, in response to the Appellant's claims that DOB's application of the ZR § 12-10 definition of "street" in this case violates the Fourteenth Amendment, DOB states that it did not issue the Final Determination irrationally, arbitrarily or capriciously, nor is DOB denying the Appellant equal protection of the law; and

WHEREAS, further, DOB notes that the Appellant asserts that it "demonstrated inconsistent and unrestrained discretion in the granting of variances due to its inconsistent interpretation of relevant land use terms and definitions", citing to Koontz v. St. Johns River Waste Management District, 570 U.S. __ (2013), Nollan v. California Coastal Commission, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S. 374 (1994); and

WHEREAS, however, DOB finds that the Appellant fails to explain how these Fifth Amendment regulatory takings cases are relevant to the present case; in the three cited cases, the plaintiffs were deprived of use of their land because the government was essentially taking the plaintiff's property – by creating public easements on the property – without a legitimate state interest; and

WHEREAS, DOB asserts that there has been no such "taking" of Appellant's property; therefore discussion of these cases is irrelevant to the issues at hand; and

WHEREAS, DOB responds to the Appellant's invocation of Village of Willowbrook v. Olech, which states that an "irrational and wholly arbitrary" decision where "the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment" is a violation of the Fourteenth Amendment's Equal Protection Clause and to Burt v. City of New York, for the claim that the DOB has not offered a rational distinction for treating the Appellant

differently from the prior erroneous approvals; and

WHEREAS, DOB asserts that the Appellant does not include the fact that Burt v. City of New York also held that "unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional or purposeful discrimination*." Burt v. City of New York, 156 F.2d 791, 792 (2d Cir. 1946) (emphasis added) (holding that discrimination occurs when city officials deliberately misinterpret and abuse their statutory power in order to deny plaintiff's architectural applications or impose upon him unlawful conditions) referring to Snowden v. Hughes, 64 S.Ct. 397 (1944); and

WHEREAS, DOB asserts that it has thoroughly explained its reasoning and that the Appellant has not demonstrated any evidence of intentional or purposeful discrimination against the Appellant because none exists; and

WHEREAS, further, DOB states that if applicants file plans today or in the future to develop a zoning lot as a "through lot" that adjoins a "street" and a railroad right-of-way, DOB would disapprove the plans for the same reasons set forth in the Final Determination and throughout the appeal process; and

WHEREAS, DOB states that such treatment would act to treat similarly-situated properties in the same manner; and

WHEREAS, DOB states that therefore, in contrast to Willowbrook, its Final Determination has not been made to *intentionally* treat the Appellant differently from others similarly situated nor has DOB violated the Equal Protection Clause in issuing this Final Determination; and

WHEREAS, finally, DOB states that In The Matter of Charles A. Field Delivery Service, Inc., states that an agency is "free [like courts] to correct a prior erroneous interpretation of the law by modifying or overruling a past decision" Field Delivery Service, Inc., 66 N.Y.2d 516, 519 (1985) and that "when an agency determines to alter its prior stated course it must set forth its reasons for doing so." Id., at 520; and

WHEREAS, accordingly, DOB states that an agency only acts arbitrarily and irrationally if the agency "fails to adhere to its own prior precedent nor indicates its reason for reaching a different result." Id., at 516; and

WHEREAS, DOB contends that in this case, it has admitted to prior erroneous interpretations of the ZR § 12-10 definition of "street" and has provided sufficient explanation for doing so; therefore, DOB maintains that it has not acted arbitrarily or capriciously; and

The Department of City Planning's Letter

WHEREAS, DCP's counsel submitted a letter into the record on appeal, which states that the meaning of the term "way" in the ZR § 12-10(a) definition considered in the context of ZR § 12-10 as a whole, clearly refers to a thoroughfare which provides public vehicular and/or pedestrian passage, not railroad transportation use, consistent with the common understanding of a "street"; and

WHEREAS, DCP cites to the repeated reference to the concept of streets being "designed or intended for general public use" in the sections of the ZR § 12-10 definition and that private roads or driveways that provide only limited vehicular access are, under the final paragraph of the ZR § 12-10 definition, not considered a street; and

WHEREAS, DCP states that taken as a whole, the definition's framework makes clear that a railroad right of way that is not accessible to the public for vehicular or pedestrian use is not a "street"; and

WHEREAS, DCP also states that the Zoning Resolution treats railroad rights-of-way as distinct from streets in numerous provisions; and

WHEREAS, DCP adds that the LIRR ROW is not established on the City Map but is among the items noted for informational purposes only; and

Conclusion

WHEREAS, the Board agrees with DOB and DCP's position that the LIRR ROW is not a "street" as defined at ZR § 12-10 and, thus, the subject lot is not a through lot exempt from the rear yard requirement; and

WHEREAS, the Board does not find that the LIRR ROW satisfies the ZR § 12-10(a) requirement of "a way established on the City Map" as the LIRR ROW is included on the map for informational purposes but is not established there, nor is it a "way" in the sense that it is "designed or intended for general public use" consistent with the framework of the provision; and

WHEREAS, further, the Board does not find that the LIRR ROW satisfies the ZR § 12-10(d) condition of being "any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map" as the LIRR ROW is not a "public way" and does not function similarly to one of the limited kinds of "ways" that are established by law on the City Map; and

WHEREAS, the Board notes that railroad rights-of-way are not among the contents of the City Map listed in Administrative Code § 25-102 and are therefore intended to be for informational purposes only; and

WHEREAS, as far as the Appellant's Constitutional claims, the Board agrees with DOB's reading of the cited case law and notes that the Appellant is neither being deprived of its use of its property nor being treated un-equally in the sense contemplated by the noted Supreme Court decisions; and

WHEREAS, the Board does not find any basis to support a claim that DOB intentionally or purposefully discriminated against the Appellant as required by Burt v. City of New York to establish a claim for Equal Protection; and

WHEREAS, the Board acknowledges that DOB has failed to explain the reason for the four approvals on Austin Street, which are contrary to zoning, but none of the submissions have provided a legal or procedural basis for issuing an approval now that DOB (the permit-issuing body) and DCP (the drafters of the text) agree would be contrary to zoning regulations; and

WHEREAS, the Board continues to support DOB's position that it is not estopped from correcting its errors as per Matter of Charles A. Field Delivery Serv., Inc.; the case law requires that the agency explain its correction and does require the rationale for the disavowed erroneous approval in order to

correct itself; and

WHEREAS, the Board notes that DOB states that it will not grant any approvals for similarly-situated sites along the LIRR ROW that include rear yards with depths of less than 30 feet; and

WHEREAS, the Board also notes that the Appellant has not begun construction at the site and that it may be possible to redesign the project to include a rear yard with a depth of 30 feet and allow for a productive use of the site; however, the Board notes that no such plans have been proposed or reviewed by the Board or DOB; and

WHEREAS, the Board notes that the Appellant's current proposal reflects a setback from the rear lot line/LIRR ROW of depths ranging from approximately 19'-3 ½" to 38'-5 ¾"; and

WHEREAS, as to the Appellant's reliance on the summary of the 1993 BCTM, the Board notes that at the time of the other Austin Street approvals, the definition of street included ZR § 12-10(a) "a way shown on the City Map" and based on the BCTM summary – "the applicant's request to consider the Rail Road right-of-way a street is granted as per Section 12-10 (definition of Block and Street)" - it is unclear whether there was reliance on the concept of "*shown*" or if the meeting attendees understood "shown on the City Map" to mean "established on the City Map"; and

WHEREAS, accordingly, it is possible that the outcome of the BCTM would have been different if the 2011 Key Terms Text Amendment and the provision "established on the City Map" had been in effect; and

WHEREAS, the Board recognizes that DOB and DCP consider the Key Terms Text Amendment change from "shown" to "established" to be a clarification and not a substantive change; however, the Board finds that whether it was clarification or substantive change, there may be a more reasonable argument for the prior version of the text to be seen as ambiguous and thus prone to misreading that led to the four prior erroneous approvals; and

WHEREAS, the Board finds that to the extent that ambiguity may have existed under the pre-2011 text, such ambiguity no longer exists and the text is clear on its face that a way must be *established* on the City Map in order to satisfy the ZR § 12-10(a) definition of "street"; and

WHEREAS, the Board rejects the Appellant's revised argument that DOB's approval was based on the fact that the LIRR ROW functioned as a street or that being *like* a street would be a sufficient substitute to satisfy the Zoning Resolution definition; and

WHEREAS, the Board notes that the Appellant's remaining arguments, including a citation to a prior Board decision involving the ZR § 12-10(d) definition of "street" as "any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map," are without merit and do not address the issue of whether a railroad right-of-way is a street per the ZR § 12-10(a) definition of a "street" as a "way established on the City Map"; and

WHEREAS, as to the Board's duty to direct DOB to revoke the certificates of occupancy for the four other Austin Street buildings, the Board notes that the four other buildings and their certificates of occupancy have not been reviewed or considered within the appeal; and

WHEREVER, the Board also notes that DOB approved the construction of those buildings when the definition of "street" was less clear and finds that the change in the text may provide an explanation for the errors, notwithstanding DOB and DCP's position that there was not a substantive change; and

WHEREAS, accordingly, the Board does not see any basis to direct DOB to revoke the certificates of occupancy for the four other Austin Street buildings and notes that the current unambiguous text will ensure that there will be no other such erroneous approvals; and

WHEREAS, based on the above, the Board has determined, the Final Determination must be upheld and this appeal must be denied; and

Therefore it is Resolved that this appeal, which challenges a Department of Buildings final determination dated April 19, 2013, is denied.

Adopted by the Board of Standards and Appeals, November 26, 2013.

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 – Laid over to January 14, 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 January 28, 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 January 28, 2014, at 10 A.M., for continued hearing.

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 – Laid over to December 17, 2013, 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 December 10, 2013, 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 January 14, 2014, at 10 A.M., for continued hearing.

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 & 47Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, Borough of Staten Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued 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 January 14, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

50-12-BZ
CEQR #12-BSA-085Q
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner of the Department of Buildings, dated February 24, 2012, acting on Department of Buildings Application No. 410202221, reads, in pertinent part:

Proposed commercial use (retail Use Group 6) within an R3-2 district is contrary to ZR 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 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 February 5, 2013, after due notice by publication in the *City Record*, with continued hearings on May 14, 2013 and October 29, 2013, and then to decision on November 26, 2013; 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 the application; and

WHEREAS, the subject site is an interior lot located on the south side of South Conduit Avenue between Farmer's Boulevard and Guy R. Brewer Boulevard, within an R3-2 zoning district; and

WHEREAS, the site has 99.38 feet of frontage along South Conduit Avenue and a lot area of 7,819 sq. ft.; and

WHEREAS, the applicant states that the site is vacant and has never been developed; and

WHEREAS, the applicant proposes to construct a one-story commercial building (Use Group 6) with 2,346 sq. ft. of floor area (0.30 FAR) and parking for ten automobiles; and

WHEREAS, because Use Group 6 is not permitted within the subject R3-2 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 shallowness and irregular shape of the site; (2) the site's location and sole frontage along South Conduit Avenue, a service road, and its proximity to multiple busy thoroughfares, including an exit ramp for the Belt Parkway; and (3) the adjacency of non-residential uses; and

WHEREAS, the applicant states that the shallow lot depth of the site (approximately 80 feet) and its irregular shape (it is approximately four feet wider along South Conduit Avenue than it is along the rear lot line) combined with the yard requirements of the R3-2 district result in impractical residential developments; and

WHEREAS, specifically, the applicant states that it must provide a rear yard with a depth of 30 feet, two side yards with widths of eight feet, and a front yard with a depth of 15 feet, it can only build a maximum of three single-family homes, which the applicant states is financially infeasible; and

WHEREAS, the applicant also states that the average lot depth of the residential sites along South Conduit Avenue is 117 feet, which is nearly 40 feet deeper than the subject site; and

WHEREAS, the applicant asserts that the community facility yard requirements, are fewer, similarly result in a financially infeasible development; and

WHEREAS, the applicant asserts that the site's location along South Conduit Avenue combined with its close proximity to an exit ramp for the Belt Parkway and the corner of South Conduit Avenue and Farmer's Boulevard make the site particularly undesirable for residential uses because of the heavy automobile traffic along these roadways; and

WHEREAS, the applicant represents that all residential developments on either South Conduit Avenue or North Conduit Avenue on lots that are similar in size to the site and have direct access from either service road also have access and frontage along more residential streets; and

WHEREAS, the applicant notes that although 16 semi-detached residences are located along South Conduit Avenue directly west of the site, such residences are screened from South Conduit Avenue by substantial vegetation, have significantly deeper lots, and are accessed by and front on Meadow Road, with their rear yards abutting South Conduit Avenue; and

WHEREAS, the applicant asserts that it is not feasible to extend Meadow Road east to provide access to homes on the site for the following reasons: (1) the neighboring school owns and uses the area as a parking lot; (2) the parking lot is not for sale; (3) even if the lot could be purchased, easement agreements would have to be executed among the applicant, the owners of the homes fronting on Meadow Road, and the school; and (4) any such alteration of the school's parking and traffic pattern would require the review of the Department of Transportation; and

WHEREAS, thus, the applicant states that because it is infeasible to extend Meadow Road, any homes at the site would—unlike all other lots in the area—have to front on and be exclusively accessed by South Conduit Avenue; and

WHEREAS, the applicant also asserts that the uses adjacent to the site make it unsuitable for conforming uses; and

WHEREAS, in particular, the applicant states that, directly south, the site abuts a large parking lot accessory to the school located on Lot 15, and, directly east, the site abuts a gasoline station service station and its accessory parking lot on Lot 1; in addition, as mentioned above, the site is directly across from an exit ramp of the Belt Parkway; the applicant represents that such adjacent uses significantly reduce the value of the site for conforming uses; and

WHEREAS, as to the adjacent gasoline service station, the applicant notes that it has a history of contamination as well as the potential for future contamination; as such, the subject site has the potential to become contaminated as well,

which further reduces its market value for conforming uses; and

WHEREAS, finally, the applicant notes that pedestrian access to the site is limited; while the gasoline service station has a sidewalk extending to Farmer's Boulevard, none of the residences to the west of the site have sidewalks along South Conduit Avenue; therefore, pedestrians would be unable to safely access the site from Guy R. Brewer Boulevard; and

WHEREAS, the Board finds that the proximity of the site to an exit from the Belt Parkway and the site's sole frontage along the service road 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: (1) an as-of-right development with three, single-family homes and 4,686 sq. ft. of floor area (0.60 FAR); (2) an as-of-right multiple dwelling with four dwelling units and 4,688.25 sq. ft. of floor area (0.60 FAR); and (3) an as-of-right community facility (ambulatory diagnostic center) with 4,837.51 sq. ft. of floor area (0.62 FAR) and 12 at-grade parking spaces; and

WHEREAS, the applicant concluded that all three as-of-right scenarios 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 the only economically viable scenario; 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 low- to medium-density residential and commercial uses with some manufacturing/industrial uses, including a school, a gasoline station, and a subdivision of one- and two-family dwellings; and

WHEREAS, in support of this statement, the applicant submitted surveys and photographs depicting the mixed-use nature of the neighborhood; and

WHEREAS, the applicant asserts that the proposal would serve as a buffer between the gasoline station and the heavily-trafficked and retail-oriented intersection of Farmer's Boulevard and South Conduit Avenue and the residential subdivision directly east of the site, and the residences directly west of the site; and

WHEREAS, in addition, the applicant states, as noted above, that the site is adjacent to or in close proximity to several major thoroughfares, including South Conduit Avenue, Guy R. Brewer Boulevard, Farmer's Boulevard, and the Belt Parkway; and

WHEREAS, accordingly, the proposed commercial use 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: 2,346 sq. ft. of floor area (0.30 FAR); a front yard depth of approximately 49 feet; one side yard with a width of 20 feet; no rear yard; and parking for 12 automobiles; and

WHEREAS, the applicant states that the proposed FAR of 0.30 is half of the maximum FAR for a residence in the R3-2 district; and

WHEREAS, the applicant asserts that it far exceeds the front yard requirement for the subject R3-2 district (which requires a minimum depth of 15 feet) as well as for the nearest district where the use would be permitted as-of-right (C1-2, which does not require a front yard); and

WHEREAS, as to side yards, the applicant states that it complies with the C1-2 regulations, but does not comply with the R3-2 regulations (which require two side yards with minimum widths of eight feet), because it provides a 20-foot side yard along the west of the building, but reduced its side yard along the east of the building in order to create the maximum distance between the nearby residences and the commercial building; and

WHEREAS, as to rear yard, the proposal complies with neither the R3-2 regulation, nor the C1-2 regulations; however, as noted above, the rear of the site abuts a parking lot for a school; and

WHEREAS, finally, the applicant represents that all parking lot lighting at the site will be directed away from residences; 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, at hearing, the Board expressed concern regarding the following: (1) the sufficiency of the proposed plantings and sidewalks; (2) the proposed hours of operation; and (3) the location of refuse storage and the hours of its removal from the site; and

WHEREAS, in response, the applicant submitted a statement that: (1) certified that the plantings and sidewalks were in compliance with applicable provisions of the Zoning Resolution and Building Code; (2) indicated that the hours of operation would be limited to seven days per week, from 6:00 a.m. to 11:00 p.m.; and (3) certified that refuse pickup would occur between the hours of 9:00 a.m. and 8:00 p.m. and submitted an amended plan showing that refuse storage would be located on the far east side of the property; 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. 12BSA085Q, 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, 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 R3-2 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 November 12, 2013"–(4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: 2,346 sq. ft. of floor area (0.30 FAR); a minimum front yard depth of 49 feet; one side yard with a minimum width of 20 feet; no rear yard; and parking for 12 automobiles;

THAT the hours of operation will be limited to seven days per week, from 6:00 a.m. to 11:00 p.m.;

THAT signage will comply with C1 regulations;

THAT refuse pickup will be limited to seven days per week, from 9:00 a.m. to 8:00 p.m.;

THAT the above conditions will appear on the 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 the Department of Buildings must ensure compliance 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 26, 2013.

106-13-BZ
CEQR #13-BSA-126K

APPLICANT – Law office of Fredrick A Becker, for Harriet and David Mandalaoui, owners.

SUBJECT – Application April 18, 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 yard (§23-461) and perimeter wall height (§23-631); R3-2 zoning district.

PREMISES AFFECTED – 2022 East 21st Street, west side of East 21st Street between Avenue S and Avenue T, Block 7299, Lot 18, 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 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 25, 2013, acting on Department of Buildings Application No. 320711128, reads in pertinent part:

> The proposed enlargement of the existing one family residence in an R3-2 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 and open space . . . contrary to Section 23-141 of the Zoning Resolution;
> 3. creates non-compliance with respect to the side yard by not meeting the requirements of Section 23-461 of the Zoning Resolution;
> 4. creates non-compliance with respect to rear yard by not meeting minimum requirements of Section 23-47 of the Zoning Resolution; 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, and 23-47; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in *The City Record*, and then to decision on November 26, 2013; 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, a member of the surrounding community testified in opposition to the application, citing concerns about the size of the enlargement; and

WHEREAS, the subject site is located on the west side of East 21st Street, between Avenue S and Avenue T, within an R3-2 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 2,409 sq. ft. (0.60 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 now seeks an increase in the floor area from of 2,409 sq. ft. (0.60 FAR) to 4,216 sq. ft. (1.05 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to decrease the open space from 65 percent to 54 percent (the minimum required open space is 65 percent) and increase the lot coverage from 35 percent to 46 percent (the maximum permitted lot coverage is 35 percent); and

WHEREAS, the applicant also seeks to maintain the width (3'-1¼") of one existing, non-complying side yard and decrease the width of the other existing side yard from 10'-6 ½" 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, in addition, the applicant seeks to decrease its rear yard depth from 28'-1½" to 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the Board notes that, initially, the applicant sought to maintain its existing non-complying perimeter wall height of 22'-1"; however, the proposal has since been modified to provide a complying 21'-0" perimeter wall height; and

WHEREAS, the applicant asserts 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 1.05 FAR is consistent with the bulk in the surrounding area and notes that there are four homes in the vicinity (on Blocks 7299, 7300, and 7301) with FARs of 1.0 or greater on lots that are smaller and narrower than the subject site; and

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

WHEREAS, at hearing, the Board requested clarification regarding the percentage of the existing building to be retained; and

WHEREAS, in response, the applicant submitted amended drawings clarifying the amount of the building to be retained; 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, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-631, 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"- Twelve (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,216 sq. ft. (1.05 FAR), a minimum open space of 54 percent, a maximum lot coverage of 46 percent, side yards with minimum widths of 3'-1¼" 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 the Department of Buildings must 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 26, 2013.

129-13-BZ
CEQR #13-BSA-135K
APPLICANT – Lewis E. Garfinkel, for Tammy Greenwald, owner.
SUBJECT – Application May 7, 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(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1010 East 22nd Street, west side of East 22nd Street, 264' south of Avenue I, Block 7585, Lot 61, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 23, 2013, acting on Department of Buildings Application No. 320728502, 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 existing minimum side yard is less than 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, 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 October 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2013, and then to decision on November 26, 2013; 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 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 22nd Street, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 3,000 sq. ft. and is occupied by a single-family home with a floor area of 2,035.6 sq. ft. (0.68 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 now seeks an increase in the floor area from of 2,035.6 sq. ft. (0.68 FAR) to 2,885.2 sq. ft. (0.96 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 86 percent to 57 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the applicant also seeks to maintain the width (7'-3") of one existing side yard and increase the width of the other existing side yard from 1'-8" to 3'-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, in addition, the applicant seeks to decrease its non-complying rear yard depth from 20'-4" 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, 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 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 15, 2013"- Twelve (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,885.2 sq. ft. (0.96 FAR), a minimum open space ratio of 57 percent, side yards with minimum widths of 3'-1" and 7'-3", 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 the Department of Buildings must 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 26, 2013.

168-13-BZ
CEQR #13-BSA-148K
APPLICANT – Lewis E Garfinkel, for Dovie Minzer, owner.
SUBJECT – Application June 4, 2013 – Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(a); side yard (§23-461(a); less than the required rear yard; (§23-47) and perimeter wall height (§23-631. R3-2 zoning district.
PREMISES AFFECTED – 1323 East 26th Street, east side of East 26th Street, 180' south of Avenue M, Block 7662, Lot 39, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 21, 2013, acting on Department of Buildings Application No. 320756776, 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 proposed side yards are less than the required 5'-0" and 8'-0";
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR § 73-622, to permit, 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 October 29, 2013, after due notice by publication in *The City Record*, and then to decision on November 26, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by 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 26th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 3,000 sq. ft. and is occupied by a single-family home with a floor area of 1,992 sq. ft. (0.66 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 now seeks an increase in the floor area from of 1,992 sq. ft. (0.66 FAR) to 3,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 102 percent to 55 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the applicant also seeks to maintain the width (3'-4") of one existing side yard and decrease the width of the other existing side yard from 7'-0" to 6'-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, in addition, the applicant seeks to decrease its rear yard depth from 31'-4" to 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant asserts 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, 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 2, 2013"- Eleven (11) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,000 sq. ft. (1.0 FAR), a minimum open space ratio of 55 percent, side yards with minimum widths of 3'-4" and 6'-4", 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 the Department of Buildings must 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 26, 2013.

