
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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December 19, 2013

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218-13-BZ	136 Church Street, Manhattan

DOCKETS

New Case Filed Up to December 10, 2013

312-13-A

521-525 West 19th Street, North Side of West 19th Street between 10th and 11th Avenues, Block 691, Lot(s) 19, Borough of **Manhattan, Community Board: 4**. Appeal challenging DOB 's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required . C6-2 WCH special district . C6-2 WCH Sp. Di district.

313-13-A

531 West 19th Street, North Side of West 19th Street between 10th and 11th Avenues, Block 691, Lot(s) 15, Borough of **Manhattan, Community Board: 4**. Appeal challenging DOB 's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required . C6-2 WCH special district . C6-2WCH Sp.Dist district.

314-13-BZ

482 President Street, Site located on south side of President Street between Third Avenue and Nevins Street, Block 447, Lot(s) 13, Borough of **Brooklyn, Community Board: 6**. Variance (§72-21) to permit the construction of a new three story two family residence to replace a two story three family residences. M1-2 Zoning District. M1-2 district.

315-13-BZ

415-427 Greenwich Street, East side of Greenwich street between Hubert street and Laight Street., Block 215, Lot(s) 7504, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the legalization of a physical culture establishment. C6-2A (TMU) zoning district. C6-2A(TMU) district.

316-13-BZ

210 Joralemon Street, On the southeast corner of Joralemon Street and Court Street, Block 266, Lot(s) 7501(30), Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-36) to permit the operation of a physical culture establishment (fitness center) in the cellar and first floor of the premises. C5-2A (Special Downtown Brooklyn) C5-2A (SDB) district.

317-13-BZ

1146 East 27th Street, West side of 27th Street between Avenue K and Avenue L., Block 7626, Lot(s) 63, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the conversion and enlargement of an existing two family residence to a single family residence located in a residential (R2) zoning district. R2 district.

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

CALENDAR

JANUARY 14, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 14, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

13-78-BZ

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

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

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

COMMUNITY BOARD #12Q

42-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1221 Avenue holdings LLC, owner; TSI West 48, LLC dba New York Sports Club, lessee.

SUBJECT – Application October 2, 2013 – Extension of term of a previously approved Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on July 22, 2013; Amendment to alter the hours of operation; Waiver of the Rules. C6-5, C6-6 (MID) zoning district.

PREMISES AFFECTED – 1221 Avenue of the Americas, western block front of the Avenue of Americas between West 48th Street and West 49th Street, Block 1001, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #5M

381-04-BZ

APPLICANT – Sheldon Lobel, P.C., for 83 Bushwick Place, LLC, owner.

SUBJECT – Application December 6, 2013 – Extension of time to complete construction (§§72-01 and 72-22) pursuant to a variance granted by the Board on September 12, 2006. Waiver of the Boards Rules. M1-1 zoning district.

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

COMMUNITY BOARD #1BK

297-06-BZ

APPLICANT – Eric Palatnik, for Montgomery Avenue Properties, LLC, owner.

SUBJECT – Application November 15, 2013 – Extension of time to complete construction of a previously granted Variance (72-21) for the construction of a four (4) story residential building with ground and cellar level retail use which expired on October 16, 2011; Waiver of the Rules. C4-2 (HS) zoning district.

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

COMMUNITY BOARD #1SI

APPEALS CALENDAR

296-13-A

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

SUBJECT – Application October 24, 2013 – An appeal seeking to revoke permits that would allow the use of the premises as an eating and drinking establishment in violation of the zoning as the original non-conforming use has been discontinued. R6B Zoning District.

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

COMMUNITY BOARD #3BK

ZONING CALENDAR

209-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 12 West 21 Land, O.P., owner.

SUBJECT – Application July 8, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*NY Physical Training Fitness Studio*) within the existing building, contrary to C6-4-A zoning district.

PREMISES AFFECTED – 12 West 21st Street, between 5th Avenue and 6th Avenue, Block 822, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

220-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yitzchok Perlstein, owner.

SUBJECT – Application July 22, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141(a)); side yard (ZR 23-461) and less than the required rear yard (ZR 23-47). R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue J, north side of Avenue J between East 21st and East 22nd Street, Block

CALENDAR

7585, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #14BK

245-13-BZ

APPLICANT – Eric Palatnik, P.C., for Dmitriy Gorelik, owner.

SUBJECT – Application August 21, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141) and less than the required rear yard (ZR 23-47). R4 zoning district.

