
BULLETIN

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CONTENTS

DOCKET	643
CALENDAR of August 13, 2013	
Morning	644
Afternoon	645

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, July 16, 2013**

Morning Calendar646

Affecting Calendar Numbers:

207-86-BZ 20, 28 & 30 East 92nd Street, Manhattan
200-00-BZ 107-24 37th Avenue, Queens
363-04-BZ 6002 Ft. Hamilton Parkway, Brooklyn
615-57-BZ 154-11 Horace Harding Expressway, Queens
274-59-BZ 3356-3358 Eastchester Road, Bronx
608-70-BZ 351-361 Neptune Avenue, Brooklyn
228-00-BZ 28/32 Locust Street, Brooklyn
346-12-A 179-181 Woodpoint Road, Brooklyn
79-13-A 807 Park Avenue, Manhattan
135-13-A thru Serena Court, Staten Island
 152-13-A
69-13-A 25 Skillman Avenue, Brooklyn
67-13-A 945 Zerega Avenue, Bronx
68-13-A 330 Bruckner Boulevard, Bronx
87-13-A 174 Canal Street, Manhattan
113-12-BZ 32-05 Parson Boulevard, Queens
293-12-BZ 1245 83rd Street, Brooklyn
54-13-BZ 1338 East 5th Street, Brooklyn
91-13-BZ 115 East 57th Street, Manhattan
104-13-BZ 1002 Gates Avenue, Brooklyn
301-12-BZ 213-11/19 35th Avenue, Queens
83-13-BZ 3089 Bedford Avenue, Brooklyn
109-13-BZ 80 John Street, Manhattan

Correction669

Affecting Calendar Numbers:

12-13-BZ 2057 Ocean Parkway, Brooklyn

DOCKETS

New Case Filed Up to July 16, 2013

212-13-BZ

151 Coleridge Street, Located on Coleridge Street between Oriental Boulevard and Hampton Avenue, Block 4819, Lot(s) 39, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) proposed enlargement of a three story single family home in a residential district R3-1 zoning district, contrary to floor area §§23-141 & 23-47 minimum rear yard. R3-1 zoning district. R3-1 district.

213-13-BZ

3858-60 Victory Boulevard, Located on the east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot(s) 22+24, Borough of **Staten Island, Community Board: 2**. 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. R3A district.

214-13-A

219-08 141st Avenue, South side of 141st Avenue between 219th Street and 222nd Street, Block 13145, Lot(s) 15, Borough of **Queens, Community Board: 13**. 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 R3X district.

215-13-A

300 Four Corners Road, , Block 894, Lot(s) 235, Borough of **Staten Island, Community Board: 2**. Appeal challenging DOB's denial of the exclusion of floor area under ZR 12-10 (12) (ii) exterior wall thickness . R1-1 Zoning District . R1-1 district.

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

CALENDAR

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,

CALENDAR

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 Montanez5

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

MINUTES

only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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 Montanez5
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 –

MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy 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

MINUTES

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application requesting a Board determination that the owner of the premises has obtained the right to complete construction of a 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

MINUTES

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

MINUTES

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 Montanez5
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(P1) 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 Montanez5
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

MINUTES

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

WHEREAS, 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

MINUTES

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

MINUTES

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 than 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 therefore 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 72 was 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

MINUTES

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

MINUTES

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

MINUTES

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 Montanez5
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

MINUTES

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.

MINUTES

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 Montanez5

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-

MINUTES

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 sacred 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

MINUTES

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 –

MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated 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”;

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”;

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”;

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

MINUTES

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

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,

MINUTES

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.

MINUTES

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 Montanez5
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

MINUTES

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 Montanez5

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)

MINUTES

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

MINUTES

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.

Adjourned: P.M.

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

MINUTES

*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 Montanez5

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 1/4" 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 1/4"; 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

MINUTES

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.**