173-13-BZ
CEQR #13-BSA-152M

APPLICANT – Greenberg Traurig, LLP, for 752 UWS, LLC, owner; 752 Paris Gym LLC, lessee.

SUBJECT – Application June 14, 2013 – Variance (§72-21) to legalize the existing Physical culture establishment (*Paris Health Club*), which occupies the cellar, first floor and the first floor mezzanine of a 24-story residential building, contrary to use regulations (§22-00). R10A zoning district.

PREMISES AFFECTED – 752-758 West End Avenue aka 260-268 West 97th Street, southeast corner of West End Avenue and West 97th Street, Block 1868, Tentative Lot 1401 (f/k/a part of 61), 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner of the Department of Buildings ("DOB"), dated June 3, 2013, acting on DOB Application No. 110443841, reads, in pertinent part:

> Proposed physical culture establishment . . . is not a permitted use in (an) R10A district (and) commercial uses are not permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R10A zoning district, the legalization of an existing physical culture establishment ("PCE") within portions of the cellar, first floor, and first-floor mezzanine of a 24-story residential building, 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*, and then to decision on November 26, 2013; and

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

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

WHEREAS, the subject site is located at the southeast corner of the intersection of West End Avenue and West 97th Street, within an R10A zoning district; and

WHEREAS, the site has 100.92 feet of frontage along West End Avenue, 100 feet of frontage along West 97th Street, and a lot area of 10,074 sq. ft.; and

WHEREAS, the site is occupied by a 24-story building with approximately 100,740 sq. ft. of floor area (10.0 FAR) (the "Building"); and

WHEREAS, the applicant represents that the Building is occupied by the Paris Health Club (the "Health Club"), a facility classified as a PCE pursuant to ZR § 12-10, in portions of the cellar, first floor, and first-floor mezzanine, and that the remainder of the Building is occupied by residential use (Use Group 2); and

WHEREAS, the applicant states that the Health Club occupies approximately 8,096 sq. ft. of floor area on the first floor and first-floor mezzanine and 11,890 sq. ft. of floor space in the cellar for a total Health Club floor space of 19,986 sq. ft., and includes a swimming pool, exercise and yoga rooms, approximately 1,100 lockers, and 18 showers; the applicant notes that the hours of operation for the Health Club are Monday through Thursday, from 5:30 a.m. to 11:00 p.m., Friday, from 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 7:30 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that, according to the original certificate of occupancy for the Building (No. 17926, issued October 19, 1931), the cellar was occupied by a gymnasium, a swimming pool, and lockers, and the rest of the Building was occupied by hotel uses; subsequent certificates of occupancy (No. 37387, issued June 29, 1950, and No. 69811, issued December 1, 1970) indicate that the swimming pool was maintained in the cellar and that the first floor and first floor mezzanine were occupied by various commercial uses, including a bar, a dining room, a barber shop, a beauty salon and hotel offices; and

WHEREAS, subsequently, in 1977, the Building was converted to residential use and the portions of the Building comprising the Health Club were re-classified on Certificate of Occupancy No. 78621, issued July 21, 1978, as "accessory" to the residences; however, the applicant states that such classification was in error, and despite the Health Club's designation as accessory, the Health Club has never been restricted to residents of the Building; and

WHEREAS, the applicant states that, twice in 2010, the prior owner of the Building submitted to DOB a request for a

determination that the accessory designation for the Health Club was in error, and that the Health Club was permitted to continue to operate as separate, non-accessory, non-conforming commercial health club use1; and

WHEREAS, the applicant states that DOB denied both requests; and

WHEREAS, in addition, the applicant states that on June 12, 2012, DOB issued a notice of violation to the Health Club for operating as a commercial club contrary to the certificate of occupancy; the violation was sustained by an administrative law judge of the Environmental Control Board on September 13, 2012; and

WHEREAS, accordingly, the applicant now seeks a variance to permit the Health Club to continue to operate as a commercial PCE in the subject R10A zoning district, contrary to ZR § 22-00; 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 existing Building's configuration on the site, which renders it unsuitable for a conforming use at the first floor and mezzanine level; and (2) the historic commercial use at the site; and

WHEREAS, the applicant states that the first floor's full lot coverage, which does not allow for a rear yard or central court, makes it unsuitable for conforming uses at the first floor and mezzanine level because required light and ventilation cannot be provided; and

WHEREAS, the applicant notes that, on the contrary, the upper floors enjoy the benefit of a courtyard for light and ventilation; and

WHEREAS, the applicant asserts that such lack of rear yard or large court on the first floor is a unique burden within the neighborhood; and

WHEREAS, in support of this assertion, the applicant submitted the results of a study of the 158 buildings in the area three blocks north and south of the Building, between Riverside Drive and 100 feet west of Broadway; and

WHEREAS, the applicant states that of the 158 buildings examined, only five, including the Building, lack a rear yard or large ground floor court; further, the applicant states that one of the five buildings has commercial uses on the first floor, and another has more than half its perimeter fronting a street, giving its first-floor apartments abundant light and ventilation; as such, the Building is one of only three buildings in the study area (approximately two percent) that lack a rear yard or large court on the first floor; and

WHEREAS, in addition, the applicant states that it examined the uses of the 153 buildings within the study area that do provide a rear yard or a large court, and found that of 104 buildings that have certificates of occupancy, 96 have ground floor residential units; the remaining eight buildings are distinguishable from the Building in that: five buildings are either wholly or partially within a commercial district and have commercial use on the first floor; two buildings are entirely community facilities (a school and a Salvation Army); and one building is occupied by an accessory parking garage; and

WHEREAS, based on its analysis of the 153 buildings that do have a rear yard or large court, the applicant asserts that, in the neighborhood, where a residential building has sufficient first-floor light and ventilation, such light and ventilation allow for first floor residential units; and

WHEREAS, thus, the applicant states that because the Building is only one of three buildings out of 158 that is adversely affected by not having first-floor light and ventilation, the site is uniquely disadvantaged; and

WHEREAS, the applicant also contends that the historic commercial use at the site is a unique physical condition; and

WHEREAS, specifically, the applicant states, as noted above, that the cellar, first floor, and first floor mezzanine have been used for commercial purposes since the Building was constructed in 1930; thus, for more than 80 years, the cellar has been occupied by a commercial health club, and the first floor and first-floor mezzanine have been used only for commercial purposes, first by the hotel prior to 1978, and thereafter by the Health Club; and

WHEREAS, the applicant also asserts, as noted above, that the 1978 Certificate of Occupancy classifying the Health Club as accessory was issued in error, and that the club has always operated independently of the residential portion of the Building; and

WHEREAS, accordingly, unlike buildings without a history of commercial use, the Building's cellar, first floor, and first-floor mezzanine were designed, arranged, and intended for commercial use; and

WHEREAS, the Board finds 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 particular, in addition to the proposal, the applicant examined the economic feasibility of demolishing the Health Club and constructing conforming medical offices at the cellar, first floor, and first-floor mezzanine of the Building; and

WHEREAS, the applicant concluded that the medical 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

1 The applicant believes that the 2010 determination requests did not include reference to the plans for the building's 1978 public assembly permit, which indicated that 1,100 lockers, three sales offices, 18 showers, and a separate entrance to the street would be maintained. The applicant notes that such a configuration is customarily found with a commercial rather than an accessory health club.

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 continued operation of the Health Club 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 Health Club complements and strengthens the surrounding residential environment by providing a unique and quality recreational facility for its approximately 2,200 members, most of whom reside in the neighborhood; and

WHEREAS, the applicant represents that the loss of the Health Club would damage its members, who rely on it for a safe, convenient facility for physical exercise and recreational activities; and

WHEREAS, finally, the applicant states that the Health Club has existed in its current form for more than 30 years without incident or detriment to the public welfare, and that the site as originally developed included a swimming pool, a gymnasium, and lockers at the cellar level; accordingly, the applicant states that some form of exercise facility has existed at the site for more than 80 years; and

WHEREAS, the applicant also states, as noted, that this application has the full endorsement of Community Board 7; and

WHEREAS, as to the effect of the Health Club on the residents of the Building, the applicant submitted a letter from a long-time employee of the Health Club and letters from the tenants of the two first-floor mezzanine apartments; the employee's letter indicated that no noise complaints have been received during her ten-year tenure, and both tenants' letters attested to the lack of noise emanating from the Health Club; 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 configuration of the existing building at the site and the history of commercial use within such building; 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 November 26, 2023; 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 a 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-152M, 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, 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 an R10A zoning district, the legalization of an existing PCE within portions of the cellar, first floor, and first floor mezzanine of a 24-story residential building, contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 26, 2013"- Eight(8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on November 26, 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 hours of the PCE will be limited to Monday through Thursday, from 5:30 a.m. to 11:00 p.m., Friday, from 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 7:30 a.m. to 9:00 p.m.;

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 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 November 26, 2015;

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, November 26, 2013.

229-13-BZ
CEQR #14-BSA-017K
APPLICANT – Rothkrug Rothrug & Spector LLP, for Country Leasing Limited Partnership, owner; Blink Nostrand Avenue, Inc., lessee.
SUBJECT – Application August 6, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 3779-3861 Nostrand Avenue, 2928/48 Ave Z, 2502/84 Haring Street, Block bounded by Nostrand Avenue, Avenue Z, Haring Street and Avenue Y, Block 7446, Lot 1, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 2, 2013, acting on Department of Buildings Application No. 320591267, reads in pertinent part:

> Proposed Physical Culture Establishment is contrary to ZR 32-10 and requires a special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C2-2 (R3-2) zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and basement of an existing one-story commercial building, contrary to ZR § 32-10; and

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

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

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

WHEREAS, the subject site is the entire block bounded by Nostrand Avenue, Avenue Y, Haring Street, and Avenue Z; the block is located within a C2-2 (R3-2) zoning district; and

WHEREAS, the site has 700 feet of frontage along both Avenue Y and Avenue Z, 190 feet of frontage along both Nostrand Avenue and Haring Street, and 133,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building; atop the building is parking for 106 automobiles; and

WHEREAS, the PCE is proposed to occupy 15,723 sq. ft. of floor area in the first floor and second floor of the building; and

WHEREAS, the PCE will be operated as Blink Fitness; 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 Saturday, from 5:00 a.m. to 10:00 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 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. 14-BSA-017K, dated

August 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.

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 C2-2 (R3-2) zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and basement of an existing 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 September 13, 2013" – three (3) sheets; and *on further condition*:

THAT the term of this grant will expire on November 26, 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, November 26, 2013.

16-12-BZ

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 – Laid over to January 14, 2014, at 10 A.M., for deferred decision.

262-12-BZ

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

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 January 14, 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 January 14, 2014, at 10 A.M., for continued hearing.

339-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Lion Bee Equities, LLC., owner.
SUBJECT – Application December 12, 2012 – Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.
PREMISES AFFECTED – 252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway, Block 8129, Lot p/o 53, 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 December 10, 2013, at 10 A.M., for decision, hearing closed.

120-13-BZ
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 #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 January 14, 2014, at 10 A.M., for decision, hearing closed.

167-13-BZ
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 – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

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
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 January 14, 2014, at 10 A.M., for decision, hearing closed.

187-13-BZ
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 – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

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 January 14, 2014, at 10 A.M., for continued hearing.

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 December 17, 2013, at 10 A.M., for continued hearing.

223-13-BZ
APPLICANT – Stroock & Stroock & Lavan LLP by Ross F. Moskowitz, for NYC Department of Citywide Adminstrative 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
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 January 14, 2014, at 10 A.M., for decision, hearing closed.

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 December 17, 2013, 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
ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

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
ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on October 22, 2013, under Calendar No. 606-75-BZ and printed in Volume 98, Bulletin Nos. 42-43, is hereby corrected to read as follows:

606-75-BZ

APPLICANT – Sheldon Lobel, P.C., for Printing House Condominium, owners.

SUBJECT – Application July 3, 2013 – Amendment of a previously approved variance (§72-21) which allowed the residential conversion of a manufacturing building; amendment seeks to permit a reallocation of floor area between the maisonette and townhouse units, resulting in a reduction of total units and no net change in total floor area. M1-5 zoning district.

PREMISES AFFECTED – 421 Hudson Street, corner through lot with frontage on Hudson Street, Leroy Street and Clarkson Street, Block 601, Lot 7501, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance permitting residential use within a manufacturing district; the amendment proposes the relocation of floor area from maisonette units to townhouse units, with no net change in floor area, and a reduction in the total number of dwelling units on the zoning lot; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, and then to decision on October 22, 2013; 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, Manhattan, recommends approval of this application; and

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

WHEREAS, certain members of the surrounding community testified in opposition to the application; and

WHEREAS, the subject site spans the full length of Hudson Street between Leroy Street and St. Luke's Place, within an M1-5 zoning district; and

WHEREAS, the site has approximately 200 feet of frontage along Hudson Street, 150 feet of frontage along Clarkson Street, 125 feet of frontage along Leroy Street, and a lot area of 27,584 sq. ft.; and

WHEREAS, the site is occupied by a ten-story mixed residential and commercial building (the "Main Building") and five, two-story residential buildings (the "Townhouses"), with a total of 184 dwelling units; the ground floor and mezzanine of the Main Building contains eight residential units (the "Maisonettes"); and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 20, 1976 when, under the subject calendar number, the Board granted a use variance authorizing the conversion of an existing eight-story industrial building to a mixed commercial and residential building (Use Group 2) within an M1-5 zoning district; on that same day, under BSA Cal. No. 607-75-A, the Board granted an appeal pursuant to New York State Multiple Dwelling Law § 310 waiving compliance with certain provisions of the MDL governing rear yard, egress, living room depth from a window, and flue projections; and

WHEREAS, on April 5, 2011, under BSA Cal. No. 226-10-BZ, the Board granted a special permit pursuant to ZR § 73-36 to permit a physical culture establishment ("PCE") on the first, ninth and tenth stories of the building; simultaneously, the Board granted an amendment to the subject variance to reflect the floor plan changes associated with the PCE; and

WHEREAS, subsequently, in 2011 and in 2012, the Board issued letters of substantial compliance authorizing various reconfigurations of the residential units, resulting in an overall reduction in the number of units from 184 to 154; and

WHEREAS, the applicant now seeks to amend the grant to decrease the floor area of the mezzanine levels within the Maisonettes by 1,425 sq. ft., increase the floor area of the Townhouses by 1,425 sq. ft. and to alter certain other dwelling units within the Main Building; the proposed relocation of floor area and Main Building alterations will result in a decrease in the number of Maisonette dwelling units from eight to three and a decrease in the number of Townhouse dwelling units from five to two; the alterations not related to the Maisonettes or the Townhouses will result in a decrease in the number of dwelling units from 141 to 138; and

WHEREAS, the applicant states that the amendment will increase the height of the Townhouses from 26'-1" to 30'-1" and will result in new landscaping, walkways and drainage; and

WHEREAS, the applicant asserts that the proposed reduction in the number of dwelling units at the site will decrease the scope of the use variance and will have no adverse effects on the surrounding community; and

WHEREAS, at hearing, the Board requested amended drawings clearly delineating the relocation of the floor area; and

WHEREAS, in response, the applicant submitted amended drawings; and

WHEREAS, based upon 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 reopens and amends the resolution, as adopted on July 20, 1976, to permit the relocation of floor area from the Maisonettes to the Townhouses and the reduction in the number of dwelling units at the site; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received October 8, 2013'- seventeen (17) sheets and 'July 3, 2013'-seven (7) sheets; and *on further condition*:

THAT there will be no increase in the floor area at the site;

THAT Multiple Dwelling Law compliance 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 the Department of Buildings must ensure compliance 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. 121326145)

Adopted by the Board of Standards and Appeals, October 22, 2013.

***The resolution has been Amended. Corrected in Bulletin No. 48, Vol. 98, dated December 4, 2013.**

BULLETIN

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DIRECTORY

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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

JANUARY 14, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 14, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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 – 144-02 Liberty Avenue, east side of Liberty Avenue between Inwood Street and Pinegrove Street, Block 10043, Lot 6, Borough of Queens.
COMMUNITY BOARD #12Q

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 approved 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 alter 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

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 (§§72-01 and 72-22) pursuant to a variance granted by the Board on September 12, 2006. Waiver of the Boards 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

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 (4) story residential building with ground and cellar level retail use 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

APPEALS 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 seeking to revoke permits that would allow the use of the premises as an eating and drinking establishment in violation of the zoning as the original non-conforming use has been discontinued. R6B Zoning District.
PREMISES AFFECTED – 280 Bond Street, Block 423, Lot 35, Borough of Brooklyn.
COMMUNITY BOARD #3BK

ZONING CALENDAR

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

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 (ZR 23-141(a)); side yard (ZR 23-461) and less than the required rear yard (ZR 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

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 (ZR 23-141) and less than the required rear yard (ZR 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

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 (*Blink Fitness*) establishment on the ninth floor the space of the building. 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

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, DECEMBER 10, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

519-57-BZ
APPLICANT – Eric Palatnik, P.C., for BP Amoco Corporation, owner.
SUBJECT – Application June 19, 2013 – Extension of term (§11-411) of an approved variance which permitted the operation and maintenance of a gasoline service station (Use Group 16B) and accessory uses, which expired on June 19, 2013. R3-1/C2-1 zoning district.
PREMISES AFFECTED – 2071 Victory Boulevard, northwest corner of Bradley Avenue and Victory Boulevard, Block 462, Lot 35, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for a gasoline service station; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in the *City Record*, with a continued hearing on November 19, 2013, and then to decision on December 10, 2013; 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, the subject site is an irregularly-shaped zoning lot located at the northwest corner of the intersection of Victory Boulevard and Bradley Avenue, within a C2-1 (R3-1) zoning district; and

WHEREAS, the site has 155 feet of frontage along Bradley Avenue, 100.26 feet of frontage along Victory Boulevard, and approximately 15,760 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story gasoline service station (Use Group 16) with an accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the site since July 9, 1957, when, under the subject calendar number, it granted a variance to permit, within a Retail Use District, the construction and maintenance of a gasoline service station, lubritorium, sale of accessories, minor motor vehicle repairs with hand tools, and parking of more than five motor vehicles for a term of 15 years; and

WHEREAS, at various times over the years, the Board has extended and amendment the grant, most recently on September 28, 2004, when the Board extended the term of the grant for ten years, to expire on June 19, 2013; and

WHEREAS, accordingly, the applicant now seeks an additional ten-year extension of term; and

WHEREAS, the applicant notes that gasoline sales and the accessory convenience store operate 24 hours per day, seven days per week and that the automobile repair shop operates Monday to Saturday, from 7:00 a.m. to 6:00 p.m., and is closed Sunday; and

WHEREAS, at hearing, the Board expressed concerns about: (1) the location of the curb cut along Bradley Avenue contrary to the approved plans; (2) the location of the dumpsters and air pump near the adjacent residences; and (3) whether the signs on the light poles were permitted; and

WHEREAS, in response, the applicant provided amended plans showing the as-built location of the curb cut as well as the signs displayed on the light poles; in addition, the applicant represented that the dumpsters and air pumps will be relocated to be as far away from the residences as possible; 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, so that as amended the resolution reads: "to permit the legalization of the conversion of an existing salesroom area to an accessory convenience store and to extend the term of the variance for a term of ten years from June 19, 2013 to expire on June 19, 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 November 27, 2013'- (5) sheets; and *on further condition:*

THAT all outdoor lighting at the premises shall be directed downward and away from all adjacent residential properties;

THAT the dumpsters and automotive air pumps will be located on the west side of the site away from residential uses, as shown on the BSA-approved plans;

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 and all relevant Board conditions from the previous Certificate of Occupancy shall appear on the new Certificate of Occupancy;

THAT all signage will conform to applicable zoning district requirements;

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."

Adopted by the Board of Standards and Appeals, December 10, 2013.

647-70-BZ

APPLICANT – Jeffrey A. Chester Esq/GSHLLP, for Channel Holding Company, Inc., owner; Cain Management II Inc., lessee.

SUBJECT – Application August 1, 2013 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation an automotive service station and auto laundry (UG 16B). Amendment seeks to convert accessory space into an accessory convenience store. C2-3/R5 zoning district.

PREMISES AFFECTED – 59-14 Beach Channel Drive, Beach Channel Drive corner of Beach 59th Street, Block 16011, Lot 105, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to permit a change in use from an office accessory to an automotive service station to an accessory convenience store; 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 December 10, 2013; 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 the application; and

WHEREAS, the site is located on the north side of Beach Channel Drive between Beach 62nd Street and Beach 58th Street, within a C2-3 (R5D) zoning district; and

WHEREAS, the site is currently occupied by a one-story gasoline service station, which includes automobile repair and laundry, and an accessory office; and

WHEREAS, on November 22, 1949, under BSA Cal. No. 321-49-BZ, the Board granted a variance to permit the construction of a gasoline service station, lubritorium, automobile repair shop, automobile laundry, and offices; the grant was for a term of five years, and such grant was extended and amended several times; and

WHEREAS, on February 17, 1971, under the subject calendar number, the Board granted, pursuant to ZR §§ 11-412, 11-413, and 73-211, an application to permit the reconstruction and enlargement of the gasoline service station, automobile repair shop, and automobile laundry; this grant did not include a term; and

WHEREAS, most recently, on March 12, 1996, the Board amended the grant to permit the installation of a canopy over the pump islands, the installation of new curb cuts, and the enlargement of the automobile laundry; and

WHEREAS, the applicant now seeks an amendment to the special permit to allow the conversion of accessory office space (779 sq. ft. of floor area) to an accessory convenience store (Dunkin' Donuts counter); and

WHEREAS, the applicant represents that the proposed convenience store satisfies Department of Buildings Technical Policy and Procedure Notice No. 10/1999, which sets forth criteria for convenience stores accessory to gasoline service stations; and

WHEREAS, the applicant notes that the proposal does not result in an increase in floor area or alter the existing building envelope; and

WHEREAS, at hearing, the Board requested clarification regarding the proposed accessory signage and the hours of operation for the convenience store; and

WHEREAS, in response, the applicant submitted amended plans and photographs confirming that the signage complies with the C2-3 regulations; in addition, the applicant clarified that the convenience store will operate initially seven days per week, from 5:00 a.m. to 11:00 p.m., and the hours may be extended to 24 hours per day, if business conditions warrant; the applicant notes that Community Board 14 expressed support for a 24-hour convenience store at the site; and

WHEREAS, based on its review of the record, the Board finds that the proposed conversion of an office accessory to an automotive service station to an accessory convenience store 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 February 17, 1971, so that as amended this portion of the resolution reads: "to permit a change in use from an office accessory to an automotive service station to an accessory convenience store"; *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, 2013'- (3) sheets; and *on further condition*:

THAT the signage will comply with C2-3 zoning district regulations;

THAT all construction will be completed and a certificate of occupancy will be obtained by December 10, 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 the Department of Buildings must ensure compliance 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. 420870908)

Adopted by the Board of Standards and Appeals, December 10, 2013.