PREMISES AFFECTED – 2660 East 27th Street, between Voorhies Avenue and Avenue Z, Block 7471, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

267-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 689 Fifth Avenue LLC, owner; Fit Life 5th Avenue LLC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to permit the operation of a physical culture (*Blink Fitness*) establishment on the ninth floor the space of the building. C5-3 (MID) zoning district.

PREMISES AFFECTED – 689 5th Avenue aka 1 East 54th Street, northeast corner of 5th Avenue and East 54th Street, Block 1290, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

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

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

SPECIAL ORDER CALENDAR

519-57-BZ

APPLICANT – Eric Palatnik, P.C., for BP Amoco Corporation, owner.

SUBJECT – Application June 19, 2013 – Extension of term (§11-411) of an approved variance which permitted the operation and maintenance of a gasoline service station (Use Group 16B) and accessory uses, which expired on June 19, 2013. R3-1/C2-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, northwest corner of Bradley Avenue and Victory Boulevard, Block 462, Lot 35, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for a gasoline service station; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in the *City Record*, with a continued hearing on November 19, 2013, and then to decision on December 10, 2013; and

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

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

WHEREAS, the subject site is an irregularly-shaped zoning lot located at the northwest corner of the intersection of Victory Boulevard and Bradley Avenue, within a C2-1 (R3-1) zoning district; and

WHEREAS, the site has 155 feet of frontage along Bradley Avenue, 100.26 feet of frontage along Victory Boulevard, and approximately 15,760 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story gasoline service station (Use Group 16) with an accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the site since July 9, 1957, when, under the subject calendar

number, it granted a variance to permit, within a Retail Use District, the construction and maintenance of a gasoline service station, lubritorium, sale of accessories, minor motor vehicle repairs with hand tools, and parking of more than five motor vehicles for a term of 15 years; and

WHEREAS, at various times over the years, the Board has extended and amendment the grant, most recently on September 28, 2004, when the Board extended the term of the grant for ten years, to expire on June 19, 2013; and

WHEREAS, accordingly, the applicant now seeks an additional ten-year extension of term; and

WHEREAS, the applicant notes that gasoline sales and the accessory convenience store operate 24 hours per day, seven days per week and that the automobile repair shop operates Monday to Saturday, from 7:00 a.m. to 6:00 p.m., and is closed Sunday; and

WHEREAS, at hearing, the Board expressed concerns about: (1) the location of the curb cut along Bradley Avenue contrary to the approved plans; (2) the location of the dumpsters and air pump near the adjacent residences; and (3) whether the signs on the light poles were permitted; and

WHEREAS, in response, the applicant provided amended plans showing the as-built location of the curb cut as well as the signs displayed on the light poles; in addition, the applicant represented that the dumpsters and air pumps will be relocated to be as far away from the residences as possible; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, so that as amended the resolution reads: “to permit the legalization of the conversion of an existing salesroom area to an accessory convenience store and to extend the term of the variance for a term of ten years from June 19, 2013 to expire on June 19, 2023; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received November 27, 2013’- (5) sheets; and *on further condition*:

THAT all outdoor lighting at the premises shall be directed downward and away from all adjacent residential properties;

THAT the dumpsters and automotive air pumps will be located on the west side of the site away from residential uses, as shown on the BSA-approved plans;

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

THAT any graffiti located on the premises will be removed within 48 hours;

THAT the above conditions and all relevant Board conditions from the previous Certificate of Occupancy shall appear on the new Certificate of Occupancy;

THAT all signage will conform to applicable zoning district requirements;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

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DOB/other jurisdiction objection(s); and

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

647-70-BZ

APPLICANT – Jeffrey A. Chester Esq/GSHLLP, for Channel Holding Company, Inc., owner; Cain Management II Inc., lessee.

SUBJECT – Application August 1, 2013 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation an automotive service station and auto laundry (UG 16B). Amendment seeks to convert accessory space into an accessory convenience store. C2-3/R5 zoning district.

PREMISES AFFECTED – 59-14 Beach Channel Drive, Beach Channel Drive corner of Beach 59th Street, Block 16011, Lot 105, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to permit a change in use from an office accessory to an automotive service station to an accessory convenience store; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in the *City Record*, with a continued hearing on November 26, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 14, Queens, recommends approval of the application; and

WHEREAS, the site is located on the north side of Beach Channel Drive between Beach 62nd Street and Beach 58th Street, within a C2-3 (R5D) zoning district; and

WHEREAS, the site is currently occupied by a one-story gasoline service station, which includes automobile repair and laundry, and an accessory office; and

WHEREAS, on November 22, 1949, under BSA Cal. No. 321-49-BZ, the Board granted a variance to permit the construction of a gasoline service station, lubritorium, automobile repair shop, automobile laundry, and offices; the grant was for a term of five years, and such grant was

extended and amended several times; and

WHEREAS, on February 17, 1971, under the subject calendar number, the Board granted, pursuant to ZR §§ 11-412, 11-413, and 73-211, an application to permit the reconstruction and enlargement of the gasoline service station, automobile repair shop, and automobile laundry; this grant did not include a term; and

WHEREAS, most recently, on March 12, 1996, the Board amended the grant to permit the installation of a canopy over the pump islands, the installation of new curb cuts, and the enlargement of the automobile laundry; and

WHEREAS, the applicant now seeks an amendment to the special permit to allow the conversion of accessory office space (779 sq. ft. of floor area) to an accessory convenience store (Dunkin’ Donuts counter); and

WHEREAS, the applicant represents that the proposed convenience store satisfies Department of Buildings Technical Policy and Procedure Notice No. 10/1999, which sets forth criteria for convenience stores accessory to gasoline service stations; and

WHEREAS, the applicant notes that the proposal does not result in an increase in floor area or alter the existing building envelope; and

WHEREAS, at hearing, the Board requested clarification regarding the proposed accessory signage and the hours of operation for the convenience store; and

WHEREAS, in response, the applicant submitted amended plans and photographs confirming that the signage complies with the C2-3 regulations; in addition, the applicant clarified that the convenience store will operate initially seven days per week, from 5:00 a.m. to 11:00 p.m., and the hours may be extended to 24 hours per day, if business conditions warrant; the applicant notes that Community Board 14 expressed support for a 24-hour convenience store at the site; and

WHEREAS, based on its review of the record, the Board finds that the proposed conversion of an office accessory to an automotive service station to an accessory convenience store is appropriate, with the conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 17, 1971, so that as amended this portion of the resolution reads: “to permit a change in use from an office accessory to an automotive service station to an accessory convenience store”; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received November 12, 2013’- (3) sheets; and *on further condition*:

THAT the signage will comply with C2-3 zoning district regulations;

THAT all construction will be completed and a certificate of occupancy will be obtained by December 10, 2015;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted. (DOB Application No. 420870908)

Adopted by the Board of Standards and Appeals, December 10, 2013.

605-84-BZ

APPLICANT – Sheldon Lobel, P.C., for Order Sons of Italy in America Housing Development Fund Company, Inc., owners.

SUBJECT – Application March 26, 2013 – Amendment of a previously granted variance (§72-21) to an existing seven-story senior citizen multiple dwelling to legalize the installation of an emergency generator, contrary to front yard requirements (§23-45). R5 zoning district.

PREMISES AFFECTED – 2629 Cropsey Avenue, Cropsy Avenue between Bay 43rd Street and Bay 44th Street, Block 6911, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance, which, pursuant to ZR § 72-21, authorized in an R5 zoning district the construction of a seven-story multiple dwelling for senior citizens contrary to bulk regulations; and

WHEREAS, a public hearing was held on this application on November 8, 2013, after due notice by publication in the *City Record*, with a continued hearing on October 29, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped zoning lot located at the southeast corner of the intersection of Bay 44th Street and Cropsy Avenue, within an R5 zoning district; and

WHEREAS, the site has 107.91 feet of frontage along Bay 44th Street, 150.14 feet of frontage along Cropsy Avenue, 157.9 feet of frontage along Bay 43rd Street, and 35,002 sq. ft. of lot area; and

WHEREAS, the site is occupied by a seven-story

multiple dwelling for senior citizens (Use Group 2) with 75,586 sq. ft. of floor area (2.16 FAR), 105 dwelling units, and 16 parking spaces; and

WHEREAS, on March 5, 1985, under the subject calendar number, the Board granted a variance to allow the construction of the building contrary to the requirements for floor area (ZR § 23-144), lot area per room (ZR § 23-225), rear yard equivalent (ZR § 23-533), wall height, (ZR § 23-631), side setback (ZR § 23-66), parking (ZR § 25-25), location of parking access (ZR § 25-63), window-to-lot line distance (ZR § 23-861), and open space ratio (ZR § 23-144); in addition, on that same date, under BSA Cal. No. 606-84-A, the Board granted a waiver of Multiple Dwelling Law § 26(d) (rear yard equivalent); and

WHEREAS, the applicant now requests an amendment to legalize the installation of an emergency generator within the front yard, contrary to ZR §§ 23-44 and 23-45; and

WHEREAS, the applicant states that many residents of the senior-living facility have medical conditions whose treatment relies on electricity, and that the generator will enable residents to use basic utilities in the event that electricity is compromised; and