605-84-BZ

APPLICANT – Sheldon Lobel, P.C., for Order Sons of Italy in America Housing Development Fund Company, Inc., owners.

SUBJECT – Application March 26, 2013 – Amendment of a previously granted variance (§72-21) to an existing seven-story senior citizen multiple dwelling to legalize the installation of an emergency generator, contrary to front yard requirements (§23-45). R5 zoning district.

PREMISES AFFECTED – 2629 Cropsey Avenue, Cropsey Avenue between Bay 43rd Street and Bay 44th Street, Block 6911, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #13BK

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 5

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 R5 zoning district the construction of a seven-story multiple dwelling for senior citizens contrary to bulk regulations; and

WHEREAS, a public hearing was held on this application on November 8, 2013, after due notice by publication in the *City Record*, with a continued hearing on October 29, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped zoning lot located at the southeast corner of the intersection of Bay 44th Street and Cropsey Avenue, within an R5 zoning district; and

WHEREAS, the site has 107.91 feet of frontage along Bay 44th Street, 150.14 feet of frontage along Cropsey Avenue, 157.9 feet of frontage along Bay 43rd Street, and 35,002 sq. ft. of lot area; and

WHEREAS, the site is occupied by a seven-story multiple dwelling for senior citizens (Use Group 2) with 75,586 sq. ft. of floor area (2.16 FAR), 105 dwelling units, and 16 parking spaces; and

WHEREAS, on March 5, 1985, under the subject calendar number, the Board granted a variance to allow the construction of the building contrary to the requirements for floor area (ZR § 23-144), lot area per room (ZR § 23-225), rear yard equivalent (ZR § 23-533), wall height, (ZR § 23-631), side setback (ZR § 23-66), parking (ZR § 25-25), location of parking access (ZR § 25-63), window-to-lot line distance (ZR § 23-861), and open space ratio (ZR § 23-144); in addition, on that same date, under BSA Cal. No. 606-84-A, the Board granted a waiver of Multiple Dwelling Law § 26(d) (rear yard equivalent); and

WHEREAS, the applicant now requests an amendment to legalize the installation of an emergency generator within the front yard, contrary to ZR §§ 23-44 and 23-45; and

WHEREAS, the applicant states that many residents of the senior-living facility have medical conditions whose treatment relies on electricity, and that the generator will enable residents to use basic utilities in the event that electricity is compromised; and

WHEREAS, the applicant notes that the generator, which measures approximately 3'-7½" in depth, 15'-6½" in length, and 9'-3½" in height, is mounted on a 0'-6" concrete base with a 2'-2" sub-base containing a double-walled 275-gallon fuel tank, and is surrounded by a concrete retaining wall and a chain-link fence; and

WHEREAS, as to the effect on the neighborhood character, the applicant represents and the Board agrees that the generator is relatively small in size and will have a minimal visual impact on the streetscape; and

WHEREAS, at hearing, the Board directed the applicant to install additional screening for the generator and landscaping along the front of the building; and

WHEREAS, in response, the applicant submitted photographs depicting the installation of the requested plantings; 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 March 5, 1985, 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 22, 2013'- (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);

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, December 10, 2013.

248-03-BZ

APPLICANT – Troutman Sanders LLP, for Ross and Ross, owners; Bally Total Fitness of Greater New York Inc., lessee.

SUBJECT – Application July 30, 2013 – Extension of Term of a previously approved variance to permit the continuance operation of a physical culture establishment (*Bally's Total Fitness)* which will expire on January 27, 2014. C1-5(R8A) & R7A zoning districts.

PREMISES AFFECTED – 1915 Third Avenue, south east 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: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a an extension of term, which expires on January 27, 2014, for a physical culture establishment ("PCE"); and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 11, Manhattan, recommends approval of this application; 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, the applicant seeks to extend the term of the variance for ten years; and

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

WHEREAS, the applicant states that it seeks to maintain its current hours of operation, which are Monday through Friday, 6:00 a.m. to 11:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that it has not yet obtained a certificate of occupancy ("CO") or a public assembly permit ("PA") for the PCE; however, it anticipates obtaining both from the Department of Buildings ("DOB") upon the extension of the term of the grant; and

WHEREAS, at hearing, the Board expressed concerns regarding the lack of the CO and the PA, and regarding the open violations at the site; and

WHEREAS, in response, the applicant advised that the issuance of the CO and the PA will occur following DOB's inspection of recently-installed emergency lighting and fireproofing; and

WHEREAS, as to the open violations, the applicant represented that although the violations have been corrected at the site, they have not yet been resolved administratively at DOB; and

WHEREAS, based on its review of the record, the Board finds that the proposed ten-year extension of term 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 January 27, 2004, so that as amended this portion reads: "to grant an extension of the variance for a term of ten years, to expire on December 10, 2023"; *on condition* that all work and site conditions shall comply with drawings marked 'Received October 10, 2013'- (4) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years from the expiration of the prior grant, to expire on December 10, 2023;

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 CO and a PA will be obtained by May 10, 2014;

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 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."

Adopted by the Board of Standards and Appeals, December 10, 2013.

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 – Laid over to January 14, 2014, at 10 A.M., for deferred decision.

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
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 January 14, 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
ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

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
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 January 14, 2014, at 10 A.M., for decision, hearing closed.

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
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 January 14, 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

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

75-11-A

APPLICANT – NYC Board of Standards and Appeals

SUBJECT – Application May 25, 2011 – To consider Dismissal for Lack of Prosecution. Appeal challenging Department of Building's determination that the permit for the subject premises expired and became invalid since permitted work was not commenced within 12 months from the date of issuance, per Title 28, §28-105.9 of the Administrative Code. R4 Zoning District.

PREMISES AFFECTED – 2230-2234 Kimball Street, Kimbal Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application Dismissed.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Montanez……...3

Negative:.....0

Absent: Vice Chair Collins.....1

Recused: Commissioner Hinkson.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of Administrative Code § 28-105.9, which provides that a building permit expires after cessation of construction for a period of more than 12 months; and

WHEREAS, the applicant filed the application on May 25, 2011; and

WHEREAS, the applicant filed two companion applications: (1) an application for a variance pursuant to ZR § 72-21 on April 8, 2011, which the Board denied on December 6, 2011 (BSA Cal. No. 39-11-BZ) and (2) a common law vested rights application (BSA Cal. No. 119-11-A), which was dismissed on the same date as the subject waiver application; and

WHEREAS, on September 22, 2011, Board staff issued a Notice of Comments; and

WHEREAS, on October 21, 2011, the applicant requested a 30-day extension of time to respond to the Notice of Comments; and

WHEREAS, on November 15, 2011, the applicant requested an additional 30-day extension of time to respond to the Notice of Comments; and

WHEREAS, on December 21, 2011, the applicant submitted a response to the Notice of Comments; and

WHEREAS, Board staff requested additional information regarding the circumstances surrounding the lapse of the building permit; and

WHEREAS, on January 12, 2012, the applicant submitted a response; and

WHEREAS, on February 14, 2012, the Board held its first public hearing and stated that it would take the item off calendar pending the outcome of the common law vesting application; and

WHEREAS, the applicant subsequently sought multiple adjournments pending its resolution of the objections with DOB associated with the vested rights application; and

WHEREAS, on April 9, 2013, after several adjournments the Board removed the vested rights application from its hearing calendar; and

WHEREAS, on July 29, 2013, the Board issued a letter stating that a significant amount of time had passed since the subject application and the vested rights application were taken off calendar without any change in status and that the Board sought to dismiss the applications for lack of prosecution; and

WHEREAS, the letter stated that, pursuant to Section 1-12.3 of the Board's Rules of Practice and Procedure, the applications would be dismissed unless provided with a complete response on all outstanding issues including revised plans approved by the Department of Buildings; and

WHEREAS, the Board did not receive any subsequent communication from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for dismissal; and

WHEREAS, on November 7, 2013, the Board sent the applicant a notice stating that the case had been put on the December 10, 2013 dismissal calendar; and

WHEREAS, at the December 10, 2013 hearing, the Board voted to dismiss the appeal; and

WHEREAS, accordingly, due to the applicant's lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 75-11-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, December 10, 2013.

119-11-A

APPLICANT – NYC Board of Standards and Appeals

SUBJECT – Application May 25, 2011 – To consider Dismissal for Lack of Prosecution. Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, Kimbal Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application Dismissed.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Montanez…….3
Negative:.....0
Absent: Vice Chair Collins.....1
Recused: Commissioner Hinkson.....1
THE RESOLUTION –

WHEREAS, this is an application under the common law doctrine of vested rights, to permit, on a site within an R4 zoning district the continuation of construction pursuant to the zoning regulations in effect at the time of permit issuance; and

WHEREAS, the applicant filed the application on August 17, 2011; and

WHEREAS, the applicant filed two companion applications: (1) an application for a variance pursuant to ZR § 72-21 on April 8, 2011, which the Board denied on December 6, 2011 (BSA Cal. No. 39-11-BZ) and (2) an application for a waiver of the Administrative Code restriction on work cessation for a period of greater than one year (BSA Cal. No. 75-11-A), which was dismissed on the same date as the subject common law vested rights application; and

WHEREAS, on September 22, 2011, Board staff issued a Notice of Comments; and

WHEREAS, on October 21, 2011, the applicant requested a 30-day extension of time to respond to the Notice of Comments; and

WHEREAS, on November 15, 2011, the applicant requested an additional 30-day extension of time to respond to the Notice of Comments; and

WHEREAS, on December 21, 2011, the applicant submitted a response to the Notice of Comments; and

WHEREAS, on February 14, 2012, the Board held its first public hearing and asked the applicant for additional information regarding work completed on the site, a timeline and an explanation of the serious loss; a second hearing date was scheduled for March 20, 2012; and

WHEREAS, on February 28, 2012, the applicant requested an extension of time to allow the Department of Buildings ("DOB") to submit an analysis as to the validity of the construction permit; the March 20, 2012 hearing was adjourned to April 3, 2012; and

WHEREAS, on March 12, 2012, DOB submitted a response to the questions raised by the Board at the February 14th hearing regarding the status of the subject permit; DOB stated that upon audit review it identified a series of objections that it determined to be minor errors that can be cured; accordingly, DOB concluded that the permit was validly issued prior to the zoning amendments; and

WHEREAS, on March 20, 2012, the applicant submitted a response to the questions raised at the Board's February 14th hearing and provided additional information as to construction work completed, costs and serious loss arguments; and

WHEREAS, on April 3, 2012, the Board closed the hearing and set the decision date for May 8, 2012; however, the Board required that prior to any approval and due to the extensive nature of the objections, the applicant must resolve all outstanding objections with DOB and revise its plans to reflect full compliance; and

WHEREAS, the Board and staff directed the applicant to work with DOB to cure the outstanding objections and correct the plans to address the objections raised by DOB's March audit; and

WHEREAS, the applicant subsequently sought multiple adjournments pending its resolution of the objections with DOB; and

WHEREAS, on April 9, 2013, after several adjournments the Board removed the case from its hearing calendar; and

WHEREAS, on July 29, 2013, the Board issued a letter stating that a significant amount of time had passed since the subject application and the Administrative Code application were taken off calendar without any change in status and that the Board sought to dismiss the applications for lack of prosecution; and

WHEREAS, the letter stated that, pursuant to Section 1-12.3 of the Board's Rules of Practice and Procedure, the applications would be dismissed unless provided with a complete response on all outstanding issues including revised plans approved by the Department of Buildings; and

WHEREAS, the Board did not receive any subsequent communication from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for dismissal; and

WHEREAS, on November 7, 2013, the Board sent the applicant a notice stating that the case had been put on the December 10, 2013 dismissal calendar; and

WHEREAS, at the December 10, 2013 hearing, the Board voted to dismiss the appeal; and

WHEREAS, accordingly, due to the applicant's lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 119-11-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, December 10, 2013.

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

Absent: Vice Chair Collin ……...1

ACTION OF THE BOARD – Laid over to January 28, 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

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

287-13-A & 288-13-A

APPLICANT – Rothkrug Rothkrug & Spec tor 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 January 14, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

236-12-BZ

CEQR #13-BSA-010R

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.

SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, 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 Montanez 4

Negative:.....0

Absent: Vice Chair Collins…….....1

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 28, 2012, acting on Department of Buildings Application No. 520100097, reads in pertinent part:

1. ZR 24-35 – Side yard is not compliant in that a minimum of eight feet is required for change of use to a community facility (and) existing side yard is 4.96 feet;
2. ZR 22-10 – Proposed change in use to a community facility in an R2 district is contrary to ZR 22-10; and

WHEREAS, this is an application under ZR § 72-21, to legalize the extension of medical office use within an existing building in an R2 zoning district, which does not conform to the use regulations or provide the required side yard, contrary to ZR §§ 22-10 and 24-35; and

WHEREAS, a public hearing was held on this application on June 4, 2013, after due notice by publication in the City Record, with continued hearings on September 10, 2013 and October 29, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application, citing concerns about the historic use of the building contrary to the certificate of occupancy; and

WHEREAS, certain members of the surrounding community testified in opposition to the application; and

WHEREAS, the site is an irregular corner lot located at the northwest corner of the intersection of Norden Street and Richmond Road, within an R2 zoning district; and

WHEREAS, the site has 100 feet of frontage along Norden Street, 40 feet of frontage along Richmond Road, and a lot area of 4,346.07 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story building containing a medical office (Use Group 4) with approximately 1,325 sq. ft. of floor area (0.31 FAR); and

WHEREAS, the applicant represents that the building was originally constructed around 1958 with approximately 1,010.35 sq. ft. of floor area (0.23 FAR); and

WHEREAS, the applicant states that the building has been used exclusively as a medical office since at least 1971, notwithstanding that the last-issued certificate of occupancy for the building (No. 18864, dated January 29, 1960) (the "CO") authorized a one-family residence and a dentist's office on the first story of the building; and

WHEREAS, the applicant notes that, to the extent a medical office existed at the site as of September 9, 2004, such use became non-conforming as a result of a text amendment that prohibited certain community facility uses as-of-right in an R2 district; and

WHEREAS, the applicant states that a fire destroyed portions of the building in 2010 and that it sought to

reconstruct the building to be used exclusively as a medical office within the historic building envelope; and

WHEREAS, the applicant states that it attempted to demonstrate to the Department of Buildings ("DOB") that the building was never occupied in accordance with the CO and was instead always exclusively a medical office, but DOB determined that the evidence was insufficient and that the building could only be reconstructed in accordance with the CO; and

WHEREAS, the applicant states that although permits were obtained to reconstruct in accordance with the original plans and CO (one-family residence and a medical office) the reconstruction altered to the building to its current configuration as medical office with no residential use; and

WHEREAS, accordingly, the applicant now seeks to legalize the reconstruction; and

WHEREAS, the applicant states that where the medical office did not previously exist as a lawful, non-conforming use, the reconstruction creates a new non-conformance (a medical office is not permitted in an R2 district) and a new non-compliance with respect to the side yard (the reconstructed building has one side yard with a width of 4.96 feet; the requirement is one side yard with a minimum width of eight feet); and

WHEREAS, the applicant notes that the proposed medical office would contain, in the cellar, utility space, storage, and a bathroom, and on the first story, an entrance area, a waiting room, examination rooms, and a clerical area; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the site's small lot area compared to nearby corner lots; (2) the site's location on Richmond Road; (3) the history of development at the site; and (4) the unsuitability of the building for its current lawful use; and

WHEREAS, the applicant states that the site's lot area of 4,346.07 sq. ft., makes it smaller than all but two of the 19 corner lots along Richmond Road within 1,000 feet of the site; and

WHEREAS, the applicant states that the two lots are distinguishable from the site, in that one lot contains a commercial use authorized by a variance, and the other is a community facility use with a significantly higher FAR (0.47) than the proposed FAR (0.31); and

WHEREAS, the applicant also states that, based on its study, the other lots that are occupied by mixed residential and commercial or community facility buildings, are significantly larger than the site and range in lot area from 5,559 sq. ft. to 8,528 sq. ft.; and

WHEREAS, the applicant asserts that the site's location on heavily-trafficked Richmond Road makes one- or two-family residential development unique and undesirable; and

WHEREAS, in support of this assertion, the applicant provided evidence that along 1,000 feet of Richmond Avenue, only two lots are developed solely with residential use – one is home on an 11,000 sq.-ft. lot (where the home may position itself away from Richmond Avenue), and the other is a multiple dwelling constructed with other buildings with an FAR of 0.78; and

WHEREAS, as to the history of development at the site, the applicant represents that medical office use has been permitted in a portion of the building at the site since 1960 and that the building has been exclusively used as a medical office since at least 1971; and

WHEREAS, as to the obsolescence of the building for its current lawful use, as noted above, the applicant states that the lawful configuration of the reconstructed building—half conforming one-family residence and half non-conforming medical office—results in undersized and therefore undesirable uses; and

WHEREAS, the applicant asserts that the lawful use of the building includes the historic condition of a medical office and one-family residence with approximately 500 sq. ft. of livable space; the applicant asserts that this configuration results in a residence that is approximately 38 percent of the size of the average residential unit (1,300 sq. ft.) on a comparably-sized lot in the vicinity; and

WHEREAS, thus, the applicant concludes that the small lot size with the existing building that was developed to include medical offices on Richmond Road creates an impediment to either a conforming one- or two-family home or a mixed residential and community facility building; and

WHEREAS, based upon the above, the Board finds that, in the aggregate, the noted conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, in addition to the proposal, the applicant analyzed the feasibility of two as-of-right scenarios: (1) occupying the building as half-medical office, half-residence; and (2) occupying the building solely as a residence; and

WHEREAS, the applicant asserts that only the proposal results in an acceptable rate of return; and

WHEREAS, based upon the above, the Board has determined that, in accordance with ZR § 72-21(b), 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, consistent with ZR § 72-21(c), 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 states that the surrounding area is characterized by low-rise one- and two-family dwellings, except along Richmond Road, where community facility and commercial uses predominate; and

WHEREAS, in particular, the applicant states that there are nine buildings on the five nearest blocks along Richmond Road that contain either a professional office or light retail; therefore, the proposed use is in keeping with nearby existing uses; and

WHEREAS, as to the adjacent uses, the applicant states directly north of the site (but separated by an unlighted parking lot and a fence) is a residence and directly west of the site is a two-story office building; as such, the impact upon adjacent properties is minimal; and

WHEREAS, the applicant notes that a medical office has existed at the site for well over 50 years and that the proposed building envelope is consistent with the historic building envelope at the site; and

WHEREAS, as to bulk, the applicant states that the proposed 0.31 FAR is well below the maximum permitted FAR for a community facility in the R2 zoning district (1.0 FAR); the applicant also notes that while the proposed side yard of approximately five feet is deficient by three feet, it is an existing condition that is considered a new non-compliance solely because change in use triggers compliance with community facility bulk regulations rather than the residential bulk regulations of the R2 district; and

WHEREAS, at hearing, the Board directed the applicant to remove excess signage at the site, to remove one curb cut, and to clarify the arrangement of the parking spaces; and

WHEREAS, in response, the applicant submitted photographs showing the removal of the excess signage and certified that the signage was in compliance with ZR § 22-321(b) ("Nameplates or Identification Signs"); in addition, the applicant submitted a revised site plan showing the removal of one curb cut and the proposed arrangement of the parking lot; 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 applicant states and the Board agrees that the hardship was not created by the owner or a predecessor in title, but is the result the site's lot size, historic use, and location on Richmond Road; and

WHEREAS, the applicant states that the proposal is the minimum variance necessary to afford relief, in that the proposal merely seeks to legalize a use that has existed since at least 1971 and has been partially authorized by a certificate of occupancy since 1960; 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 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. 236-12-BZ dated July 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, 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 makes each and every one of the required findings under ZR § 72-21 and grants a variance, to legalize the extension of medical office use within an existing building in an R2 zoning district, which does not conform to the use regulations or provide the required side yard, contrary to ZR §§ 22-10 and 24-35; 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 May 6, 2013"-(3) sheets and "November 26, 2013"– (2) sheets; and on further condition;

THAT the following will be the bulk parameters of the building: 1,325 sq. ft. of floor area (0.31 FAR), a minimum side yard width of 4.96 feet; and a minimum front yard depth of 8.46 feet, as indicated on the BSA-approved plans;

THAT all signage at the site will be in accordance with the BSA-approved plans;

THAT construction will proceed 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) 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, December 10, 2013.

339-12-BZ
CEQR 13-BSA-067Q

APPLICANT – Sheldon Lobel, P.C., for Lion Bee Equities, LLC., owner.

SUBJECT – Application December 12, 2012 – Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.

PREMISES AFFECTED – 252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway, Block 8129, Lot p/o

53, Borough of Queens.