WHEREAS, the applicant notes that the generator, which measures approximately 3'-7½" in depth, 15'-6½" in length, and 9'-3½" in height, is mounted on a 0'-6" concrete base with a 2'-2" sub-base containing a double-walled 275-gallon fuel tank, and is surrounded by a concrete retaining wall and a chain-link fence; and

WHEREAS, as to the effect on the neighborhood character, the applicant represents and the Board agrees that the generator is relatively small in size and will have a minimal visual impact on the streetscape; and

WHEREAS, at hearing, the Board directed the applicant to install additional screening for the generator and landscaping along the front of the building; and

WHEREAS, in response, the applicant submitted photographs depicting the installation of the requested plantings; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated March 5, 1985, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received October 22, 2013'- (3) sheets; and *on further condition*:

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

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

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

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laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 10, 2013.

248-03-BZ

APPLICANT – Troutman Sanders LLP, for Ross and Ross, owners; Bally Total Fitness of Greater New York Inc., lessee.

SUBJECT – Application July 30, 2013 – Extension of Term of a previously approved variance to permit the continuance operation of a physical culture establishment (*Bally's Total Fitness*) which will expire on January 27, 2014. C1-5(R8A) & R7A zoning districts.

PREMISES AFFECTED – 1915 Third Avenue, south east corner of East 106th Street and Third Avenue, Block 1655, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term, which expires on January 27, 2014, for a physical culture establishment (“PCE”); and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 10, 2013; and

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

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

WHEREAS, the subject site is located on the southeast corner of the intersection of Third Avenue and East 106th Street, partially within a C1-5 (R8A) zoning district and partially within an R7A zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; the PCE occupies 10,137 sq. ft. of floor space in the cellar, 5,261 sq. ft. of floor area on the first story, and 11,189 sq. ft. of floor area on the second story, for a total PCE floor space within the building of 26,587 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since January 27, 2004, when, under the subject calendar number, the Board granted a variance to permit the operation of the PCE partially within a residence district, for a term of ten years, to expire on January 27, 2014; and

WHEREAS, the applicant seeks to extend the term of the variance for ten years; and

WHEREAS, the applicant notes that the PCE is

operated as Bally Total Fitness; and

WHEREAS, the applicant states that it seeks to maintain its current hours of operation, which are Monday through Friday, 6:00 a.m. to 11:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that it has not yet obtained a certificate of occupancy (“CO”) or a public assembly permit (“PA”) for the PCE; however, it anticipates obtaining both from the Department of Buildings (“DOB”) upon the extension of the term of the grant; and

WHEREAS, at hearing, the Board expressed concerns regarding the lack of the CO and the PA, and regarding the open violations at the site; and

WHEREAS, in response, the applicant advised that the issuance of the CO and the PA will occur following DOB’s inspection of recently-installed emergency lighting and fireproofing; and

WHEREAS, as to the open violations, the applicant represented that although the violations have been corrected at the site, they have not yet been resolved administratively at DOB; and

WHEREAS, based on its review of the record, the Board finds that the proposed ten-year extension of term is appropriate, with the conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 27, 2004, so that as amended this portion reads: “to grant an extension of the variance for a term of ten years, to expire on December 10, 2023”; *on condition* that all work and site conditions shall comply with drawings marked ‘Received October 10, 2013’ - (4) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years from the expiration of the prior grant, to expire on December 10, 2023;

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

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

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

THAT a CO and a PA will be obtained by May 10, 2014;

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

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

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

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360-65-BZ

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

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

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

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for deferred decision.

68-94-BZ

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

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

PREMISES AFFECTED – 2100 Bartow Avenue, bounded by Bay Plaza Blvd. Co-Op City Blvd, Bartow Avenue and the Hutchinson River Parkway, Block 5141, Lot 810, Borough of Bronx.

COMMUNITY BOARD #10BX

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for decision, hearing closed.

239-02-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.

SUBJECT – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.

PREMISES AFFECTED – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

358-02-BZ

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

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

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

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for decision, hearing closed.

206-03-BZ

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

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

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

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for decision, hearing closed.

25-08-BZ

APPLICANT – Eric Palatnik, P.C., for Torah Academy for Girls, owner.

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

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

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

75-11-A

APPLICANT – NYC Board of Standards and Appeals
SUBJECT – Application May 25, 2011 – To consider Dismissal for Lack of Prosecution. Appeal challenging Department of Building's determination that the permit for the subject premises expired and became invalid since permitted work was not commenced within 12 months from the date of issuance, per Title 28, §28-105.9 of the Administrative Code. R4 Zoning District.