COMMUNITY BOARD #11Q

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 Executive Zoning Specialist, dated November 14, 2013, acting on Department of Buildings Application No. 420605447, reads in pertinent part:

1. Use Group 6 retail (accessory parking and driveway) is not permitted in R2A district lot portion; contrary to ZR 22-10; and
2. Use Group 4 medical office (accessory parking and driveway) is not permitted in R2A district lot portion; contrary to ZR 22-14; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C1-2 (R3-1) zoning district and partially within an R2A zoning district, an accessory parking lot to a medical office (Use Group 4) and retail (Use Group 6) on the R2A portion of the site, which is contrary to ZR §§ 22-10 and 22-14; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in the *City Record*, with a continued hearing on October 29, 2013, and November 26, 2013, and then to decision on December 10, 2013; 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 11, Queens, recommended approval of the application; and

WHEREAS, Queens Borough President Helen Marshall recommended approval of the application; and

WHEREAS, the subject site is an irregularly-shaped lot located at the southwest corner of the intersection of Northern Boulevard and Little Neck Parkway, partially within a C1-2 (R3-1) zoning district and partially within an R2A zoning district; and

WHEREAS, the site has approximately 172 feet of frontage along Little Neck Parkway, approximately 85 feet of frontage along Northern Boulevard, and 11,651 sq. ft. of lot area (7,510 sq. ft. of lot area within the C1-2 (R3-1) zoning district and 4,141 sq. ft. of lot area within the R2A zoning district); and

WHEREAS, the applicant notes that despite its designation as a single tax lot, the site has been owned as two separate and independent parcels since before 1961 and supports this statement with historic tax maps and a chain-of-title analysis; and

WHEREAS, the site is occupied by a one-story commercial building that was constructed in or about 1939 and contained an eating and drinking establishment known as the "Scobee Diner" until November 2010, when the diner was closed due to fire damage; and

WHEREAS, the applicant states that to the extent that portions of the lot within the R2A zoning district were used for the eating and drinking establishment (including accessory parking) and were lawfully non-conforming, such non-conforming uses have been discontinued and may not be resumed, pursuant to ZR § 52-61; and

WHEREAS, the applicant proposes to formally subdivide the separately owned parcels, demolish the Scobee Diner building (which straddles the parcels), and construct a two-story mixed commercial and community facility building with 5,612.7 sq. ft. of floor area entirely within the C1-2 (R3-1) portion of the lot and in accordance with all applicable bulk regulations; and

WHEREAS, the applicant states that because 12 of the required 17 accessory parking spaces are being provided within the R2A portion of the lot, the proposal is contrary to ZR § 22-10, which does not allow parking accessory to a commercial use as-of-right, and ZR § 22-14, which does not allow parking accessory to a medical office as-of-right; 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 division of the site by a district boundary line; (2) history of commercial use at the site; (3) the site's location at the intersection of two major thoroughfares; and (4) the irregular shape of the lot; and

WHEREAS, the applicant states that, in December 2006, the Douglaston-Little Neck Rezoning rezoned 65 percent of the site C1-2 (R3-1) and 35 percent of the site R2A; previously, approximately 90 percent of the site was within the C1-2 (R3-1) district; and

WHEREAS, the applicant notes that while a typical commercial overlay has a depth of 150 feet, the commercial overlay resulting from the rezoning of the subject site has a depth of only 100 feet; and

WHEREAS, consequently, the applicant states that, prior to the rezoning, it was able to utilize ZR § 77-11 to extend the permitted commercial uses in the C1-2 district to the R2A portion of the lot; however, subsequent to the rezoning, ZR § 77-11 was not available to extend the permitted commercial uses, because the lot line was relocated to more than 25 feet from the district boundary; likewise, the applicant notes that it is unable to utilize ZR § 73-52 to extend the district boundary and expand the portion of the lot that may be used for commercial uses because, as noted above, the site to be developed was not a lot of record held in single ownership prior to 1961; and

WHEREAS, the applicant asserts that the standard 150-foot depth is to accommodate the high accessory parking requirements for certain uses permitted as-of-right within C1-2 districts, and that the site is uniquely burdened by the absence of the 150 depth (width) along Little Neck Parkway; and

WHEREAS, the applicant also asserts that the zoning districts that many of the viable community facility uses that are permitted in the C1-2 district are prohibited in the R2A

district and those community facility uses that are permitted as-of-right in both portions of the lot (schools or houses of worship) are economically infeasible; and

WHEREAS, finally, the applicant states that of the 28 lots affected by the Douglaston-Little Neck Rezoning, six split in a similar fashion to the site; however, each of the six is either occupied by an existing building that covers the entire lot or utilizes the rear of its respective lot for parking; therefore, the applicant asserts that only the site is unable to make practical use of its R2A portion following the rezoning; and

WHEREAS, as to the history of commercial use at the site, the applicant states that the site has been used for commercial purposes since the 1930s, including the long-standing use of the R2A portion of the lot for parking; and

WHEREAS, similarly, the existing building on the lot is partially within the R2A portion of the lot, but can no longer be used for commercial purposes due to its discontinuance pursuant to ZR § 52-61; in any event, the applicant asserts that the existing building is configured as a diner and cannot be renovated to accommodate a use other than a diner without significant cost; and

WHEREAS, as to the site's location at the intersection of two major thoroughfares, the applicant asserts that both Northern Boulevard and Little Neck Parkway are heavily-trafficked thoroughfares, which are well-suited to commercial or community facility use; and

WHEREAS, likewise, the applicant asserts the intersection of these streets is an undesirable location for the types of homes (one-family, detached residences) that predominate in the surrounding neighborhood; and

WHEREAS, as to the irregular shape of the lot, the applicant states that the lot's southeast corner forms an acute angle, which, when combined with the parking requirements, results in inefficient floorplates and the loss of rental square footage; and

WHEREAS, in addition, the shape of the site in combination with the location of the district boundary, result in inefficient as-of-right vehicular circulation and parking configurations; and

WHEREAS, the applicant also notes that while it is possible to locate all required parking for the proposal within the C1-2 portion of the lot, the neighborhood is heavily automobile-oriented; as such, the applicant asserts that additional parking is necessary in order for the development to succeed; and

WHEREAS, accordingly, the Board finds that the cited unique physical conditions create an unnecessary hardship and a practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as-of-right community facility development with daycare center use; (2) an as-of-right commercial retail and office building; (3) an as-of-right retail and office building with the residential portion of the site being developed with a single-family residence; (4) an as-of-right commercial office building with on-grade parking below; (5) a lesser variance scenario that is identical to the proposal, but lacks the second-story community facility use; and (6) the proposed two-story mixed commercial and community facility building with 17 on-grade parking spaces partially within the R2A district; and

WHEREAS, the applicant concluded that only the proposal would result in a reasonable return due to the physical conditions of the site; and

WHEREAS, based upon its review of the submissions, per ZR § 72-21(b), 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 of the site 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 low-rise commercial and community facility uses along the major streets (e.g., Northern Boulevard and Little Neck Parkway) and predominantly two-story, single-family detached residences along the residential streets (e.g., Browvale Lane and 44th Avenue); and

WHEREAS, the applicant asserts that the proposal is consistent with the uses immediately adjacent to the site, which include, a shopping center to the south, a large accessory parking lot to the west, a series of two-story retail stores and an Off-Track Betting establishment across Little Neck Parkway to the north, and to the east, across Northern Boulevard, a small parking lot, one-story martial arts school, and two, two-story mixed retail buildings; and

WHEREAS, the applicant notes that the adjacent accessory parking lot is entirely within the subject R2A district and was authorized by Board variance under BSA Cal. No. 332-79-BZ; and

WHEREAS, in addition, the applicant states that the R2A portion of the lot has been used for commercial purposes for more than 60 years and the proposal would allow such use to continue, without an increase in its intensity or scope; and

WHEREAS, the applicant notes that the proposed building is well within the parameters of the C1-2 (R3-1) district and that the proposed FAR of 0.75 is three-quarters of that which is permitted as-of-right (1.0 FAR); and

WHEREAS, finally, the applicant states that it has configured the curb cuts and parking spaces on the site so as to minimize the traffic impacts on the R2A district; specifically, traffic will enter the site along Little Neck Parkway and exit onto Northern Boulevard; and

WHEREAS, at hearing, the Board questioned the necessity of the "bridge" connecting the building segments on either side of the exit driveway and requested additional landscaping for portions of the site; and

WHEREAS, in response, the applicant explained that the bridge and the floor area that will be accessed by it are

integral to the project and that removing them would make the development financially infeasible; in addition, the applicant amended its site plan to include additional landscaping; 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, 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 split-lot condition and ownership history of Lot 53; and

WHEREAS, likewise, the Board finds the proposal to allow accessory parking spaces within the R2A portion of the site to be the minimum variance 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 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-067Q, dated December 11, 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 and grants a variance to permit, on a site partially within a C1-2 (R3-1) zoning district and partially within an R2A zoning district, an accessory parking lot to a medical office (Use Group 4) and retail (Use Group 6) on the R2A portion of the site, which is contrary to ZR §§ 22-10 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 October 17, 2013" - three (3) sheets and *on further condition*:

THAT the following will be the bulk parameters of the site: two stories, 5,612.7 sq. ft. of floor area (0.75 FAR) (1,999.6 sq. ft. of community facility floor area and 3,613.1 sq. ft. of commercial floor area), 17 parking spaces (12 parking spaces within the R2A district), a maximum wall height of 18'-6", and a maximum building height of 28'-0", as indicated on the BSA-approved plans;

THAT the use of the parking lot is limited to an accessory parking for principal uses on the lot;

THAT screening and landscaping will be installed and maintained as per the BSA-approved plans;

THAT all exterior lighting within the parking area shall be directed away from adjacent residential use;

THAT the above conditions will be noted on the Certificate of Occupancy;

THAT this grant will apply to the lot as depicted on the BSA-approved plans and the lot may not be altered without prior application to and approval from 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 construction will proceed 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 Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 10, 2013.

13-13-BZ & 14-13-BZ
CEQR #13-BSA-085K
APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.
SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, Borough of Brooklyn.
COMMUNITY BOARD #6BK
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 decisions of the Brooklyn Borough

Commissioner, dated January 28, 2013, acting on Department of Buildings Application Nos. 320547654 and 320547645, read in pertinent part:

> Proposed one (1) family dwelling (UG-2) in proposed zoning lot within an M1-1 zoning district is contrary to Section 42-10 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 construction of two, three-story, single-family residential buildings (Use Group 2), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in the *City Record*, with continued hearings on June 4, 2013 and July 9, 2013, and then to decision on December 10, 2013; 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, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of DeGraw Street, between Van Brunt Street and Columbia Street, within an M1-1 zoning district; and

WHEREAS, the site comprises Tax Lots 22 and 23, each of which has a width of 17.5 feet and a depth of 100 feet, for a combined lot width of 35 feet, and a combined lot area of 3,500 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct two, three-story, single-family residential buildings on separate zoning lots in accordance with the bulk regulations applicable in an R6A district; and

WHEREAS, the applicant states that the building on Lot 22 will have 3,152 sq. ft. of floor area and the building on Lot 23 will have 3,044 sq. ft. of floor area for a combined floor area of 6,196 (1.77 FAR) (the maximum permitted FAR in an R6A district is 3.0); one accessory off-street parking space is proposed for each building, and both buildings will have a street wall height of 31'-8" and a maximum building height of 36'-0" (the maximum permitted street wall height in an R6A district is 60'-0"; the maximum permitted building height in an R6A district is 70'-0"); 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 is vacant, and has a small lot size of 3,500 sq. ft. and a narrow lot width of 35 feet; (2) the site is adjacent to residential buildings on two sides; (3) the site fronts on a narrow street; and (4) the site is burdened with sub-surface soil conditions that significantly increase the cost of construction; 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 3,500 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 most conforming uses are located on larger lots; the applicant also found that out of the 121 lots that are less than 3,500 sq. ft., only eight lots (6.61 percent) contain buildings that are occupied by a conforming use and that all such buildings were built prior to 1977, except two: an architectural office and a mechanic's shop; and

WHEREAS, thus, the applicant concludes that: (1) where commercial and manufacturing uses exist on narrow lots within the surrounding neighborhood, they are long-standing uses within existing buildings; and (2) modern manufacturing uses require larger lots; and

WHEREAS, in addition, the applicant notes that for approximately 100 years (until 1991), the site was occupied by two single-family dwellings; 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 both sides and that the existence of residential buildings on the adjacent lots further devalues the site for a conforming use and would result in lower rental incomes and higher vacancy rates; and

WHEREAS, the applicant also submitted study of the surrounding properties within an area bounded by DeGraw Street to the north, Columbia Street to the east, and Hamilton Avenue to the south and Van Brunt Street to the west to support its representations regarding uniqueness; and

WHEREAS, the applicant represents that, of the 121 lots surveyed, there are 27 lots that share the following basic characteristics with the subject lot: the lots are vacant, have narrow lot widths of 35 feet or less, lot areas of 3,500 sq. ft. or less, and are located in the subject M1-1 district; however, of these 27 lots, only six lots (4.96 percent) are also adjacent to residential uses on both sides which constraint access to the site for larger vehicles; and

WHEREAS, the applicant concludes that the site is uniquely unsuitable for a manufacturing use because of its width, size, and adjacency to residential uses; and

WHEREAS, the applicant also states that the width of DeGraw Street (60'-0")—which, as a practical matter, is narrowed further by the existence of a bike lane and permitted parking on both sides of the street—makes the site incapable of handling the truck traffic associated with a conforming use; accordingly, rent would have to be decreased to reflect a tenant's increase in loading costs; and

WHEREAS, finally, the applicant represents that the site's unique sub-surface soil conditions create an additional impediment to conforming development; and

WHEREAS, the applicant submitted a letter from an engineer, which concluded that, due to the soil composition at the site, an as-of-right building at the site would require deep foundations and the installation of 58 helical piles, which increase the cost of construction; and

WHEREAS, the Board notes that it does not find that DeGraw Street is particularly narrow or that its width is unique or inherently unsuitable for manufacturing uses; on the contrary, the Board observes that a width of 60 feet is typical to the neighborhood and to most areas of the city, including where bike and parking lanes are provided; and

WHEREAS, nevertheless, the Board finds that the site has a combination of unique physical conditions including its lot width and size, the adjacent residential uses and the sub-surface conditions, 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), 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 3,500 sq. ft. of floor area occupied by a conforming use would yield a negative rate of return; the proposed residential buildings, 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 a mix of residential, commercial, and manufacturing/industrial uses; the applicant notes that while the western half of the block is predominantly manufacturing/industrial, the eastern half, where the site is located, is predominantly residential with a total of 26 dwelling units and ground floor commercial uses along Columbia Street (which forms the eastern boundary of the block); and

WHEREAS, the applicant notes that, based on a series of Sanborn maps, the site was occupied by two single-family buildings for the majority of the 20th Century, until 1991, when the buildings were demolished; further, nine of the ten residential buildings on the eastern half of the block have existed for approximately 100 years, and the tenth was built around 1930; thus, the block has remained residential in character despite its designation as an M1-1 zoning district; and

WHEREAS, the applicant also notes that the Columbia Street frontage of the block directly across the street from the site is planned to be developed as an access point to the Brooklyn Waterfront Greenway and will include outdoor recreation and green space; and

WHEREAS, as to bulk, as noted above, the applicant states that the proposed building complies with all bulk regulations of a R6A zoning district, which is mapped on portions of the blocks directly to the northeast, east, southeast, and south of the subject block; and

WHEREAS, further, the applicant notes that the proposed buildings are designed to maintain the contextual streescape, will align with the height of the residential building directly to the east of the site (31'-8"), and be compatible with the two buildings directly west (three feet shorter than one; three feet taller than the other); 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 lot dimensions, adjacent residential uses, and soil 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. 13BSA085K, dated December 24, 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, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the November 2013 Remedial Action Plan and the October 2013 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 the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the results of noise monitoring and determined that a minimum of 26 dBA window-wall noise attenuation and an alternate means of ventilation (provided by a rooftop ERV/HRV system) should be provided in the proposed building's residential units in order to achieve an interior noise level of 45 dBA; 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 two three-story, single-family residential buildings (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 March 25, 2013" – seven (7) sheets; and *on further condition*:

THAT the total floor area on the lots shall not exceed 6,196 sq. ft.;

THAT the following are the bulk parameters of the building on Lot 23: a floor area of 3,044; a maximum street wall height of 31'-8"; a maximum building height of 36'-0"; and one parking space, as indicated on the BSA-approved plans;

THAT the following are the bulk parameters of the building on Lot 22: a floor area of 3,152; a maximum street wall height of 31'-8"; a maximum building height of 36'-0"; and one parking space, as indicated on the BSA-approved plans;

THAT DOB shall not issue certificates of occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT a minimum of 26 dBA window-wall noise attenuation and an alternate means of ventilation (provided by a rooftop ERV/HRV system) shall be provided in the proposed building's residential units;

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, December 10, 2013.

55-13-BZ
CEQR #13-BSA-089K
APPLICANT – Stuart A. Klein, Esq., for Yeshivas Novominsk, owners.
SUBJECT – Application February 1, 2013 – Variance (§72-21) to permit the enlargement of an existing yeshiva and dormitory (*Yeshiva Novominsk*), contrary to floor area (§24-11), wall height and sky exposure plane (§24-521), and side yard setback (§24-551). R5 zoning district.
PREMISES AFFECTED – 1690 60th Street, north side of 17th Avenue between 60th and 61st Street, Block 5517, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #12BK
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 January 2, 2013, acting on Department of Buildings Application No. 320752912 reads, in pertinent part:

1. Proposed floor area is contrary to ZR 24-11;
2. Proposed wall height and sky exposure plane are contrary to ZR 24-521;
3. Proposed side yard setback is contrary to ZR 24-551; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, a two-story enlargement of a three-story and mezzanine community facility building occupied as a religious school (Use Group 3), which does not comply with the district regulations for floor area, wall height, sky-exposure plane, and side yard setback, contrary to ZR §§ 24-11, 24-521, and 24-551; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on November 19, 2013, and then to decision on December 10, 2013; 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, Brooklyn, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Yeshiva Novominsk (the "Yeshiva"); and

WHEREAS, the subject site is an irregular corner lot that spans the full length of the block on the west side of 17th Avenue between 60th Street and 61st Street, within an R5 zoning district; and

WHEREAS, the site has 140 feet of frontage along 60th Street, 200 feet of frontage along 17th Avenue, 150 feet of frontage along 61st Street, and 29,000 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a three-story plus mezzanine religious school building, with 55,290 sq. ft. of floor area (1.91 FAR); and

WHEREAS, the applicant represents that the building currently includes the following uses: (1) classrooms for the Yeshiva; (2) prayer halls; (3) a gymnasium; (4) a rabbi's apartment; (5) conference rooms; and (6) a dormitory; and

WHEREAS, the applicant proposes to construct a two-story enlargement atop the southern wing of the existing building (61st Street frontage) in order to expand the Yeshiva's dormitory facilities; and

WHEREAS, the applicant states that although the proposed enlargement will provide complying lot coverage and front and rear yards, it will also: (1) result in an increase in floor area from 55,290 sq. ft. (1.91 FAR) to 65,799 sq. ft. (2.27 FAR), which will exceed the maximum FAR of 2.0, contrary to ZR § 24-11; (2) increase the wall height from 37'-0" to 58'-6", which will exceed the maximum wall height of 37'-0"; (3) eclipse the required sky exposure plane of 1:1, contrary to ZR § 24-521; and (4) not provide the required side setbacks of 22'-6" at a height of 45'-0" above the side yard level, and 27'-6" at a height of 55'-0" above the side yard level, contrary to ZR § 24-551; and

WHEREAS, the proposal would allow for an increase in the number of dormitory beds from 177 beds to 269 beds; and

WHEREAS, the applicant states that the Yeshiva's programmatic need to provide sufficient dormitory space for its 292 students necessitates the requested variances; and

WHEREAS, in particular, the applicant asserts that providing sleeping accommodations for its student body is essential to achieving the pedagogical and religious objective of the Yeshiva; and

WHEREAS, the applicant states that students enrolled in the Yeshiva (40 ninth-graders, 41 tenth-graders, 41 eleventh-graders, 47 twelfth-graders, and 123 post-high school students) come from across the United States and Europe and attend the Yeshiva because of its uniquely rigorous secular and religious curriculum; and

WHEREAS, the applicant states that students at the Yeshiva are immersed in the curriculum—which includes prayers, meals, and recreation time—from as early as 7:30 a.m. to as late as 11:00 p.m.; thus, the Yeshiva must be able to provide sleeping accommodations for all students who do not live in the immediate vicinity; and

WHEREAS, the applicant represents that there is a direct nexus between the requested waivers and the design of the proposal; and

WHEREAS, specifically, the applicant states that vertically enlarging the building without setbacks is necessary due to the limitations created by the structural elements of the existing building; and

WHEREAS, in addition, the applicant represents that the two-story enlargement's floor plates and layouts mirror those of the existing dormitory at the second and third stories of the building, which provides the most efficient and structurally-sound enlargement; and

WHEREAS, the applicant represents that extending the enlargement horizontally across the roof instead of vertically above the existing dormitory would require: (1) demolition of the existing beams and columns above the *Batei Midrash* (study hall) and portions of the roof slab; (2) reinforcement of the transfer girders, which were only designed to carry the loads imposed by the roof and exterior wall; and (3) demolition and reconstruction of the some walls and ceilings of the study hall spaces, which the applicant states are the most intricately-finished spaces in the building; and

WHEREAS, thus, the applicant represents that alternative designs expanding the existing footprint of the building or providing some or all of the required setbacks would be infeasible due to the extensive structural and plumbing work that would be required, at significant cost; and

WHEREAS, further, the applicant notes that an off-site dormitory would be both costly and impractical given the comprehensive nature of the Yeshiva's curriculum; the Yeshiva does not bus students and it does not want its students taking public transportation late into the evening due to safety concerns; and

WHEREAS, finally, the applicant represents that if the Yeshiva is unable to increase the size of its dormitory, it may be forced to turn away prospective students who do not live in the immediate vicinity of the school; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious and 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 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, the Board accepts that the Yeshiva's programmatic needs are furthered by the construction of the proposed dormitory; and

WHEREAS, the Board also recognizes that the proposed enlargement above the existing dormitory is the most efficient, practical, and cost-effective to construct the dormitory and that such proposal cannot be accomplished without the requested height, setback, and floor area waivers;

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; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva 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 enlargement 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 states that the surrounding neighborhood is characterized by a diverse mix of low- to medium density residential, community facility and manufacturing uses; and

WHEREAS, as to height, the applicant states that although other nearby uses include, across 61st Street, two-story industrial buildings, across 60th Street, a one-story warehouse and a two-story residence, and, across 17th Avenue, a two-story branch of the Brooklyn Public Library, and two-story residences, there are a number of nearby community facility buildings that are similar in height and FAR to the subject building, including: (1) the Edward B. Shallow Junior High School (four stories, 184,000 sq. ft. of floor area (2.2 FAR) within an R5 district); (2) The Seeall Academy (five stories, 157,261 sq. ft. of floor area (2.12 FAR) partially within an R5 district and partially within an R6 district); (3) Bais Sarah School (three stories, 61,148 sq. ft. of floor area (2.04 FAR) within an M1-1 district); and (4) Public School 48 (five stories, 72,400 sq. ft. of floor area (1.81 FAR) within an R5 district); and

WHEREAS, the applicant also states that it chose to locate the enlargement on the 61st Street frontage of the lot, so as to minimize its impact upon the R5 district; and

WHEREAS, as to bulk, the applicant states, as noted above, that the enlargement maintains the complying front and rear yards, does not increase the building's complying lot coverage, and only exceeds the permitted FAR by 0.27, which represents a 13.5 percent increase over the maximum permitted 2.0 FAR; and

WHEREAS, the applicant notes that although there is a two-story residence directly west of the site along 61st Street, it is a total of 13 feet away from the Yeshiva building and no windows are proposed in the enlarged portion of the school facing that residence; and

WHEREAS, at hearing, the Board requested clarification regarding the proposed occupant load and questioned whether enrollment was anticipated to increase; and

WHEREAS, in response, the applicant submitted amended plans indicating that occupant loads would be subject to DOB approval; in addition, the applicant submitted a statement confirming that enrollment is expected to remain at current levels; 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 Yeshiva 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 applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Congregation'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. 13BSA090K, dated January 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 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 R5 zoning district, a two-story enlargement of a three-story and mezzanine community facility building occupied as a religious school (Use Group 3), which does not comply with the district regulations for floor area, wall height, sky-exposure plane, and side-yard setback, contrary to ZR §§ 24-11, 24-521, and 24-551; *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 4, 2013" – Eight (8) sheets; and *on further condition*:

THAT the building parameters will be: a floor area of

65,799 sq. ft. (2.27 FAR); a maximum wall height of 58'-6"; and five stories, as illustrated on the BSA-approved plans;

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; 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, December 10, 2013.

90-13-BZ

APPLICANT – Akerman Senterfitt, LLP, for Eleftherios Lagos, owner.

SUBJECT – Application March 18, 2013 – Variance (§72-21) to permit the construction of a single-family dwelling, contrary to open area requirements (§23-89). R1-2 zoning district.

PREMISES AFFECTED – 166-05 Cryders Lane, northeast corner of the intersection of Cryders Lane and 166th Street, Block 4611, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

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 decisions of the Queens Borough Commissioner, dated February 15, 2013, acting on Department of Buildings Application No. 402460608, read in pertinent part:

> Proposed building creates non-compliance with open area requirements and is contrary to ZR Section 23-891; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R1-2 zoning district, construction of a two-story single-family home that does not provide the required minimum open area, contrary to ZR § 23-891; 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 December 10, 2013; 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 7, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of 166th Street and Cryders Lane, within an R1-2 zoning district; and

WHEREAS, the site is a rectangular zoning lot with 100 feet of frontage along Cryders Lane, 103 feet of frontage along 166th Street, and a lot area of 10,300 sq. ft.; and

WHEREAS, the site comprises two tax lots, Lots 1 and 3, which were declared to be a single zoning lot pursuant to a 2006 declaration; and

WHEREAS, the applicant represents that the site previously comprised a single tax lot, Lot 3, and that it was occupied by a single-family home that was demolished in 2001; and

WHEREAS, the applicant states that Lot 3 is currently occupied by a two-story, single-family home that has 1,929.46 sq. ft. of floor area and was completed in 2005; and

WHEREAS, the applicant states that Lot 1 is vacant; and

WHEREAS, the applicant proposes to construct a two-story, single-family home on Lot 1, and that the addition of the proposed building to the zoning lot results in the following compliances: 2,611.52 sq. ft. of floor area is proposed, for a total of 4,504.98 sq. ft. of floor area on the zoning lot (0.44 FAR for the zoning lot) (the maximum permitted FAR is 0.50); an open space ratio of 153 percent, (the minimum open space ratio is 150 percent); front yards with a depths of 24'-0" and 20'-0" (front yards with minimum depths of 20'-0" and 15'-0' are required) (the building on Lot 3 has a front yard depth of 20'6"); an open area of 20'-0" measured perpendicular to the rear wall (a minimum of 20'-0" is required for a corner lot); a wall height of 24'-0" (the maximum permitted wall height is 25'-0"); and one parking space (one parking space is required for each dwelling unit on the zoning lot and there is one existing parking space on Lot 3, for a complying total of two parking spaces on the lot); and

WHEREAS, however, the applicant states that, per ZR § 23-891(b), where there are two buildings located on a corner lot within an R1-2 district, the interior building must provide a minimum open area of 30 feet measured perpendicular to the rear wall; therefore, the construction of the proposed building creates a new non-compliance with respect to the existing building on Lot 3, because that building only provides 23'-5" feet of open space; and

WHEREAS, the applicant notes that, similarly, subdividing the zoning lot would create a non-compliance on Lot 3 with respect to the requirement for a rear yard with a minimum depth of 30'-0"; and

WHEREAS, accordingly, in order to construct the building proposed on Lot 1, the applicant seeks a waiver of the open area requirement for the existing building on Lot 3;

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 district regulations: (1) the underdevelopment of the site; and (2) the history of development on the site, including the location of the existing home on the site; and

WHEREAS, the applicant states that the subject zoning lot is a large, significantly under-developed corner lot; and

WHEREAS, specifically, the applicant states that the zoning lot has a lot area of 10,300 sq. ft. and is currently occupied by a single-family home with a floor area of 1,929.46 sq. ft. (0.19 FAR), which is significantly underdeveloped based on the maximum allowable floor area of 5,150 sq. ft. (0.50 FAR) for the site; and

WHEREAS, the applicant also states that such underdevelopment is due to history of development on the lot; and

WHEREAS, in particular, the applicant states that Lot 3 was historically a single tax lot that was subdivided into Lots 1 and 3, in order to construct two as-of-right single-family homes; development of Lot 3 proceeded and was completed in 2005; subsequently, in 2008, ZR § 23-891 ("Open Area Requirements for Residences") was amended so that if a home were to be constructed on Lot 1, the home on Lot 3 would become non-complying with respect to its open area at the rear; and

WHEREAS, accordingly, the applicant states, as noted above, that any development of Lot 1 would require removing significant portions of the rear of the home on Lot 3 to provide a minimum open area of 30 feet; and

WHEREAS, the applicant asserts that the sequence of development, the orientation of the existing home on Lot 3 (which was complying when the home was designed and built), and the underdevelopment of the lot is unique among similar sites in the surrounding area; and

WHEREAS, in support of this assertion, the applicant submitted the results of a study of the 82 corner lots within 900 feet of the site that are subject to ZR § 23-891; and

WHEREAS, based on this study, the applicant states that 73 out of 82 lots potentially impacted by ZR § 23-891 are smaller than the subject lot, significantly developed, and cannot be subdivided; and

WHEREAS, accordingly, the applicant contends that there are only nine lots out of 82 in the study area that may be reasonably considered to be similar in size to the subject site; however, the subject site is the most underdeveloped at 0.19 FAR and, more importantly, the other sites have existing homes that occupy a central location on their respective site, making subdivision impossible without demolition of the existing home; and

WHEREAS, the applicant asserts that, as such—and in contrast to the subject site whose existing building leaves ample room for a second home but for the requirements of ZR § 23-891—the development potential of the nine underdeveloped sites that are similar in size to the subject site lies in enlarging their respective centrally-located 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 regulations; and

WHEREAS, the applicant asserts and the Board agrees that because of the site's unique physical conditions, there is no reasonable possibility that the owner will be able to develop the site without the requested waiver; and

WHEREAS, the applicant represents that, consistent with 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 community is characterized by single-family, detached homes; and

WHEREAS, the applicant states that the proposal is contextual in terms of use and bulk and complies in all respects with the R1-2 regulations; as noted above, the only non-compliance on the zoning lot that would result from the proposal is a failure of the existing home on Lot 3 to provide a 30-foot open area; and

WHEREAS, the applicant also notes that a 20-foot distance has been provided between the rear wall of the proposed home on Lot 1 and the side lot line of the adjacent Lot 46, which is well in excess of the eight feet that would be required if this lot line were considered a side lot line for Lot 1; 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 applicant asserts that the unnecessary hardship in developing the site in compliance with underlying district regulations is not self-created but is inherent to the site's history of development and the location of the existing home, in accordance with ZR § 72-21(d); and

WHEREAS, specifically, the applicant states that Lots 1 and 3 were subdivided for the sole purpose of developing them independently, and at the time of subdivision—indeed, even at the time that the home on Lot 3 was completed—it was not foreseeable that the Zoning Resolution would be amended in manner that would make as-of-right development of both lots infeasible; and

WHEREAS, for reasons set forth above, the Board agrees that the unnecessary hardship in developing the site in compliance with underlying district regulations was not self-created; and

WHEREAS, finally, the applicant asserts and the Board agrees that a reduction in the open area from the required 30'-0" to 23'-5" is consistent with ZR § 72-21(e) and, thus, is 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.

Therefore it is Resolved, that the Board of Standards and

Appeals issues a Type II 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, in an R1-2 zoning district, construction of a two-story single-family home that does not provide the required minimum open area, contrary to ZR § 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 September 18, 2013"- (7) sheets, "November 6, 2013"-(2) sheets and "November 12, 2013"-(4) sheets; and *on further condition*:

THAT the parameters of the site will be as follows: 2,611.52 sq. ft. of floor area (Lot 1), for a total of 4,504.98 sq. ft. of floor area on the zoning lot (0.44 FAR) (Lots 1 and 3); an minimum open space ratio of 153 percent (Lots 1 and 3); front yards with minimum depths of 24'-0" and 20'-0" (Lot 1); a maximum wall height of 24'-0" (Lot 1); a minimum open area of 20'-0" measured perpendicular to the rear wall (Lots 1 and 3); and one parking space for each home on the zoning lot, for a total of two parking spaces (Lots 1 and 3); as illustrated in the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed home will be as reviewed and approved by DOB;

THAT there will be no habitable room in the cellar;

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, December 10, 2013.

105-13-BZ
CEQR #13-BSA-125K
APPLICANT – Law Office of Fred A Becker, for Nicole Orfali and Chaby Orfali, owners.
SUBJECT – Application April 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461); perimeter wall height (§23-631) and less than the minimum rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 1932 East 24th street, west side of East 24th street, between Avenue S and Avenue T, Block 7302, Lot 19, 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, dated April 3, 2013, acting on Department of Buildings Application No. 320726087, reads in pertinent part:

The proposed enlargement of the existing one-family residence in an R3-2 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 and open space, contrary to Section 23-141 of the Zoning Resolution
3. Creates non-compliance with respect to the side yard by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution;
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution;

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, and 23-47; 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 22, 2013 and November 19, 2013, and then to decision on December 10, 2013; 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 East 24th Street, between Avenue S and Avenue T, within an R3-2 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 1,729 sq. ft. (0.43 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 1,729 sq. ft. (0.43 FAR) to 4,168 sq. ft. (1.04 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to increase the lot coverage from 28 percent to 43 percent; the minimum required open space is 35 percent; and

WHEREAS, the applicant seeks to reduce the open space from 72 percent to 57 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant seeks to maintain the width of one existing side yard (4'-8½") and decrease the width of the other existing side yard from 11'-10" 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 33'-5¼" to 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant notes that, initially, it proposed to maintain its existing, non-complying perimeter wall height of 22'-0"; however, in response to the Board's concerns, the applicant amended the proposal to provide a 21'-0" perimeter wall height, in accordance with ZR § 23-631(b); 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 1.04 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 the nearest three blocks between Avenue S and Avenue T) with an FAR of 1.01 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, at hearing, the Board directed the applicant to clarify the portions of the building being retained; and

WHEREAS, in response, the applicant submitted plans providing additional details regarding the portions of the building to be retained; 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, 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 November 6, 2013"- (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,168 sq. ft. (1.04 FAR), a maximum lot coverage of 43 percent, a minimum open space of 57 percent, a minimum rear yard depth of 20'-0", and side yards with minimum widths of 4'-8½" 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 the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 10, 2013.

122-13-BZ
CEQR # 13-BSA-131K
APPLICANT – Law Office of Fredrick A Becker, for Jacqueline and Jack Sakkal, owners.
SUBJECT – Application April 29, 2013 – Special Permit (§73-621) for the enlargement of an existing two-family home to be converted into a single family home, contrary to floor area (§23-141). R2X (OP) zoning district.
PREMISES AFFECTED – 1080 East 8th Street, west side of East 8th Street between Avenue J and Avenue K, Block 6528, Lot 33, Borough of Brooklyn.
COMMUNITY BOARD #12BK
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 April 11, 2013, acting on Department of Buildings ("DOB") Application No. 320588280, reads in pertinent part:

> Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio is greater than the maximum permitted; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R2X zoning district within the Special Ocean Parkway 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 October 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on November 19, 2013, and then to decision on December 10, 2013; 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, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East Eighth Street, between Avenue J and Avenue K, within an R2X zoning district within the Special Ocean Parkway District; and

WHEREAS, the site has a total lot area of 4,820 sq. ft. and is occupied by a two-story and attic single-family home with a floor area of 2,990.65 sq. ft. (0.63 FAR), and an accessory parking garage; and

WHEREAS, the applicant proposes to demolish the garage and enlarge the home, resulting in an increase in floor area from 2,990.65 sq. ft. (0.63 FAR) to 5,398.4 sq. ft. (1.12 FAR) the maximum floor area permitted is 4,097 sq. ft. (0.85 FAR) with a 20 percent attic bonus, which brings the maximum permitted floor area to 4,916.4 sq. ft. (1.02 FAR); and

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

WHEREAS, the applicant submitted a tax photograph from 1940 depicting the subject building; thus, the applicant states that the building existed well before June 20, 1989, which is the operative date within the subject R2X 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, provided that the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, the applicant represents that the proposed floor area is 109.8 percent of the maximum permitted; and

WHEREAS, the applicant notes that, initially, it proposed to maintain its existing, non-complying perimeter wall height of 22'-0"; however, in response to the Board's concerns, the applicant amended the proposal to provide a 21'-0" perimeter wall height, in accordance with ZR § 23-631(b); 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 expressed concerns regarding the following: (1) the enclosure of the proposed balconies and porch; (2) whether the proposed parking space has sufficient maneuvering area; (3) the adequacy of the proposed landscaping; (4) the scope of the proposed structural work; (5) the calculation of the attic bonus; and (6) the size of the trusses and collars within the attic; and

WHEREAS, in response, the applicant clarified that the rear balcony is enclosed and included in floor area, but the front balcony is not enclosed and not included in floor area, and that the open porch at the front is subject to DOB approval; and

WHEREAS, in addition, the applicant submitted amended plans showing sufficient maneuvering area for the parking space, complying landscaping and plantings, and detailed information regarding the scope of the structural work, the calculation of the attic bonus, and the size of the trusses and collars within the attic; 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 R2X zoning district within the Special Ocean Parkway 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; *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 27, 2013" - eleven (11) sheets and "December 5, 2013"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: two stories and an attic and a maximum floor area of 5,398.4 sq. ft. (1.12 FAR), as illustrated on the BSA-approved plans;

THAT DOB will verify that the FAR attic bonus is limited to 20 percent of the 1.12 FAR and is calculated in accordance with 23-141(b)(1);

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 construction proceed 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, December 10, 2013.

162-13-BZ
CEQR #13-BSA-145M

APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.

SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units, ground floor retail, and 11 parking spaces, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100' south of Spring street, Block 490, Lot 27, 35, Borough of Manhattan.

COMMUNITY BOARD #2M

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 Executive Zoning Specialist, dated April 3, 2013, acting on Department of Buildings Application No. 121329589, reads, in pertinent part:

1. ZR 42-10 – Proposed UG 2 is not permitted; contrary to ZR 42-10
2. ZR 42-14 (D)(2)(b) – Proposed UG 6 is not permitted below the floor level of the second story; contrary to ZR 42-14 (D)(2)(b)
3. ZR 13-12(a) – Proposed number of accessory parking spaces for UG 2 exceeds the maximum permitted; contrary to ZR 13-12(a); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-5B zoning district, a 16-story residential building, with 33 dwelling units, commercial use on the first floor and cellar level, and ten accessory parking spaces, which is contrary to ZR §§ 42-10, 42-14 (D)(2)(b), and 13-12(a); 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 and November 19, 2013, and then to decision on December 10, 2013; 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 approval of the use variance but recommends a reduction for the FAR to 3.44 and a reduction of the building height; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to the proposed building citing concerns about the potential incompatibility with the surrounding area and that the proposal does not reflect the minimum variance; and

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

WHEREAS, certain members of the community provided oral and written testimony in opposition to the application, primarily citing concerns with the proposed building's bulk; and

WHEREAS, the subject triangular site is located at the intersection of Avenue of the Americas and Sullivan Street with 356.74 feet of frontage on Avenue of the Americas and 343.38 feet of frontage on Sullivan Street; and

WHEREAS, Lot 27 is currently vacant, but was formerly occupied by a gasoline service station and Lot 35 is occupied by a car wash that ceased operations in April 2013; and

WHEREAS, the applicant initially proposed an 18-story building, which included a three-story base with a 15-story tower adjacent to four attached four-story townhouses and rose to a total height of 223 feet; and

WHEREAS, at the Board's direction and in response to the community's concern about the building's scale, the applicant now proposes a 16-story building, which includes an extended four- and five-story base with a 14-story tower adjacent to the four attached four-story townhouses for a total of 33 residential units; the proposed building will have a total floor area of 81,565 sq. ft. with a resulting 5.0 FAR, of which 1,802 sq. ft. will be commercial on the first floor (0.11 FAR) (Use Group 6) and 79,763 sq. ft. (4.89 FAR) will be residential (Use Group 2); the proposal has a height of 204.75 feet to the top of the parapet; and

WHEREAS, the four townhouses will occupy the northern portion of the site, with frontage on Sullivan Street, and the 16-story portion will occupy the southern tip of the site and will include commercial use on the ground floor and cellar level of the base and 10 parking spaces accessory to the residential use; and

WHEREAS, the applicant seeks relief in the form of use variances pursuant to ZR § 72-21 to permit: (1) residential use in the building, which is contrary to ZR §§ 42-10; (2) commercial use on the first floor and cellar level, contrary to ZR § 42-14 (D)(2)(b); and (3) 10 accessory residential parking spaces, contrary to ZR § 13-12(a), which

allows a maximum of six accessory off street parking spaces for residential developments; and

WHEREAS, accordingly, the owner now seeks a variance from the Board, which would permit the construction of the proposed building; 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 size and shape of the site; (2) sloping topography; (3) the proximity of the Eighth Avenue subway along the Avenue of the Americas' frontage; and (4) environmental conditions associated with the historic use of the site as a car wash and gasoline service station; and

WHEREAS, as to the site's size and shape, the applicant states that it is a long narrow triangle, with its sides measuring 356.73 feet along Avenue of the Americas, 343.38 feet along Sullivan Street, and 94.97 feet across the base of the triangle along the northern portion of the site parallel with Spring Street; and

WHEREAS, the applicant represents that due to the unusual configuration and the narrowness of the triangle, the buildable portion of the site begins approximately 78 feet north of the apex where the site's east-west dimension is 21 feet; and

WHEREAS, the applicant states that the site's triangular-shaped block is one of a few sites created in the 1920s by the development of the IND subway line and the extension of the Avenue of the Americas, which sliced its way from the intersection of Carmine Street and Minetta Lane south to Canal Street; the development resulted in truncated blocks and buildings and a series of irregular rectangular and trapezoidal blocks; and

WHEREAS, the applicant represents that the changes to the area in the 1920s led to many buildings being demolished and others sheared in half; and

WHEREAS, the applicant asserts that new buildings replaced some of those that had been demolished to make way for the Avenue (ADT Building at Spring Street on the west side of the Avenue (1929); 100 Avenue of the Americas at Watts Street, on the east side of the Avenue (1930); Union Building at Grand on the west side of the Avenue (1991); and the James Hotel at Grand Street on the east side of the Avenue (2010)), but many sites remained vacant, or were occupied by small, temporary structures, or underbuilt commercial buildings; and

WHEREAS, accordingly, the applicant notes that the historic under use of the site is attributed to the effect of the subway line and Avenue construction; and

WHEREAS, the applicant notes that, due to the size and shape, where the site can be developed, the utility of the interior spaces is limited by the narrowness of the site, where a building would not reach a width of 50 feet until it is approximately 110 feet north of the triangle's apex, or back one third into the length of the site; and

WHEREAS, accordingly, the applicant asserts that the site's shape results in inefficient interior layouts; and

WHEREAS, to support its assertion, the applicant submitted drawings for an as-of-right hotel building that would have to sit all the way to the top of the site along the northern boundary in order to accommodate feasible floor plates for hotel use, utilizing a 53-foot deep floor plate with a double-loaded hotel room corridor; and

WHEREAS, the applicant notes that height and setback regulations require at the sixth floor a 15-ft. setback from Avenue of the Americas and a 20-ft. setback from Sullivan Street; for the tower portion of the hotel, the regulations mandate further reduction in the floor plates above the 11th floor, with required setbacks of 10 feet from the Avenue and 15 feet from Sullivan Street, and aggregate tower area maximums of 1,875 sq. ft. within 50 feet of Sullivan Street and 1,600 sq. ft. within 40 feet of the Avenue pursuant to ZR § 43-45; and

WHEREAS, the applicant states that above the fifth floor, the floor plates would become long narrow trapezoids of only 4,765 sq. ft. that are ill-suited to the standard double-loaded corridor hotel floor and accommodate only eight rooms per floor, while at the tower portion of the building from the 11th to 18th floors, the floor plates reduce to only 2,787 sq. ft., permitting only three hotel rooms per floor; and

WHEREAS, as to the topography, the applicant notes that the site slopes steeply downward both from west to east and from north to south, with a difference in elevation from the Avenue of the Americas down to Sullivan Street of nearly five feet and along the Avenue of the Americas of nearly eight feet from the northern lot line of Lot 27 to the southern apex of Lot 35; and

WHEREAS, the applicant notes that the as-of-right drawings reflect that the west to east slope presents difficulties in accessing the shallow interior spaces, requiring a split-level design, which requires that the commercial space is entered at grade from Sixth Avenue at the northernmost portion of the site, but up a flight of six to eight steps midway down the Avenue and at the apex facing the plaza where the difference between sidewalk level and the interior space is between three and five feet; and

WHEREAS, further, the applicant states that the hotel entry vestibule and core would be at grade with Sullivan Street, but six feet lower than the commercial space on the other side of the wall that defines the vestibule and core; and

WHEREAS, the applicant asserts that the grade differential, resulting in the need for an elevated entry plaza on the Avenue side of the site and splitting the ground floor into multiple levels, compounds the problems owing to the narrow, irregular shape and size of the site, affecting not only the functionality of the ground floor but also greatly increasing development costs; and

WHEREAS, as to the proximity of the subway, the applicant represents that construction activity in close proximity to a subway line (typically, within a 50-ft. "zone of influence") requires a permit from the Metropolitan Transportation Authority (MTA), a condition of which is engineering review and approval by the MTA, adherence to strict vibration limits and continuous monitoring of any

construction-related vibrations; certain standard construction methods such as pile driving, which are vibration inducing, and tiebacks, are not permitted and, thus lead to increased construction costs; and

WHEREAS, as to the uniqueness of the constraints imposed by the subway, the applicant performed an analysis which reflects that there are 15 properties in the M1-5 zoning district located along the Avenue of the Americas and Houston Street that are within the "zone of influence" of the subway, including the subject property; and

WHEREAS, further, the analysis reflects that the building line of the subject site is 20 to 21 feet from the subway tunnel and 14 to 15 feet from a subway vent and that the subject property's frontage along Avenue of the Americas is 195.6 feet and 161.6 feet for a total of 357.2 feet; and