PREMISES AFFECTED – 2230-2234 Kimball Street, Kimbal Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application Dismissed.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Montanez.....3

Negative:.....0

Absent: Vice Chair Collins.....1

Recused: Commissioner Hinkson.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of Administrative Code § 28-105.9, which provides that a building permit expires after cessation of construction for a period of more than 12 months; and

WHEREAS, the applicant filed the application on May 25, 2011; and

WHEREAS, the applicant filed two companion applications: (1) an application for a variance pursuant to ZR § 72-21 on April 8, 2011, which the Board denied on December 6, 2011 (BSA Cal. No. 39-11-BZ) and (2) a common law vested rights application (BSA Cal. No. 119-11-A), which was dismissed on the same date as the subject waiver application; and

WHEREAS, on September 22, 2011, Board staff issued a Notice of Comments; and

WHEREAS, on October 21, 2011, the applicant requested a 30-day extension of time to respond to the Notice of Comments; and

WHEREAS, on November 15, 2011, the applicant requested an additional 30-day extension of time to respond to the Notice of Comments; and

WHEREAS, on December 21, 2011, the applicant submitted a response to the Notice of Comments; and

WHEREAS, Board staff requested additional information regarding the circumstances surrounding the lapse

of the building permit; and

WHEREAS, on January 12, 2012, the applicant submitted a response; and

WHEREAS, on February 14, 2012, the Board held its first public hearing and stated that it would take the item off calendar pending the outcome of the common law vesting application; and

WHEREAS, the applicant subsequently sought multiple adjournments pending its resolution of the objections with DOB associated with the vested rights application; and

WHEREAS, on April 9, 2013, after several adjournments the Board removed the vested rights application from its hearing calendar; and

WHEREAS, on July 29, 2013, the Board issued a letter stating that a significant amount of time had passed since the subject application and the vested rights application were taken off calendar without any change in status and that the Board sought to dismiss the applications for lack of prosecution; and

WHEREAS, the letter stated that, pursuant to Section 1-12.3 of the Board's Rules of Practice and Procedure, the applications would be dismissed unless provided with a complete response on all outstanding issues including revised plans approved by the Department of Buildings; and

WHEREAS, the Board did not receive any subsequent communication from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for dismissal; and

WHEREAS, on November 7, 2013, the Board sent the applicant a notice stating that the case had been put on the December 10, 2013 dismissal calendar; and

WHEREAS, at the December 10, 2013 hearing, the Board voted to dismiss the appeal; and

WHEREAS, accordingly, due to the applicant's lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 75-11-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, December 10, 2013.

119-11-A

APPLICANT – NYC Board of Standards and Appeals
SUBJECT – Application May 25, 2011 – To consider Dismissal for Lack of Prosecution. Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, Kimbal Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application Dismissed.

THE VOTE TO GRANT –

MINUTES

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Montanez.....3
Negative:.....0
Absent: Vice Chair Collins.....1
Recused: Commissioner Hinkson.....1

THE RESOLUTION –

WHEREAS, this is an application under the common law doctrine of vested rights, to permit, on a site within an R4 zoning district the continuation of construction pursuant to the zoning regulations in effect at the time of permit issuance; and

WHEREAS, the applicant filed the application on August 17, 2011; and

WHEREAS, the applicant filed two companion applications: (1) an application for a variance pursuant to ZR § 72-21 on April 8, 2011, which the Board denied on December 6, 2011 (BSA Cal. No. 39-11-BZ) and (2) an application for a waiver of the Administrative Code restriction on work cessation for a period of greater than one year (BSA Cal. No. 75-11-A), which was dismissed on the same date as the subject common law vested rights application; and

WHEREAS, on September 22, 2011, Board staff issued a Notice of Comments; and

WHEREAS, on October 21, 2011, the applicant requested a 30-day extension of time to respond to the Notice of Comments; and

WHEREAS, on November 15, 2011, the applicant requested an additional 30-day extension of time to respond to the Notice of Comments; and

WHEREAS, on December 21, 2011, the applicant submitted a response to the Notice of Comments; and

WHEREAS, on February 14, 2012, the Board held its first public hearing and asked the applicant for additional information regarding work completed on the site, a timeline and an explanation of the serious loss; a second hearing date was scheduled for March 20, 2012; and

WHEREAS, on February 28, 2012, the applicant requested an extension of time to allow the Department of Buildings (“DOB”) to submit an analysis as to the validity of the construction permit; the March 20, 2012 hearing was adjourned to April 3, 2012; and

WHEREAS, on March 12, 2012, DOB submitted a response to the questions raised by the Board at the February 14th hearing regarding the status of the subject permit; DOB stated that upon audit review it identified a series of objections that it determined to be minor errors that can be cured; accordingly, DOB concluded that the permit was validly issued prior to the zoning amendments; and

WHEREAS, on March 20, 2012, the applicant submitted a response to the questions raised at the Board’s February 14th hearing and provided additional information as to construction work completed, costs and serious loss arguments; and

WHEREAS, on April 3, 2012, the Board closed the hearing and set the decision date for May 8, 2012; however, the Board required that prior to any approval and due to the extensive nature of the objections, the applicant must resolve all outstanding objections with DOB and revise its plans to

reflect full compliance; and

WHEREAS, the Board and staff directed the applicant to work with DOB to cure the outstanding objections and correct the plans to address the objections raised by DOB’s March audit; and

WHEREAS, the applicant subsequently sought multiple adjournments pending its resolution of the objections with DOB; and

WHEREAS, on April 9, 2013, after several adjournments the Board removed the case from its hearing calendar; and

WHEREAS, on July 29, 2013, the Board issued a letter stating that a significant amount of time had passed since the subject application and the Administrative Code application were taken off calendar without any change in status and that the Board sought to dismiss the applications for lack of prosecution; and

WHEREAS, the letter stated that, pursuant to Section 1-12.3 of the Board’s Rules of Practice and Procedure, the applications would be dismissed unless provided with a complete response on all outstanding issues including revised plans approved by the Department of Buildings; and

WHEREAS, the Board did not receive any subsequent communication from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for dismissal; and

WHEREAS, on November 7, 2013, the Board sent the applicant a notice stating that the case had been put on the December 10, 2013 dismissal calendar; and

WHEREAS, at the December 10, 2013 hearing, the Board voted to dismiss the appeal; and

WHEREAS, accordingly, due to the applicant’s lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 119-11-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, December 10, 2013.

348-12-A & 349-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Starr Avenue Development LLC, owner.

SUBJECT – Application December 28, 2012 – Proposed construction of two one-family dwellings located within the bed of a mapped street, contrary to General City Law, Section 35. R2 zoning district.

PREMISES AFFECTED – 15 & 19 Starr Avenue, north side of Starr Avenue, 248.73 east of intersection of Bement Avenue and Starr Avenue, Block 298, Lot 67, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0

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Absent: Vice Chair Collin1
ACTION OF THE BOARD – Laid over to January 28, 2014, at 10 A.M., for decision, hearing closed.

110-13-A

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings’ interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #6BK

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

287-13-A & 288-13-A

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

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

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

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

236-12-BZ

CEQR #13-BSA-010R

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.

SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

Absent: Vice Chair Collins.....1
THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 28, 2012, acting on Department of Buildings Application No. 520100097, reads in pertinent part:

1. ZR 24-35 – Side yard is not compliant in that a minimum of eight feet is required for change of use to a community facility (and) existing side yard is 4.96 feet;
2. ZR 22-10 – Proposed change in use to a community facility in an R2 district is contrary to ZR 22-10; and

WHEREAS, this is an application under ZR § 72-21, to legalize the extension of medical office use within an existing building in an R2 zoning district, which does not conform to the use regulations or provide the required side yard, contrary to ZR §§ 22-10 and 24-35; and

WHEREAS, a public hearing was held on this application on June 4, 2013, after due notice by publication in the City Record, with continued hearings on September 10, 2013 and October 29, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application, citing concerns about the historic use of the building contrary to the certificate of occupancy; and

WHEREAS, certain members of the surrounding community testified in opposition to the application; and

WHEREAS, the site is an irregular corner lot located at the northwest corner of the intersection of Norden Street and Richmond Road, within an R2 zoning district; and

WHEREAS, the site has 100 feet of frontage along Norden Street, 40 feet of frontage along Richmond Road, and a lot area of 4,346.07 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story building containing a medical office (Use Group 4) with approximately 1,325 sq. ft. of floor area (0.31 FAR); and

WHEREAS, the applicant represents that the building was originally constructed around 1958 with approximately 1,010.35 sq. ft. of floor area (0.23 FAR); and

WHEREAS, the applicant states that the building has been used exclusively as a medical office since at least 1971, notwithstanding that the last-issued certificate of occupancy for the building (No. 18864, dated January 29, 1960) (the “CO”) authorized a one-family residence and a dentist’s office on the first story of the building; and

WHEREAS, the applicant notes that, to the extent a medical office existed at the site as of September 9, 2004, such use became non-conforming as a result of a text amendment that prohibited certain community facility uses as-of-right in an R2 district; and

WHEREAS, the applicant states that a fire destroyed portions of the building in 2010 and that it sought to