WHEREAS, the applicant notes that of the sites identified as being within the zone of influence of the subway tunnel, the building lines of five sites are closer than 20 feet to the subway tunnel, and the building lines of two sites are closer than 14 feet to a subway vent; of the 15 sites, including the subject property, only the subject site (357.2 feet) and three others have frontage in excess of 150 feet, while no property, other than the subject property, has frontage greater than 201 feet; and

WHEREAS, the applicant concludes that given that the subject site is the only one in the study group with a building line located 20 feet from the subway tunnel and 14 feet from the subway vent with frontage that exceeds significantly the frontages of other sites in the study area, the subject site is uniquely burdened; and

WHEREAS, the applicant represents that there are premium costs of approximately $4,603,000 associated with the construction on the subject site due to its shape, topography, and proximity to the subway; and

WHEREAS, as to the environmental conditions, the applicant notes that the southern, Lot 35 portion of the site was occupied by a car wash from 1979 until April 2013 and the car wash building is still on the site but will be demolished for the proposed building; the northern, Lot 27 portion of the site was occupied by a gasoline service station from August 1985 to December 2006, which was demolished in 2009 and this portion of the site is currently vacant; and

WHEREAS, the applicant states that in October 1992, during construction on the adjacent Eighth Avenue subway tunnel, the New York City Transit Authority ("NYCTA") observed petroleum impacts and a spill was reported to the New York State Department of Environmental Conservation ("NYSDEC"); and

WHEREAS, the applicant notes that a spill number (92-07631) was assigned to Lot 27 by NYSDEC and the spill remains open; and

WHEREAS, the applicant states that since 1992, environmental investigations and remedial measures (e.g., tank removal, mass excavation, product recovery systems, and chemical oxidant injections) have been completed both on and off Lot 27, and that the most recent remedial plan for Lot 27 is the February 2012 Revised Supplemental Remedial Action Plan ("RSRAP"), which was approved by the NYSDEC and any subsequent development on Lot 27 must comply with the requirements made in the RSRAP; and

WHEREAS, the applicant states that in addition to compliance with the NYSDEC RSRAP, development of the site requires compliance with the New York City Department of Environmental Protection ("NYCDEP") Remedial Action Work Plan ("RAWP"), which requires development of the site that includes additional soil excavation in excess of what would be required to accommodate a single cellar, installation of a monitoring and remediation well system, a sub-slab depressurization system and engineering controls; and

WHEREAS, the applicant represents that pursuant to the RSRAP, excavation must extend to approximately 23 feet below the average existing site grade (approximately 18.5 to 16.5 feet excavated to approximately elevation -4.5 feet), which amounts to an over-excavation beyond that required for foundation construction and one cellar level; and

WHEREAS, the applicant's expert submitted that based on boring reports, natural soils with adequate bearing capacity for a mat foundation were encountered at the desired cellar slab level at elevations +4.4 to -3.6; however, due to the requirement to remove contaminated soils, excavation must extend to depths that are between one and nine feet below the bearing level of the foundations and then must be backfilled using one to nine feet of imported structural fill; and

WHEREAS, the applicant represents that the over-excavation generates additional costs and complications relating to dewatering, soil disposal, support of excavation, backfilling, oversight, and general site work; and

WHEREAS, the applicant states that the RSRAP requires installation of a vapor barrier to mitigate the potential migration of contaminants into the proposed buildings and compliance with the NYCDEP RAWP requires installation of a submembrane depressurization system; and

WHEREAS, the applicant represents that additional measures also include monitoring, injection, an extraction well, piping, and an access vault; and

WHEREAS, the applicant represents that the costs associated with environmental remediation of the below grade contamination will add $2,445,750 to construction; and

WHEREAS, the applicant asserts that its use waivers and for four additional accessory parking spaces are necessary to compensate for the premium construction costs; and

WHEREAS, the Board views the configuration of the site, the topography, the presence of the subway, and the environmental conditions as legitimate unique physical conditions, in the aggregate and are relatively unique within the area; and

WHEREAS, based upon the above, the Board finds that the site conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing: (1) an as-of-right conforming hotel scenario, (2) an as-of-right conforming hotel scenario on a site unencumbered by the site's unique physical conditions, and (3) the initially-proposed 18-story 5.0 FAR building; and

WHEREAS, the applicant determined that the theoretical as-of-right hotel on a standard site would be marginally feasible, but only the initially-proposed building would realize a truly reasonable rate of return; and

WHEREAS, at the Board's direction, the applicant analyzed three additional development scenarios with residential development: (1) a 3.44 FAR lesser variance; (2) a 5.0 FAR building with a higher, five-story base structure surmounted by an 11-story tower; and (3) a 4.6 FAR building with a 13-story tower; and

WHEREAS, the applicant concluded that only the 5.0 FAR extended base scenario realized a reasonable rate of return due in large part to the loss of the most valuable high floor units in the other scenarios; and

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

WHEREAS, the applicant represents that 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 immediate area surrounding the site contains significant residential use and ground floor Use Group 6 use; and

WHEREAS, specifically, the applicant cites to the immediate north of the site where there are two six- and seven-story, mixed-used residential and retail buildings, a six-story retail building with joint living-work quarters for artists and a six-story retail and office building, all with frontage on Spring Street (202 through 208 Spring Street); to the east, directly across Sullivan Street from the site are three- to five-story residential rowhouses and tenements; and

WHEREAS, the applicant notes that an R7-2 zoning district with a C1-5 overlay is located immediately north of the site, to the northeast is an R7-2 zoning district and to the southeast is the M1-5B in which the site itself is also located; and

WHEREAS, the applicant states that due to the manner in which the Avenue of the Americas was laid out in the 1920s to facilitate the Avenue's southerly extension, the portion of the Avenue of the Americas to the west of the site is more than 180 feet wide and is one of the widest sections along the entirety of the Avenue's length; and

WHEREAS, the applicant asserts that the Avenue of the Americas extends north and south along the diagonal, cutting through Tribeca, SoHo and Greenwich Village, and defining transitions in scale between the lower-rise portions on small lots of SoHo to the east of the site and the higher-rise portions on larger lots to the north and south of the site along the Avenue of the Americas and across the Avenue to the west at Hudson Square; and

WHEREAS, the applicant asserts that the site is at the crossroads of two neighborhoods and two scales, with three- to seven-story low rise to the immediate east of the site, buildings with heights ranging from 180 to 277 feet to the immediate south of the site on the east side of the Avenue of the Americas and 170 feet to 246 feet (with the Trump SoHo tower at 510 feet) on the west side of the Avenue; and

WHEREAS, as to bulk, the applicant notes that R7-2 districts permit a maximum of 4.0 FAR for residential use within 100 feet of a wide street and 6.5 FAR for community facility uses; M1-5 districts, which prohibit residential use as-of-right, permit a maximum of 5.0 FAR for commercial uses and up to 6.5 FAR for community facility uses; and the M1-6 in the Special Hudson Square District permits up to 10.0 FAR for commercial, community facility and residential use, with an additional 2.0 FAR for projects employing Inclusionary Housing bonuses; and

WHEREAS, accordingly, the applicant asserts that its proposed 5.0 FAR is compatible with the surrounding area; and

WHEREAS, additionally, the applicant notes that it has designed the site with four single-family residential townhouses fronting on and entered from Sullivan Street at the northern portion of the triangular site and extend 100 feet south along Sullivan Street and that the revised proposal with the extended base provides a transition from the four-story townhouses to the 14-story tower at the south of the site at a height of 204.75 feet to the parapet; and

WHEREAS, the applicant asserts that the location of the tower at the southern portion of the block, pulls the tallest portion of the building onto the Avenue of the Americas and away from the context of Sullivan Street; and

WHEREAS, the applicant asserts that the configuration of the building speaks directly to the development history of the area and the block with the townhouses and three-story base building, located along the northern portion of the site, responding to the low scale of Sullivan Street's 19th Century conditions, and the larger residential tower to the southern portion of the site reflecting development trends occurring to the immediate south and across the Avenue to the west of the site; and

WHEREAS, the applicant states that the proposed building, with its brick rowhouses and three-story brick base building located adjacent to the brick tower with large window openings, and which rises to its full height without setback, reflects the formal and textural conditions found in the area; and

WHEREAS, the applicant submitted renderings to support its point that the proposed building is compatible with the surrounding area; specifically, the applicant asserts

that from many vantage points, the tower cannot be seen from within SoHo and that when it is visible between buildings or along streets within SoHo, it appears to be located outside of the SoHo neighborhood; and

WHEREAS, the applicant notes that on approaching the site from the west side of the Avenue, the low scale townhouses at the north of the site permit a view from SoHo Square through to the lower scale portions of SoHo (which would have been blocked by a bulkier as-of-right building), while the tower at the southern portion of the site picks up the high-rise street wall created by 100 Avenue of the Americas (204 feet) and the James Hotel (277 feet) at Grand Street; and

WHEREAS, the applicant notes that the revised height of 204.75 feet to the top of the parapet matches the 204.55 feet to the top of the parapet of 100 Avenue of the Americas, which is directly to the south of the site on the east side of the Avenue; and

WHEREAS, the applicant notes that there are six projects expected to be built by 2016 within the area of the site, including several large-scale residential developments; and

WHEREAS, as to the accessory parking for the proposed residential use, accessory parking for a hotel is permitted as-of-right in the district at a rate of 15 percent of the hotel rooms to a maximum of 150 spaces; accordingly, the as-of-right hotel with 130 rooms, could have up to 19 parking spaces; and

WHEREAS, consequently, the applicant asserts that the proposed number of accessory parking spaces for the residences—which initially was 11 but through the hearing process was reduced to ten—exceeds that permitted by ZR § 13-12(a) by only four spaces; thus, the accessory parking would have no impact on the use of adjoining properties, the public welfare or the character of the neighborhood, particularly in light of the prior uses of the site as gasoline service station and car wash; and

WHEREAS, additionally, the applicant asserts that the entrance to the accessory parking is through an existing curb cut at the Avenue of the Americas frontage; and

WHEREAS, the applicant notes that the entrance to the Use Group 6 space is at the corner of the site, off of the Sullivan Street frontage, where Sullivan Street and the Avenue of the Americas frontage; and

WHEREAS, the Board agrees that the area is best characterized as mixed-use, and that the proposed residential use and commercial space is compatible with the character of the community; and

WHEREAS, as to the nature of the hardship, as noted above, the unique configuration of the site is due to the construction of the IND subway line and the widening of the Avenue of the Americas in the 1920s and was not created by the owner; and

WHEREAS, at hearing, the Board inquired about the history of the site's environmental contamination and if there was documentation to establish that once the gasoline spill problems were identified, they were addressed appropriately and not permitted to worsen due to inaction; and

WHEREAS, in response, the applicant submitted a report documenting the prior owner's remediation efforts between 1992 and 2004; based upon this analysis, the applicant's consultant concludes that ExxonMobil, who operated a gasoline filling station on the site until 2006, took appropriate action, since spill discovery, to effectively stop, control and remediate the spill and, thus, they assert that the hardship claimed with respect to required remediation at the site was not created by the owner or a predecessor in title; and

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

WHEREAS, as to the minimum variance, as noted, the Board directed the applicant to analyze additional development scenarios from the original 18-story proposal, including buildings with 3.44 FAR and 4.6 FAR and a 5.0 FAR with an extended base and 16 stories; and

WHEREAS, the applicant revisited its analysis and concluded that the extended base alternative, but none of the reduced FAR scenarios, realized a reasonable rate of return due to the reduction of the number of the more valuable units; and

WHEREAS, in addition, the applicant reduced the proposed number of parking spaces accessory to residences from 11 to ten; and

WHEREAS, the Board has reviewed the revised feasibility analysis and agrees that the 5.0 FAR scenario with the extended base represents the degree of relief necessary to overcome the site's inherent hardship while resulting in a building that is compatible with the surrounding context; 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 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. 13BSA145M, dated December 6, 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 Landmarks Preservation Commission's ("LPC") requested that a Construction Protection Plan be prepared to address any

potential proposed site construction effects and/or or impacts on the LPC, State and National Register-listed houses located at 83 Sullivan Street and 85 Sullivan Street; and

WHEREAS, NYCDEP's Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, NYCDEP reviewed and accepted the May 2013 Remedial Action Plan and Construction Health and Safety Plan for the subject site's lots 27 and 35; and

WHEREAS, NYCDEP also indicated that the proposed sub-slab depressurization system ("SSDS") discussed in the RAP should have the capability of being converted to an active SSDS, if warranted based on future conditions and should be incorporated into the design plan of the proposed construction project; and

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

WHEREAS, the remediation on the subject site's Lot 27 should comply with the requirements of the RSRAP; the remediation required under Consent Order No. D2-0030-02-07SWO and Spill No. 9207631 should continue in accordance with the NYSDEC requirements; and

WHEREAS, a copy of the NYSDEC-approved Remedial Closure Report should also be submitted with Remedial Closure Report submitted to NYCDEP for review and 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.

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 M1-5B zoning district, a 16-story residential building, with 33 dwelling units, commercial use on the first floor and cellar, and 10 accessory parking spaces, which is contrary to ZR §§ 42-10, 42-14 (D)(2)(b), and 13-12(a), *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 10, 2013" –(24) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a total floor area of 81,565 sq. ft., (5.0 FAR) (including 79,763 sq. ft. of residential floor area (4.89 FAR) and 1,802 sq. ft. of commercial floor area (0.11 FAR)); 16 stories; a 203'-0" building height (204.75 feet at the top of the parapet), a maximum of 33 residential units, and a maximum of 10 accessory residential parking spaces, as illustrated on the BSA-approved plans;

THAT DOB will not issue a permit until the Landmarks Preservation Commission has reviewed and approved the Construction Protection Plan;

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

THAT the sound attenuation measures in the proposed building will be maintained 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 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 the Department of Buildings must ensure compliance 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 10, 2013.

232-13-BZ
CEQR #14BSA-018R
APPLICANT – Rothkrug Rothkrug & Spector LLP, for SDF12 Bay Street, LLC, owner; Staten Island Fitness, LLC, lessee.
SUBJECT – Application August 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within portions of proposed commercial building. M1-1 zoning district.
PREMISES AFFECTED – 364 Bay Street, northwest corner of intersection of Bay Street and Grant Street, Block 503, Lot 1 and 19, 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 Montanez 4
Negative:.....0
Absent: Vice Chair Collins…….....1
THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 9, 2013, acting on Department of Buildings ("DOB") Application No. 500902810, reads in pertinent part:

> Proposed Physical Culture Establishment on second floor of two story commercial building located in an M1-1 Zoning District is contrary to Section 42-10 of the New York City Zoning Resolution and must be referred to the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36

and 73-03, to permit, on a site located in an M1-1 zoning district, the operation of a physical culture establishment ("PCE") on portions of the first and second floors of a proposed two-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in *The City Record*, and then to decision on December 10, 2013; 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, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped lot bordered Bay Street to the east, Grant Street to the south by Van Duzer Street to the west, and St. Julian Place to the north, within an M1-1 zoning district; and

WHEREAS, the site has 103.45 feet of frontage along Bay Street, 289.67 feet of frontage along Grant Street, 276.36 feet of frontage along Van Duzer Street, 152.29 feet of frontage along St. Julian Place and 60,663.75 sq. ft. of total lot area; and

WHEREAS, under construction at the site is a two-story commercial building; and

WHEREAS, the PCE is proposed to occupy 19,618.07 sq. ft. of floor area on portions of the first floor and second floor 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 aerobic; 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 applicant states that there are 11 open Environmental Control Board ("ECB") violations and three open DOB violations; however, those violations were issued prior to the current owner taking title to the subject site and the applicant represents that the current owner will be able to resolve the violations upon the completion of the proposed building and grant of this application; 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 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. 14BSA018R, dated August 5, 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 an M1-1 zoning district, the operation of a PCE on portions of the first and second floors of a proposed 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 October 18, 2013" – (3) sheets and "November 12, 2013"-(1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on December 10, 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, December 10, 2013.

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

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Vice Chair Collin …….……...1

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for decision, hearing closed.

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 January 28, 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 1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to February 4, 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

ACTION OF THE BOARD – Laid over to January 14, 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 February 25, 2014, at 10 A.M., for continued hearing.

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 January 28, 2014, at 10 A.M., for deferred decision.

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
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collin ……....1

ACTION OF THE BOARD – Laid over to January 28, 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 January 28, 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

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

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

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

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 – Laid over to January 28, 2014, at 10 A.M., for continued hearing.

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
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 January 28, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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Tuesday, December 17, 2013

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New Case Filed Up to December 17, 2013

318-13-BZ

74 Grand street, North side of Grand Street, 25 feet east of Wooster Street., Block 425, Lot(s) 60, Borough of **Manhattan, Community Board: 2**. 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. M1-21 district.

319-13-BZ

1800 Park Avenue, Park Avenue, East 124th street, East 125 Street., Block 1749, Lot(s) 33(air rights 24), Borough of **Manhattan, Community Board: 11**. 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. C4-7 district.

320-13-BZ

906 Prospect Place, Located on the South Side of Prospect Place between Brooklyn and New York Avenues, Block 1235, Lot(s) 17, Borough of **Brooklyn, Community Board: 8**. Special Permit (§73-452) proposed development of an off site accessory parking lot for the Brooklyn Children's Museum contrary to the maximum allowable distance permitted by §25-52. 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

JANUARY 28, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 28, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

427-70-BZ
APPLIICANT – 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). The application seeks to legalize the erection of a one story accessory convenience store at an existing Automotive Service Station. 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

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 granted 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

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 floor area permitted. 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

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 contrary to use and bulk regulations. The amendment seeks the elimination of the cellar as well as other design changes to the Dormitory Building to facilitate the use of this building by the CUNY Graduate Center Foundation and its affiliates. 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

APPEALS CALENDAR

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 in Manhattan contrary to General City law Section 35 .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

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 zoning. 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

CALENDAR

ZONING CALENDAR

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 (ZR §23-141); side yards (§23-461) and less than the minimum required rear yard (ZR §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

157-13-BZ
APPLICANT – Sheldon Lobel, P.C., for 1368 23rd Street, LLC, owner.
SUBJECT – Application May 17, 2013 – Special Permit (§73-622) to 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

193-13-BZ
APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.
SUBJECT – Application July 2, 2013 – Special Permit (§73-44) seeking to vary §36-21 to permit a reduction in the required parking for the proposed use group 6 office use in parking requirement category B1. 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

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 (ZR §23-141); and less than the required rear yard (ZR §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

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 the mezzanine floors of the existing building; Special Permit (§73-52) to allow the fitness center use to extend twenty-five feet into the R8 portion of a zoning lot that is spilt by district boundaries. 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

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 contrary to §32-10 zoning resolution. 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

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, DECEMBER 17, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

774-55-BZ
APPLICANT – Sahn Ward Coschignano & Baker, for FGP West Street, LLC, owner.
SUBJECT – Application July 31, 2013 – Extension of Term (§11-411) of a previously granted variance for the continued operation of a (UG8) parking lot for the employees and customers of an existing bank (*Citibank*), which expire d on January 31, 2013; Waiver of the Rules. R5/C1-2 & R5/C2-2 zoning district.
PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue, between Olmstead Avenue and Castle Hill Avenue, Block 3814, Lot 59, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of term for a previously granted special permit for the operation of a parking lot, which expired on January 31, 2013; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 2013; and

WHEREAS, Community Board 9, Bronx, recommends approval of this application; and

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

WHEREAS, the subject site is located on the north side of Newbold Avenue, between Olmstead Avenue and Castle Hill Avenue; and

WHEREAS, the site is located partially within an R5 zoning district and partially within a C1-2 (R5) zoning district, and is occupied by a parking lot with 30 spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 8, 1957, when, under the subject calendar number, the Board granted a special permit for the continued operation of a parking lot for more than five cars for use by a bank on the adjacent site in what was then a residential district, for a term of five years; and

WHEREAS, subsequently, the grant has been amended and the term extended several times; and

WHEREAS, most recently, on June 24, 2008, the Board renewed the term, to expire on January 31, 2013; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, the applicant notes that 16 parking spaces remain partially or entirely within the R5 zoning district and require the special permit, and 14 parking spaces are located entirely within the C1-2 (R5) zoning district; and

WHEREAS, at hearing, the Board directed the applicant to submit photographs demonstrating that the screening of the site and striping of the parking lot comply with the previously-approved BSA plans; and

WHEREAS, in response, the applicant submitted photographs depicting the screening of the site and striping of the parking lot; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens,* and *amends* the resolution, as adopted on October 8, 1957, and as subsequently extended and amended, so that as amended this portion resolution reads: "to extend the term for ten years from January 31, 2013, to expire on January 31, 2023, *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received July 31, 2013"-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on January 31, 2023;

THAT the above condition 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 the Department of Buildings must ensure compliance 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. 210028548)

Adopted by the Board of Standards and Appeals, December 17, 2013.