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reconstruct the building to be used exclusively as a medical office within the historic building envelope; and

WHEREAS, the applicant states that it attempted to demonstrate to the Department of Buildings (“DOB”) that the building was never occupied in accordance with the CO and was instead always exclusively a medical office, but DOB determined that the evidence was insufficient and that the building could only be reconstructed in accordance with the CO; and

WHEREAS, the applicant states that although permits were obtained to reconstruct in accordance with the original plans and CO (one-family residence and a medical office) the reconstruction altered to the building to its current configuration as medical office with no residential use; and

WHEREAS, accordingly, the applicant now seeks to legalize the reconstruction; and

WHEREAS, the applicant states that where the medical office did not previously exist as a lawful, non-conforming use, the reconstruction creates a new non-conformance (a medical office is not permitted in an R2 district) and a new non-compliance with respect to the side yard (the reconstructed building has one side yard with a width of 4.96 feet; the requirement is one side yard with a minimum width of eight feet); and

WHEREAS, the applicant notes that the proposed medical office would contain, in the cellar, utility space, storage, and a bathroom, and on the first story, an entrance area, a waiting room, examination rooms, and a clerical area; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the site’s small lot area compared to nearby corner lots; (2) the site’s location on Richmond Road; (3) the history of development at the site; and (4) the unsuitability of the building for its current lawful use; and

WHEREAS, the applicant states that the site’s lot area of 4,346.07 sq. ft., makes it smaller than all but two of the 19 corner lots along Richmond Road within 1,000 feet of the site; and

WHEREAS, the applicant states that the two lots are distinguishable from the site, in that one lot contains a commercial use authorized by a variance, and the other is a community facility use with a significantly higher FAR (0.47) than the proposed FAR (0.31); and

WHEREAS, the applicant also states that, based on its study, the other lots that are occupied by mixed residential and commercial or community facility buildings, are significantly larger than the site and range in lot area from 5,559 sq. ft. to 8,528 sq. ft.; and

WHEREAS, the applicant asserts that the site’s location on heavily-trafficked Richmond Road makes one- or two-family residential development unique and undesirable; and

WHEREAS, in support of this assertion, the applicant provided evidence that along 1,000 feet of Richmond Avenue,

only two lots are developed solely with residential use – one is home on an 11,000 sq.-ft. lot (where the home may position itself away from Richmond Avenue), and the other is a multiple dwelling constructed with other buildings with an FAR of 0.78; and

WHEREAS, as to the history of development at the site, the applicant represents that medical office use has been permitted in a portion of the building at the site since 1960 and that the building has been exclusively used as a medical office since at least 1971; and

WHEREAS, as to the obsolescence of the building for its current lawful use, as noted above, the applicant states that the lawful configuration of the reconstructed building—half conforming one-family residence and half non-conforming medical office—results in undersized and therefore undesirable uses; and

WHEREAS, the applicant asserts that the lawful use of the building includes the historic condition of a medical office and one-family residence with approximately 500 sq. ft. of livable space; the applicant asserts that this configuration results in a residence that is approximately 38 percent of the size of the average residential unit (1,300 sq. ft.) on a comparably-sized lot in the vicinity; and

WHEREAS, thus, the applicant concludes that the small lot size with the existing building that was developed to include medical offices on Richmond Road creates an impediment to either a conforming one- or two-family home or a mixed residential and community facility building; and

WHEREAS, based upon the above, the Board finds that, in the aggregate, the noted conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, in addition to the proposal, the applicant analyzed the feasibility of two as-of-right scenarios: (1) occupying the building as half-medical office, half-residence; and (2) occupying the building solely as a residence; and

WHEREAS, the applicant asserts that only the proposal results in an acceptable rate of return; and

WHEREAS, based upon the above, the Board has determined that, in accordance with ZR § 72-21(b), because of the subject lot’s unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that, consistent with ZR § 72-21(c), the proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is characterized by low-rise one- and two-family dwellings, except along Richmond Road, where community facility and commercial uses predominate; and

WHEREAS, in particular, the applicant states that there are nine buildings on the five nearest blocks along Richmond Road that contain either a professional office or light retail; therefore, the proposed use is in keeping with nearby existing uses; and

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WHEREAS, as to the adjacent uses, the applicant states directly north of the site (but separated by an unlighted parking lot and a fence) is a residence and directly west of the site is a two-story office building; as such, the impact upon adjacent properties is minimal; and

WHEREAS, the applicant notes that a medical office has existed at the site for well over 50 years and that the proposed building envelope is consistent with the historic building envelope at the site; and