182-69-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 227 East 19th Street Owner LCL, owner.
SUBJECT – Application September 4, 2013 – Amendment to previous special permit which allowed construction of a hospital building, contrary to height and setback, yards, distance between buildings, and floor area (§§ 23-145, ZR-23-711 and ZR23-89). Amendment proposes a residential conversion of existing buildings. R8B zoning district.
PREMISES AFFECTED – 211-235 East 19th Street aka 224-228 East 20th St & 2nd & 3rd Avenues, midblock portion of block bounded by East 19th and East 20th Street, Block 900, lot 6, 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 Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening, and an amendment to a previously-granted special permit pursuant to ZR §§ 73-641 and 73-49, which authorized, on the campus of the Cabrini Hospital, the construction of a new building contrary to the bulk regulations, and roof parking on an existing 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 December 17, 2013; 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 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a through lot located mid-block on the north side of East 19th Street and the south side of East 20th Street between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the site has 334 feet of frontage along East 19th Street, 309 feet of frontage along East 20th Street, and 59,813 sq. ft. of lot area; and

WHEREAS, the site is the campus of the former Cabrini Hospital; it is occupied by five buildings, which are designated on the most recent certificate of occupancy (Certificate of Occupancy No. 75029, dated October 9, 1974), as buildings A, B, C and C1, D, and E, and 48 accessory parking spaces at grade and in the cellar; and

WHEREAS, the applicant states that Building A is a 16-story building with 220,123 sq. ft. of floor area; Building A was developed pursuant to a June 24, 1969 grant from the Board under the subject calendar number and pursuant to ZR § 73-641, which waived compliance with the regulations regarding front setback, rear yard equivalent, sky-exposure plane, permitted obstructions within a front setback; the grant also included a special permit pursuant to ZR § 73-49, which allowed roof parking on an existing building at the site; and

WHEREAS, the applicant notes that the site first came under the Board's jurisdiction on July 3, 1956, when the Board, under BSA Cal. No. 378-56-A, authorized a waiver of the fire-tower stair requirements for the extension of an existing stair to an eighth-floor addition to Building C; subsequently, on July 18, 1967, under BSA Cal. No. 555-67-BZ, the Board granted a special permit pursuant to ZR § 73-641 waiving compliance with the regulations regarding FAR, lot coverage, front setback, sky-exposure plane, rear yard equivalent, and parking; on that same date, under BSA Cal. No. 556-67-A, the Board denied an appeal seeking waiver of the requirement for a fire-tower stair; and

WHEREAS, the applicant states that Buildings B (six stories), C (eight stories) and C1 (one story), D (nine stories), and E (three stories) were constructed as-of-right prior to 1961 and contain a total of 143,972 sq. ft. of floor area; as noted above, Building A has 220,123 sq. ft. of floor area; thus, the site contains a total floor area of 364,095 sq. ft. (6.15 FAR); and

WHEREAS, the applicant notes that at the time of the special permit and until 1995, the site was located in an R7-2 zoning district, which allowed a maximum community facility FAR of 6.50, therefore, until the 1995 rezoning, a maximum of 384,689 sq. ft. of community facility floor area was permitted at the site; however, in 1995, the site was rezoned R8B, reducing the maximum permitted community facility floor area permitted at the site to 236,732 sq. ft. (4.0 FAR); accordingly, the site is non-complying with respect to floor area; likewise, the site does not comply with the R8B height and setback requirements; and

WHEREAS, the applicant states that the building authorized under the 1967 special permit was not constructed and that the 1967 grant was superseded by the 1969 grant described above; and

WHEREAS, the applicant states that Cabrini Hospital ceased operating in March 2008 after being designated for closure in 2006 by the New York State Commission on Health Care Facilities a/k/a the Berger Commission; and

WHEREAS, the applicant represents that it extensively marketed the site to find a new hospital tenant without success; and

WHEREAS, accordingly, the applicant now requests an amendment to permit the conversion of the hospital to residential use (Use Group 2); and

WHEREAS, in particular, the applicant proposes to demolish Buildings B and C1, convert Buildings A, C, D, and E to residential use, create 287 dwelling units, and retain all 48 accessory off-street parking spaces; and

WHEREAS, the applicant represents that: (1) all pre-1961 non-residential floor area on the lot may be converted to residential floor area pursuant to Article I, Chapter 5 of the Zoning Resolution without regard to the floor area restrictions of the underlying district; and (2) the post-1961 floor area, including the non-occupiable space (such as mechanical

space) within the pre-1961 buildings may be converted to occupiable space and count as zoning floor area; and

WHEREAS, the applicant further represents that the proposed conversion of mechanical space within Building A to residential use will increase its floor area from 220,123 sq. ft. to 253,103 sq. ft.; correspondingly, the floor area within the pre-1961 buildings will decrease from 143,972 sq. ft. to 127,601 sq. ft., for a total floor area on the lot of 380,704 sq. ft. (6.43 FAR); and

WHEREAS, the applicant notes that Buildings B, C, and E will be reconfigured to comply with the R8B envelope and that the degree of non-compliance with respect to rear yard equivalent will be decreased as a result of the proposal; and

WHEREAS, the applicant represents that the proposal does not introduce any new non-compliances and does not trigger the need for any further relief from the Board but is required due to the prior action regarding Building A; and

WHEREAS, the applicant represents that all changes to the existing buildings, including Building A, is as-of-right under the Zoning Resolution; and

WHEREAS, as to the effect on the neighborhood character, the applicant represents that the proposal will result in a reduction in neighborhood impacts, as compared to the prior hospital use; specifically, the applicant represents that the proposal results in no urban design or shadow impacts, no significant impact on schools, libraries, day care facilities, open space or other public services and neighborhood resources, and a net reduction in the number of vehicle and pedestrian trips; and

WHEREAS, in support of these representations, the applicant submitted its environmental study, which analyzed (with particular emphasis on traffic and air quality) the neighborhood effect of the proposal in comparison to the as-of-right R8B development and the prior hospital use; and

WHEREAS, at hearing, the Board requested clarification regarding the proposed increase in floor area and the proposed landscaping of the site; and

WHEREAS, in response, the applicant represented that the Department of Buildings ("DOB") reviewed and approved the proposed increase in floor area; in addition, the applicant submitted amended plans clarifying the proposed landscaping of the site; and

WHEREAS, the Board takes no position on the floor area calculations, which are subject to DOB review and approval; 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 24, 1969, 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 December 11, 2013'- (31) 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 and approve compliance with the Zoning Resolution, including floor area calculations;

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, December 17, 2013.

380-01-BZ

APPLICANT – Law office of Fredrick A. Becker, for 230 West 41st St. LLC, owner;

TSI West 41 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 17, 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*), located in a 21-story commercial office building, which expired on April 9, 2012; Waiver of the Rules. C6-6.5 M1-6 (Mid) zoning district.

PREMISES AFFECTED – 230 West 41st Street, south side of West 41st Street, 320' west of Seventh Avenue, through block to West 40th Street, Block 1012, Lot 15, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of term of a physical culture establishment ("PCE"), which expired on April 9, 2012; 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 December 17, 2013; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an interior lot located on the block bounded by Seventh Avenue, West 40th Street, Eighth Avenue, and West 41st Street, partially within an M1-6 zoning district and partially within a C6-6.5 zoning district, within the Special Midtown District; and

WHEREAS, the site is occupied by a 21-story

commercial building; and

WHEREAS, the PCE is located on portions of the cellar, first floor, and second floor of the building, and occupies approximately 21,814 sq. ft. of total floor space; and

WHEREAS, on April 9, 2002, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 to permit the operation of the PCE on portions of the cellar, first floor, and second floor of the 21-story building at the site; and

WHEREAS, the term of the original grant expired on April 9, 2012; and

WHEREAS, the applicant now seeks an extension of the term; and

WHEREAS, the PCE will continue to be operated as the New York Sports Club; and

WHEREAS, the applicant notes that the hours of operation of the PCE were not established in the original grant; and

WHEREAS, at hearing, the Board directed the applicant to add the standard PCE notes to the proposed plans; and

WHEREAS, in response, the applicant submitted an amended plan including the required notes; and

WHEREAS, based on its review of the record, the Board finds that the proposed ten-year extension of term is appropriate, with the conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on April 9, 2002, and as subsequently extended and amended, so that as amended this portion of the resolution reads: "to extend the term for ten years from April 9, 2012, to expire on April 9, 2022, *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received December 11, 2013"- (6) sheets; 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 this grant will be limited to a term of ten years, to expire on April 9, 2022;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

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. 103031924)

Adopted by the Board of Standards and Appeals, December 17, 2013.

17-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Abrams Holding LLC, owner; Town Sports International dba New York Sports Club, lessee.

SUBJECT – Application August 7, 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 June 4, 2012; Waiver of the Rules. C4-3 zoning district.

PREMISES AFFECTED – 445-455 Fifth Avenue, aka 453 Fifth Avenue, between 9th Street and 10th Street, Block 1011, Lot 5, 8, 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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of term of a physical culture establishment ("PCE"), which expired on June 4, 2012; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 2013; and

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

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

WHEREAS, the subject site is located on Fifth Avenue between Ninth Street and Tenth Street, within a C4-3A zoning district; and

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

WHEREAS, the PCE is located on portions of the first floor, second floor, and third floor of the building, and occupies approximately 20,521 sq. ft. of floor area; and

WHEREAS, on June 4, 2002, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 to permit the operation of the PCE on portions of the first floor, second floor, and third floor of the three-story building at the site; and

WHEREAS, the term of the original grant expired on June 4, 2012; and

WHEREAS, the applicant now seeks an extension of the term; and

WHEREAS, the operator will continue to be operated as the New York Sports Club; and

WHEREAS, the applicant notes that the hours of operation of the PCE were not established in the original grant, but are as follows: 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 7:00 a.m. to 9:00 p.m.; and

WHEREAS, at hearing, the Board requested clarification regarding the installation of a fire alarm system, which was, among other things, required under the prior Board grant; and

WHEREAS, in response, the applicant submitted documentation from the Department of Buildings confirming the installation of the system; and

WHEREAS, based on its review of the record, the Board finds that the proposed ten-year extension of term is appropriate, with the conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on June 4, 2002, and as subsequently extended and amended, so that as amended this portion of the resolution reads: "to extend the term for ten years from June 4, 2012, to expire on June 4, 2022, *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received December 11, 2013"- (7) sheets; 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 this grant will be limited to a term of ten years, to expire on June 4, 2022;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

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. 301136367)

Adopted by the Board of Standards and Appeals, December 17, 2013.

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 – Laid over to January 28, 2014, at 10 A.M., for continued hearing.

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 – Laid over to January 28, 2014, at 10 A.M., for continued hearing.

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

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 January 28, 2014, at 10 A.M., for decision, hearing closed.

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
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 January 28, 2014, at 10 A.M., for decision, hearing closed.

176-09-BZ
APPLICANT – Bryan Cave LLP/Margery Perlmutter, for NYC Fashion of 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
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 January 28, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

90-12-A
APPLICANT – New York City Board of Standards and Appeals
SUBJECT – Application September 11, 2013 – Reopening by court remand for supplemental review of whether the subject wall was occupied by an art installation or an advertising sign. M1-6 zoning district.
PREMISES AFFECTED – 111 Varick Street, Varick Street between Broome and Dominick Street, Block 578, Lot 71, Borough of Manhattan.
COMMUNITY BOARD #2M
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 Montanez 5
THE RESOLUTION –

WHEREAS, the underlying case is an appeal requesting a Board determination that the owner has not lost the right to maintain a non-conforming advertising sign at the site; and

WHEREAS, the subject site is located at the northwest corner of Varick Street and Broome Street, within an M1-6 zoning district; and

WHEREAS, the site is occupied by a six-story parking garage with a 58'-0" high by 78'-3" wide sign structure located on the south wall (the "Sign Structure"); and

WHEREAS, the Sign faces Broome Street and is located approximately 57'-0" from the northern boundary of the Holland Tunnel approach, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

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 March 12, 2012, denying registration for a sign at the site (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 Signs Enforcement Unit. As evidence related to the sign points to its having been of various sizes, orientations, and even removed, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS, the appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, on April 11, 2012, the Appellant filed an application with the Board seeking recognition of a right to continue its use of the wall at the subject premises for an advertising sign; and

WHEREAS, on January 15, 2013, under the subject calendar number, the Board upheld DOB's Final Determination and found that advertising sign had been discontinued for a period of greater than two years, contrary to ZR § 52-61; specifically, that for the period of 1979 to 1989 when the Sign was occupied by an installation by artist Terry Fugate-Wilcox entitled "the Holland Tunnel Wall," the advertising sign use was discontinued; and

WHEREAS, on February 14, 2013, the property owner appealed the Board's determination in New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules; and

WHEREAS, by decision and order in Van Wagner v. Board of Standards and Appeals, dated June 18, 2013, Supreme Court, New York County, Justice Rakower "remanded [the matter] back to the agency for a fuller record" and "granted the petition to the extent stated in the record"; and

WHEREAS, the record from the oral argument includes the following:

> [the Board has] to figure out why this art installation, which was later dismantled and sold, which bore the name of the artist and served to perpetuate those sales that came later, was less than an advertising sign, and establish how it was that that is a departure from the non-conforming use that was in place.
>
> So, I'm going to send it back and I'm not

directing that they grant the permit, but there is an insufficient record here for me to – for anyone to know when it is that an art installation would be different from an advertising sign. And I think they have to clarify that issue; and

WHEREAS, a public hearing was held on the remand on October 29, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 2013; 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 Board re-adopts the analysis and determination it made in its January 15, 2013 decision on the matter; and

WHEREAS, this resolution reflects the parties' supplemental arguments and the Board's associated analysis; it includes a summary of the parties' original arguments, which are presented in full in the January 15, 2013 resolution; and

WHEREAS, the Appellant and DOB appeared and, pursuant to the remand, made a total of six additional submissions on the question of whether the Sign constituted an advertising sign from the years of 1979 to 1989 when the wall was occupied by the "Holland Tunnel Wall"; the Board held one executive review session and one public hearing; and

Background

WHEREAS, the Appellant contends that DOB's Final Determination should be reversed because (1) an advertising sign was established on the building prior to June 1, 1968, as required under ZR § 42-55, and may therefore be maintained as a legal non-conforming advertising sign pursuant to ZR § 52-11, and (2) an advertising sign has occupied the Sign Structure with no discontinuance of two years or more since its establishment; and

WHEREAS, as to the establishment of an advertising sign prior to June 1, 1968, DOB has stated that it does not contest the Appellant's claim that an advertising sign existed on May 31, 1968; however, DOB asserts that the use was discontinued and must terminate per ZR § 52-61 because the wall was used to display an art installation for a period of approximately ten years; and

WHEREAS, the Appellant contends that the art installation at the site from approximately 1979 to 1989 constituted an "advertising sign" within the meaning of ZR § 12-10, and therefore the use of the Sign Structure from an advertising sign was continuous during that period; and

WHEREAS, accordingly, the sole question in dispute is whether the Sign Structure was occupied by an advertising sign, as defined by the Zoning Resolution, from 1979 to 1989 when the "Holland Tunnel Wall" art installation (the "Holland Tunnel Wall" or the "Art Installation") occupied it; and

WHEREAS, the Appellant notes that ZR § 12-10 defines the term "sign" as follows:

ZR § 12-10 *Definitions*

Sign

A "sign" is any writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or pennant), or any other figure of similar character, that:

(a) Is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a #building or other structure#;
(b) Is used to announce, direct attention to, or advertise; and
(c) Is visible from outside a #building#. A #sign# shall include writing, representation or other figures of similar character, within a #building#, only when illuminated and located in a window…

* * *

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#; and

The Appellant's Original Arguments

WHEREAS, in sum, the Appellant contended that the Final Determination should be reversed because (1) an advertising sign was established prior to June 1, 1968, as required under ZR § 42-55, and may therefore be maintained as a legal non-conforming use pursuant to ZR § 52-11, and (2) the Sign Structure has been occupied by an advertising sign with no discontinuance of two years or more since its establishment; and

WHEREAS, the Appellant argued that the art installation met the ZR § 12-10 definition of a "sign," in that (1) it was a pictorial representation (including illustration or decoration), (2) it was attached to the building; (3) it was used to direct attention to and advertise the artist Terry Fugate-Wilcox and his works; and (4) it was visible from outside the building; and

WHEREAS, the Appellant also contended that the context and circumstances applicable to the Sign make it clear that the Art Installation was simultaneously used for artistic and advertising purposes; and

WHEREAS, specifically, the Appellant asserted that the Sign Structure has a long history of use as an advertising sign from as early as the 1920's, the Art Installation was affixed in the exact same position and location as advertising signs that had been posted on the Building for six decades prior, and that it met all of the elements of the definition of a "sign," and based on this context the Art Installation may properly be construed as an advertising sign for the purposes of establishing a history of continuous use under the Zoning Resolution; and

The Appellant's Position on Remand

WHEREAS, the Appellant asserts that the Board should reconsider its prior denial and order DOB to accept its sign registration for the following primary reasons: (1) the plain

language of the ZR § 12-10 definitions controls; (2) sale of the pieces is indicative of an advertising signage and the inclusion of the artist's signature and; (3) any ambiguity in the text must be read in favor of the property owner; and (4) there are unique conditions surrounding the Sign Structure and location that will not allow it to set a precedent; and

WHEREAS, the Appellant asserts that the art installation was a "sign" and an "advertising sign" under the plain language of the Zoning Resolution; and

WHEREAS, the Appellant asserts that to affirm DOB's position that the Art Installation did not constitute an "advertising sign" during the time it was displayed, the Board would be taking a narrow reading of the statute that departs from its plain language; and

WHEREAS, the Appellant asserts that the installation was clearly a "sign," because it satisfies all elements of the definition that it was a pictorial representation (including illustration or decoration), that was (a) was attached to the building, (b) used to direct attention to and advertise the artist Fugate-Wilcox and his works, and (c) visible from the outside of the building; and

WHEREAS, the Appellant asserts that as with any other types of business, an artist must develop his or her brand, and that the Art Installation served that purpose by directing attention to the artist and his work by attracting attention to the installation itself; thus, element (b) of the "sign" definition is satisfied; and

WHEREAS, the Appellant asserts that the Art Installation also satisfies the definition of an "advertising sign" in that it "direct[ed] attention to a business, profession, commodity, service or entertainment" by directing attention to the artist and his work, which can be construed as a "business" (the business of creating artwork), a "profession" (being an artist), a "service" (providing commissioned works) or "entertainment" (the viewing and enjoyment of artwork); and

WHEREAS, the Appellant submitted an affidavit from the vice-president of the property owner of the site from 1973 to 2010 which states that Mr. Fugate-Wilcox leased the space on the Sign Structure and thus paid for the right to advertise his work and display his signature by posting the Art Installation on the Sign Structure; and

WHEREAS, the Appellant asserts that the Art Installation was posted as an opportunity to promote the brand and the work of the artist Terry Fugate-Wilcox and that the aesthetic and creative aspects of the Art Installation do not preclude its function as an advertising sign; and

WHEREAS, the Appellant asserts that such an interpretation is not found within the Zoning Resolution, which does not include anything in the statutory definition of "advertising sign" to suggest that it must exclude signs that also have independent aesthetic value; and

WHEREAS, further, the Appellant asserts that the Art Installation, while displayed on the Sign Structure, functioned as advertising for the artist Terry Fugate-Wilcox because (1) after the Fugate-Wilcox installation was removed from the Sign Structure, it was broken apart and sold as individual pieces of artwork; and (2) the signature of the artist appeared on the corner of the installation; and

WHEREAS, the Appellant assert that in effect, the signature, and what the literature regarding Mr. Fugate-Wilcox's works describes as his "artistic voice" in a genre known in the art community as "Actual Art," which included an entire series of "weathering" art installations which directed attention to the artist and his unique works, thus satisfying the definition of "advertising sign"; and

WHEREAS, the Appellant asserts that, though not required by the statute, the fact that the installation functioned as advertising was then confirmed by the fact that patrons purchased pieces of the weathering wood as "works of art" after the installation was dismantled; and

WHEREAS, the Appellant asserts that the Art Installation served to draw attention to Mr. Fugate-Wilcox and became a source of commercial revenue for him, as pieces of the art were sold to the public due to the attention the art installation had garnered; and

WHEREAS, the Appellant assert that there is no requirement in the statute that an advertising sign have a "discernible message" as DOB contends; and

WHEREAS, the Appellant rejects DOB's inclusion of the requirement that there be a discernible message, but, asserts, that even if there were such a requirement, the installation would satisfy it because the art community at the time recognized the work as an expression of Mr. Fugate-Wilcox's "artistic voice"; and

WHEREAS, as to the artist's signature, the Appellant asserts that it is not relevant that the signature was not "prominently featured" as there is no requirement in the Zoning Resolution that a signature be the "focal point"; and

WHEREAS, the Appellant asserts that it also does not matter that the signature of the artist may have worn away over time because whether the signature lasted for one year or ten, its initial presence created an association between the artist and the weathering wood that would have persisted even after the signature eroded; and

WHEREAS, the Appellant reiterated its position that a sign bearing the Target brand logo of a target is analogous because it is similarly abstract and similarly fails to convey a discernible message; and

WHEREAS, the Appellant asserts that the Art Installation constituted advertising because it was a sign that directed attention to the artist, Terry Fugate-Wilcox, and his works and it is immaterial that only those most familiar with the art world and its community, understood and reacted to the advertisement by knowing that the artwork of Mr. Fugate-Wilcox was commercially available for purchase elsewhere; and

WHEREAS, the Appellant asserts that the statutory language is ambiguous and thus should be construed in favor of the property owner; and

WHEREAS, the Appellant asserts that if the Board or DOB believes the statutory language is too broad, and that applying its plain meaning as urged by Appellant would yield unusual or undesirable results, the appropriate remedy would

be to amend the statute through the proper legislative channels; and

WHEREAS, finally, the Appellant asserts that the Subject Sign represents a unique circumstance of a long-grandfathered signage location that does not set a precedent for all artistic displays to be advertising signs; and

WHEREAS, the Appellant asserts that the sign was a legal "non-conforming" advertising use prior to the Art Installation and it should be seen as a continuation of a non-conforming advertising use of the Sign Structure in that the installation was in the same format and location as advertising signs that had been at this location since the 1920s; and

WHEREAS, the Appellant asserts that additional unique features include that the artist leased the space from the property owner; the artist was identified on the installation; and the pieces were subsequently sold; and

WHEREAS, finally, the Appellant asserts that the Court has already found that there were insufficient findings in the record to support the Board's prior decision and that DOB has presented no new evidence or arguments that would support new findings by the Board; and

DOB's Original Arguments

WHEREAS, in sum, during the original case, DOB stated that it did not contest the Appellant's claim that an advertising sign existed prior to June 1, 1968; however, DOB asserted that during the time the building wall was used to display the Art Installation, the non-conforming advertising sign use was discontinued, and therefore the use must terminate pursuant to ZR § 52-61; and

WHEREAS, DOB stated that pursuant to ZR § 12-10, a non-conforming "sign" must continue to be used to "announce, direct attention to or advertise," and a non-conforming "advertising sign" must continue to be used as 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

WHEREAS, DOB concluded that painted plywood, whether visible in solid colors or eroded into patterns, does not announce, direct attention to or advertise a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot, and therefore, does not constitute a "sign" or "advertising sign" pursuant to the ZR § 12-10 definitions of those terms; and

DOB's Position on Remand

WHEREAS, DOB maintains its position that the "Holland Tunnel Wall" displayed at the site from 1979 to 1989 did not meet the ZR § 12-10 definition of "sign" or "advertising sign" because: (1) the "Holland Tunnel Wall" did not "announce, direct attention to, or advertise" as per the sign definition's requirement (b); and (2) the "Holland Tunnel Wall" did not direct attention to a business, profession, commodity, service or entertainment conducted, sold, or offered off the zoning lot as per the advertising sign definition's requirement; and

WHEREAS, DOB cites to requirement (b) of the definition of "sign" which provides that a sign "announce, direct attention to, or advertise" a particular message because the threshold requirement that there be an exhibition of any writing, picture, emblem, flag or other figure does not alone satisfy the other three elements of the ZR § 12-10 definition; and

WHEREAS, DOB states that the enumerated forms of expression must communicate a commonly understood message that is readily discernible by the viewer because otherwise the statute would include all forms of expression that met the sign definition's requirements (a) and (c) and paragraph (b) would be without meaning; and

WHEREAS, DOB asserts that the "Holland Tunnel Wall" did not announce, direct attention to, or advertise because there was no particular message being conveyed; and

WHEREAS, in support of the assertion that the Art Installation failed to meet the definition of sign, DOB cites to historic records regarding the wall including copies of a Department of Finance photograph dated 1982-1987 and other photographs of the art installation posted on the Wikipedia website, which described the different layers of paint the artist used and the process of their degradation; and

WHEREAS, DOB notes that the article states that "[t]he artist's intention was to use paints that were incompatible with each other so that as the work weathered, all the different colors would merge, in natural patterns;" and

WHEREAS, DOB also cites to a New York Times article dated August 7, 1981 titled "An Outdoor-Sculpture Safari Around New York" which described Fugate-Wilcox's work at 111 Varick Street as "sheets of plywood painted yellow" covering the façade and noted that the artist felt that "[t]ime and the weather…will give [the display] esthetic appeal;" and

WHEREAS, accordingly, DOB asserts that the Art Installation was used to show changing paint patterns caused by exposure to the outdoors and not to "announce, direct attention to, or advertise" or (2) convey any message and, thus, was comparable to a display of colorful lights on a building, which also does not deemed to be a "sign" per zoning; and

WHEREAS, DOB asserts that in order to announce, direct attention to or advertise, as required by the definition's (b), a sign must communicate a commonly understood message that is readily discernible by the viewer; and

WHEREAS, DOB states that the "Holland Tunnel Wall" did not "announce, direct attention to, or advertise" the artist, his artwork, or anything else; and

WHEREAS, first, DOB notes that there is no evidence that Mr. Fugate-Wilcox's name was prominently identified such that the display was used for the purpose of promoting the artist and the work does not express any particular message about the artist or the artwork; and

WHEREAS, DOB notes that the artist's signature was initially visible in the lower right hand corner of the Art Installation, but by the third year on display, the signature had worn away and was no longer legible; and

WHEREAS, DOB submitted an image from the Wikipedia article showing the "Holland Tunnel Wall" in years one, two and three to support the point that for approximately

seven of the ten years of the work's installation, no signature was visible so if any message had ever been conveyed, it was certainly not during that period; and

WHEREAS, further, DOB asserts that for the life of the work, it did not contain identification of a museum exhibit, studio or gallery at which to view or buy the artist's artwork, and so there was no basis to conclude that the Art Installation was used to direct attention to the artist, his profession, or his artistic product as none of that information included on advertising signs was present; and

WHEREAS, DOB cites to the Wikipedia article, which states that "[w]hen the sub-structure of the plywood billboard eventually gave way to the effects of weathering [and] had to be dismantled, the artist was able to reclaim many of the weathered plywood panels which, in turn became individual works of art;" and

WHEREAS, however, DOB notes that there was no information displayed on the art installation that offered it for sale and it cannot be concluded that the art installation was used to promote its purchase simply because the artist was able to sell the art installation segments after it was taken down; and

WHEREAS, DOB states that even if the Art Installation were a sign, it was not an advertising sign; and

WHEREAS, DOB asserts that it would be overly restrictive to interpret the work as an advertising sign because it would render every display an "advertising sign" directing attention to itself as a commodity for sale; and

WHEREAS, DOB notes that, contrary to the Appellant's assertion, the Wikipedia article on the artist states that the wall space was not leased, but donated by the owner of the building; and

WHEREAS, further, the article states that the installation was painted by riggers of the Apollo Painting Company who donated their services and was sponsored by the Lower Manhattan Cultural Council (LMCC), which identifies itself as a non-profit art organization that produces cultural events and promotes the arts through grants, services, advocacy, and cultural development programs; and

WHEREAS, DOB asserts that regardless of whether the artist paid the building's owner for the right to display his artwork or whether the project was funded by either a non-profit or commercial organization, the installation was not a sign, or advertising sign, regulated by the ZR because the face of the installation did not communicate a commonly understood message readily discernible by the viewer about the artist's business or artwork; and

WHEREAS, DOB concludes that the Holland Tunnel Wall does not meet the definition of a "sign;" and

WHEREAS, DOB notes that an "advertising sign" per ZR § 12-10 is a "sign" that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered on another zoning lot and that, accordingly, to be an advertising sign under the ZR, the Appellant must show that this installation communicated a commonly understood message readily discernible by the viewer about the artist's business or artwork sold elsewhere; and

WHEREAS, DOB disagrees with the Appellant's position that the installation was not an advertising sign that directed attention to the artist's business conducted on another zoning lot and artwork as a commodity sold on another zoning lot because the artist's signature on the installation drew attention to the artist and the sale of the "Holland Tunnel Wall" generated revenue; and

WHEREAS, DOB asserts that the artist's signature and sale of the installation do not satisfy the terms of the ZR "sign" or "advertising sign" definitions; and

WHEREAS, first, DOB notes that the artist's name was not prominently featured in the display and that the overall effect of the small signature that wore away after three years in the context of the large display of changing paint colors did not direct attention to the artist; and

WHEREAS, DOB asserts that an artist's signature is customarily used to show that a work is finished and authentic and is typically shown, as it was on the "Holland Tunnel Wall," in a neutral color in the lower right hand corner of the work in order to not distract the viewer's eye; and

WHEREAS, DOB asserts that given a signature's conventional use on artwork, it would be unreasonable to consider the artist's signature the focal point of the installation particularly given that the artist's signature was no longer legible or even visible after the third year, therefore the signature was not an important element of the display during its ten year long use; and

WHEREAS, DOB finds that the temporary and incidental presence of the artist's signature did not communicate a commonly understood message about the artist or his works and did not render the installation an advertising sign; and

WHEREAS, further, DOB asserts that how a display is used once it is removed from the premises is not a criterion for determining whether it was a sign or an advertising sign regulated by the ZR; and

WHEREAS, specifically, DOB states that the handling of the "Holland Tunnel Wall" after it was removed from the premises (to the extent it was dismantled and sold in pieces) does not support a finding that while it was displayed it promoted itself as a commodity that could be purchased; and

WHEREAS, DOB states that had the installation identified a museum exhibit, studio or gallery at which to view or buy the artist's artwork, it would have been an advertising sign that directed attention to the artist's business and products offered on another zoning lot; and

WHEREAS, DOB states that here, there is no evidence of contemporaneous publicity to demonstrate that the installation was installed to encourage its sale or other artwork of the artist generally; and

WHEREAS, DOB states that the installation with abstract paint patterns on it does not direct attention to anything but itself as it exists on-site at the premises and does not meet the definition's standard for an advertising sign; and

WHEREAS, DOB disagrees with the Appellant's assertion that since the City does not have a policy with respect to whether art could constitute advertising, an art

installation that does not meet the ZR sign definition should nevertheless be regulated as an advertising sign if it is located in the same wall space formerly used to display advertising signs; and

WHEREAS, DOB asserts that this argument misses the point because the only relevant question is whether the display meets the ZR's definition of a sign, not what the historic use of the Sign Structure has been; and

WHEREAS, moreover, DOB asserts that the Appellant's proposal to treat artwork as an advertising sign based only on the former use of the billboard space is incompatible with ZR § 52-61, which recognizes that once a non-conforming use ceases for a continuous period of two years, the right to the non-conforming use is lost; and

WHEREAS, DOB notes that the ZR does not make exception to allow the reactivation of a non-conforming advertising sign use following a ten year-long display of an art installation that did not meet the sign definition; and

The Board's Original Conclusion

WHEREAS, as noted, the Board re-adopts its prior resolution dated January 15, 2013 and re-affirms its position to uphold DOB's determination that the advertising sign use at the site was discontinued for a ten-year period between 1979 and 1989 when the "Holland Tunnel Wall" occupied the building and, thus, the advertising sign use must terminate pursuant to ZR § 52-61; and

WHEREAS, in sum, the Board found that the art installation, which consisted of sheets of plywood painted in layers of solid colors, did not meet the ZR § 12-10 definition of a "sign" or an "advertising sign" because it did not "announce, direct attention to, or advertise" a business, profession, commodity, service, or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot; and

WHEREAS, the Board agreed with DOB that the Art Installation is a creative expression that attracts attention to itself rather than directing attention to a use or product off the site, and therefore it lacks requirement (b) of the ZR § 12-10 definition of "sign"; and

WHEREAS, the Board found the fact that the Art Installation is similar to many other murals displayed throughout the City, which DOB noted are not subject to the sign regulations of the Zoning Resolution, to be further evidence that an artist's signature is not sufficient to transform a piece of art into an advertising sign, since it is standard practice for artists to sign their work; and

The Board's Conclusion on Remand

WHEREAS, in consideration of all the supplemental points made in the record on remand, the Board is not persuaded by the Appellant's position that the "Holland Tunnel Wall" satisfies the definition of "sign" but that even if it were a "sign," by definition, it is not an "advertising sign," which is the regulated use subject to the discontinuation provisions of ZR § 52-61; and

WHEREAS, specifically, the Board does not find that the Art Installation created from paint and plywood satisfies requirement (b) of the ZR § 12-10 definition of "sign" for announcing, directing attention to, or advertising; and

WHEREAS, the Board finds that the inclusion of the requirement that a sign "announce, direct attention, or advertise" acknowledges that there are examples of writing, pictorial representation, emblems, flags or other characters which announce, direct attention to, or advertise and there are those that do not do any of those things yet may satisfy the other elements of the definition; and

WHEREAS, the Board finds that if every form of representation within the definition's list that is attached to a building (requirement (a)) and visible from outside the building (requirement (c)) "announce[d], directe[d] attention to, or advertise[d]" then there would not be any reason to include requirement (b); and

WHEREAS, the Board finds that the complete criteria for signs is enumerated so as to make clear that writing or pictorial representation along with being located on a wall alone do not meet the criteria for a sign and would fit into some other category not regulated by DOB; and

WHEREAS, the Board notes that there may be a pictorial representation that announces or advertises (requirement (b)) and is attached to a wall (requirement (a)) but is not visible from the outside of a building (requirement (c)) and therefore not a sign; and

WHEREAS, the Board notes that such a representation may have many qualities of a "sign" and even be referred to as a sign outside of the zoning context, but would not be a "sign" as per the Zoning Resolution and would not be regulated by DOB or the sign provisions; and

WHEREAS, the Board finds that the Appellant's interpretation of requirement (b) is overly broad, would lead to the conclusion that requirement (b) is unnecessary to state, and does not have any basis in either the statute or common sense; and

WHEREAS, the Board asserts that there are many forms of representation that would satisfy elements (a) and (c) but do not include (b) in any reasonable sense; and

WHEREAS, the Board cites to graffiti, which often includes a signature, would satisfy (a) and (c) but not (b) in any reasonable sense but, by the Appellant's reading, it would be a sign as it may direct attention to the graffiti artist's work there and elsewhere or to the graffiti artist; and

WHEREAS, additionally, the Board posits that, under the Appellant's interpretation, an architectural feature or piece of art attached to a building wall (such as a cornice or a metal sculptural relief on an exterior wall at Pace University) would be deemed a sign because it directs attention to itself and to the artist, like the "Holland Tunnel Wall" or ubiquitous graffiti; and

WHEREAS, the Board notes that if an architect imprinted her name on a building's exterior wall that had some form of decoration on it, by the Appellant's reasoning, that wall would be a sign because it announces, directs attention to, or advertises the architect; and

WHEREAS, in fact, the Board notes that it is difficult to imagine any visual representation that does not announce something, and would therefore not be a sign, if announcing its own presence or the identity of its creator alone would

satisfy the (b) requirement; and

WHEREAS, the Board does not find that the statute's text is overly broad and leads to absurd results; and

WHEREAS, the Board notes that there are many examples of a representation fitting several of the definitional requirements, but not all, and thus may not be a "sign" in the zoning context and subject to the limitations and benefits of such use; and

WHEREAS, the Board finds that the plain reading of the text does not result in a conclusion that the "Holland Tunnel Wall" is a sign, because it does not announce, direct attention to, or advertise and the Board does not find the language to be ambiguous if the concepts in requirement (b) are given their plain meaning; and

WHEREAS, the Board does not see any requirement in the text that there be a discernible message, as DOB asserts, but finds that for the definition to have any meaning, there must be (1) a reasonable nexus between the sign and the business, profession, commodity, service or entertainment conducted, sold, or offered *offsite*, or else every "sign" would be an "advertising sign"; and

WHEREAS, furthermore, the Board questions whether the "Holland Tunnel Wall" satisfies the threshold requirement of being a "writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or pennant), or any other figure of similar character" as the subject installation without any pictorial representation arguably does not satisfy even the threshold element of the "sign" definition; and

WHEREAS, the Board finds that the Appellant's repeated example of the Target brand logo is completely distinguishable as the Target logo is a pictorial representation (an illustration) of a target sign and it is an emblem (a symbol and a trademark); and

WHEREAS, the Board finds that, contrary to the Appellant's assertions, there is nothing abstract about the Target brand logo and no question that it satisfies requirement (b) that it announces, directs attention to, and advertises the brand; and

WHEREAS, the Board finds that even if the Holland Tunnel Wall were a "sign," by definition, it is not an "advertising sign" by definition because it does not "direct[ ] attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere"; and

WHEREAS, again, the Board finds that every sign has a connection to something offsite and in most every case the person who actually installed the sign is offsite, so, by the Appellant's reasoning, graffiti and decorative reliefs or architectural features, would be "advertising signs"; and

WHEREAS, the Board finds that the requirement is actually that "sign" direct attention to one of the enumerated endeavors *off* the zoning lot; so that, if the Holland Tunnel Wall were a "sign," it could only be so in the sense that it directs attention to itself as there is no perceptible nexus between it and an endeavor off of the zoning lot; and

WHEREAS, similarly, the Board does not find that the inclusion of a signature has any bearing on whether or not the Holland Tunnel Wall was an advertising sign, but notes that for approximately seven years no signature was visible, so finding the nexus between the installation and the "business," "profession," or "service" offsite is even more strained; on the contrary, the installation draws attention to something *on* the site, itself; and

WHEREAS, the Board notes that there is not any compelling evidence to refute the unbiased reporting that the Lower Manhattan Culture Council (LMCC) sponsored the project and secured the space, including the affidavit from someone affiliated with the building during the relevant period, which does not provide any evidence to establish that Mr. Fugate-Wilcox himself leased the space or that the LMCC did not lease the space on behalf of Mr. Fugate-Wilcox; and

WHEREAS, the Board notes that the distinctions between art and advertising are made to the benefit of art and that the exclusion of art installations from the definitions of "sign" and "accessory sign" protects the rights of artists and their expression thus, DOB routinely exempts murals and other art displays, which satisfy requirements (a) and (c) from sign regulations, but not (b); and

WHEREAS, the Board finds that the Appellant's argument that the Holland Tunnel Wall is an advertisement undermines the protections in place (including through the First Amendment and the Zoning Resolution) for art and the greater freedom it enjoys than advertising signs; and

WHEREAS, the Board notes that murals and other art installations on building walls are not regulated by the Zoning Resolution, or, indeed, any other local law, rule, or regulation except to the extent that the *process* of installing or maintaining such works requires agency approval; for example, scaffolds 40 feet or more in height require a work permit from the Department of Buildings pursuant to Building Code Section 3314.2; and

WHEREAS, the Board finds that an installation by an artist that was conceived of as art, according to reporting on the matter and which was completed using donated labor, materials, and through the support of a non-profit cultural organization that supports public art, fails to have any nexus to a commercial endeavor off of the zoning lot; and

WHEREAS, the Board notes that the Appellant looks to the unique history of the subject wall at 111 Varick Street, including that it has been occupied by a sign and sign structure for 80 or 90 years and that it is highly visible such that there is an expectation for an advertising sign to be there; and that the Holland Tunnel Wall occupied a former billboard space; and

WHEREAS, the Board finds such suppositions to be conclusory given that a high degree of visibility is not a requirement in zoning and that the shape and degree of visibility of an installation is not relevant to the analysis of whether it is advertising; and

WHEREAS, the Board notes that a flat rectangular form, such as that occupied by billboards, is a traditional and very natural backdrop for a painting and that any artist would prefer a location with optimal visibility; further, the fact that the Sign replaced a historic billboard is irrelevant to the

question of whether it satisfies the definition of an advertising sign; and

WHEREAS, the Board concludes that through this decision, it does not have a basis to establish the distinction between all art and all advertising, but, based on the record before it, the Board determines that the the subject installation of plywood and layers of weathering paint was not an advertising sign and, thus, for the period between 1979 and 1989, the advertising sign use on the subject wall at 111 Varick Street discontinued to an extent that such use is no longer permitted pursuant to ZR § 52-61; and

Therefore it is resolved, that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 12, 2012, on remand is hereby denied.

Adopted by the Board of Standards and Appeals, December 17, 2013.

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 – Laid over to January 14, 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 January 28, 2014, at 10 A.M., for deferred decision.

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 & 47Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, 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 January 28, 2014, at 10 A.M., for decision, hearing closed.

156-13-A

APPLICANT – Bryan Cave LLP, for 450 West 31Street 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 January 28, 2014, at 10 A.M., for decision, hearing closed.

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 – Laid over to January 28, 2014, at 10 A.M., for continued hearing.

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 – Laid over to January 28, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

206-13-BZ

APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for 605 West 42nd Owner LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-36) to allow a physical culture establishment within an existing building. C6-4 zoning district.

PREMISES AFFECTED – 605 West 42nd Street, eastern portion of the city block bounded by West 42nd St, West 43rd Street, 11th Avenue and 12th Avenue, Block 1090, Lot 29, 23, 7501, 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 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings ("DOB"), dated June 6, 2013, acting on DOB Application No. 121331120, reads in pertinent part:

> Proposed physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in C6-4 zoning district within the Special Clinton District, the operation of a physical culture establishment ("PCE") in portions of the cellar, first, and third floor of a 60-story mixed residential and commercial building, contrary to ZR §§ 32-10 and 32-31; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 2013; 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, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Eleventh Avenue between West 42nd Street and West 43rd Street, within a C6-4 zoning district, within the Special Clinton District; and

WHEREAS, the site has 575 feet of frontage along West 43rd Street, 200.84 feet of frontage along Eleventh Avenue, 579 feet of frontage along West 42nd Street, and 115,881 sq. ft. of lot area; and

WHEREAS, under construction at the site is a 60-story mixed residential and commercial building; and

WHEREAS, the PCE is proposed to occupy a total of 59,680 sq. ft. of floor space, 20,457 sq. ft. of floor space in the cellar, 2,166 sq. ft. on the first floor, 19,268 sq. ft. of floor area on the third floor, and 17,788 sq. ft. of outdoor space with two swimming pools at the third floor above the second floor roof; and

WHEREAS, the PCE will be operated by the owner of the building, 605 West 42nd Owner, LLC; 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 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 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 also finds that the PCE supports the general purposes of the Special Clinton District, which include strengthening the residential character of the community, in accordance with ZR § 96-00; and

WHEREAS, in accordance with ZR § 73-36(b), the Board may permit outdoor PCE uses, provided that additional findings are made; and

WHEREAS, at hearing, the Board requested additional information regarding the uses adjacent to the proposed outdoor swimming pools and directed the applicant to identify limited hours for such use; and

WHEREAS, in response, the applicant submitted an amended statement and a site plan detailing the adjacent uses, which includes two street frontages, terraces, and common residential spaces (tenant lounge and recreation area) within the building; and

WHEREAS, in addition, the applicant states that use of the pools will be limited to daily from 6:00 a.m. to 7:00 p.m.

from Columbus Day to Memorial Day, and daily from 6:00 a.m. to 9:00 p.m. from Memorial Day to Columbus Day; the applicant notes that it does not propose to limit the hours of use of the outdoor areas adjacent to the pools when the PCE is closed; and

WHEREAS, the applicant represents that its proposed outdoor pools are consistent with the findings required under ZR § 73-36(b); and

WHEREAS, the Board agrees that the proposed outdoor PCE use is in accordance with ZR § 72-36(b); 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. 14BSA002M, dated September 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 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 C6-4 zoning district within the Special Clinton District, the operation of a physical culture establishment ("PCE") in portions of the cellar, first, and third floor of a 60-story mixed residential and commercial building, contrary to ZR §§ 32-10 and 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 23, 2013" – Five (5) sheets; and *on further condition*:

THAT the term of this grant will expire on December 17, 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 hours of operation for the outdoor pools will be limited to daily from 6:00 a.m. to 7:00 p.m. from Columbus Day to Memorial Day, and daily from 6:00 a.m. to 9:00 p.m. from Memorial Day to Columbus Day; however, the hours of use of the outdoor areas adjacent to the pools will not be limited under this grant;

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, December 17, 2013.

219-13-BZ
CEQR #14-BSA-012M
APPLICANT – Eric Palatnik, P.C., for 2 Cooper Square LLC, owner; Crunch LLC, lessee.
SUBJECT – Application July 19, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Crunch Fitness*) within a portions of an existing mixed use building contrary to §42-10. M1-5B zoning district.
PREMISES AFFECTED – 2 Cooper Square, northwest corner of intersection of Cooper Square and East 4th Street, Block 544, Lot 65, 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 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 8, 2013, acting on Department of Buildings ("DOB") Application No. 121694345, reads in pertinent part:

> Proposed use as a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §§ 73-36

and 73-03, to permit, on a site located in an M1-5B zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and first floor of an existing 15-story mixed residential and commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 2013; 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 approval of this application; and

WHEREAS, the subject site is located at the northwest corner of the intersection of Cooper Square and East Fourth Street, within an M1-5B zoning district; and

WHEREAS, the site has 142.62 feet of frontage along Cooper Square, 114.12 feet of frontage along East Fourth Street, and 5,335 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 15-story mixed residential and commercial building; and

WHEREAS, the PCE is proposed to occupy 8,998 sq. ft. of floor space in the cellar and 9,410 sq. ft. of floor area on the first floor for a total PCE floor space of 18,408 sq. ft.; and

WHEREAS, the PCE will be operated as Crunch; 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 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, at hearing, the Board directed the applicant to submit additional information regarding the sound attenuation measures to be taken; and

WHEREAS, in response, the applicant submitted an amended plan detailing the full extent of the sound attenuation measures; 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 and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA012M, dated July 17, 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 an M1-5B zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and first floor of an existing 15-story mixed residential and commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 29, 2013" – Seven (7) sheets; and *on further condition*:

THAT the term of this grant will expire on December 17, 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 hours of operation will be limited to 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.;

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, December 17, 2013.

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 Street, Block 2892, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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

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 – Laid over to January 14, 2014, at 10 A.M., for deferred decision.

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

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 January 28, 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 January 28, 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 January 28, 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 February 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 February 4, 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 February 4, 2014, at 10 A.M., for continued hearing.

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 January 28, 2014, at 10 A.M., for continued hearing.

167-13-BZ
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
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 January 28, 2014, at 10 A.M., for decision, hearing closed.

187-13-BZ
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
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 January 14, 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 January 28, 2014, at 10 A.M., for continued 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 January 28, 2014, at 10 A.M., for continued hearing.

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
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 January 28, 2014, at 10 A.M., for decision, hearing closed.

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
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 January 28, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.