WHEREAS, as to bulk, the applicant states that the proposed 0.31 FAR is well below the maximum permitted FAR for a community facility in the R2 zoning district (1.0 FAR); the applicant also notes that while the proposed side yard of approximately five feet is deficient by three feet, it is an existing condition that is considered a new non-compliance solely because change in use triggers compliance with community facility bulk regulations rather than the residential bulk regulations of the R2 district; and

WHEREAS, at hearing, the Board directed the applicant to remove excess signage at the site, to remove one curb cut, and to clarify the arrangement of the parking spaces; and

WHEREAS, in response, the applicant submitted photographs showing the removal of the excess signage and certified that the signage was in compliance with ZR § 22-321(b) (“Nameplates or Identification Signs”); in addition, the applicant submitted a revised site plan showing the removal of one curb cut and the proposed arrangement of the parking lot; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states and the Board agrees that the hardship was not created by the owner or a predecessor in title, but is the result the site’s lot size, historic use, and location on Richmond Road; and

WHEREAS, the applicant states that the proposal is the minimum variance necessary to afford relief, in that the proposal merely seeks to legalize a use that has existed since at least 1971 and has been partially authorized by a certificate of occupancy since 1960; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 236-12-BZ dated July 26, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance, to legalize the extension of medical office use within an existing building in an R2 zoning district, which does not conform to the use regulations or provide the required side yard, contrary to ZR §§ 22-10 and 24-35; on condition that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received May 6, 2013”-(3) sheets and “November 26, 2013”- (2) sheets; and on further condition;

THAT the following will be the bulk parameters of the building: 1,325 sq. ft. of floor area (0.31 FAR), a minimum side yard width of 4.96 feet; and a minimum front yard depth of 8.46 feet, as indicated on the BSA-approved plans;

THAT all signage at the site will be in accordance with the BSA-approved plans;

THAT construction will proceed in accordance with ZR § 72-23;

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

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

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

339-12-BZ

CEQR 13-BSA-067Q

APPLICANT – Sheldon Lobel, P.C., for Lion Bee Equities, LLC., owner.

SUBJECT – Application December 12, 2012 – Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.

PREMISES AFFECTED – 252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway, Block 8129, Lot p/o

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53, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated November 14, 2013, acting on Department of Buildings Application No. 420605447, reads in pertinent part:

1. Use Group 6 retail (accessory parking and driveway) is not permitted in R2A district lot portion; contrary to ZR 22-10; and
2. Use Group 4 medical office (accessory parking and driveway) is not permitted in R2A district lot portion; contrary to ZR 22-14; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C1-2 (R3-1) zoning district and partially within an R2A zoning district, an accessory parking lot to a medical office (Use Group 4) and retail (Use Group 6) on the R2A portion of the site, which is contrary to ZR §§ 22-10 and 22-14; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in the *City Record*, with a continued hearing on October 29, 2013, and November 26, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 11, Queens, recommended approval of the application; and

WHEREAS, Queens Borough President Helen Marshall recommended approval of the application; and

WHEREAS, the subject site is an irregularly-shaped lot located at the southwest corner of the intersection of Northern Boulevard and Little Neck Parkway, partially within a C1-2 (R3-1) zoning district and partially within an R2A zoning district; and

WHEREAS, the site has approximately 172 feet of frontage along Little Neck Parkway, approximately 85 feet of frontage along Northern Boulevard, and 11,651 sq. ft. of lot area (7,510 sq. ft. of lot area within the C1-2 (R3-1) zoning district and 4,141 sq. ft. of lot area within the R2A zoning district); and

WHEREAS, the applicant notes that despite its designation as a single tax lot, the site has been owned as two separate and independent parcels since before 1961 and supports this statement with historic tax maps and a chain-of-title analysis; and

WHEREAS, the site is occupied by a one-story commercial building that was constructed in or about 1939 and contained an eating and drinking establishment known as

the “Scobee Diner” until November 2010, when the diner was closed due to fire damage; and

WHEREAS, the applicant states that to the extent that portions of the lot within the R2A zoning district were used for the eating and drinking establishment (including accessory parking) and were lawfully non-conforming, such non-conforming uses have been discontinued and may not be resumed, pursuant to ZR § 52-61; and

WHEREAS, the applicant proposes to formally subdivide the separately owned parcels, demolish the Scobee Diner building (which straddles the parcels), and construct a two-story mixed commercial and community facility building with 5,612.7 sq. ft. of floor area entirely within the C1-2 (R3-1) portion of the lot and in accordance with all applicable bulk regulations; and

WHEREAS, the applicant states that because 12 of the required 17 accessory parking spaces are being provided within the R2A portion of the lot, the proposal is contrary to ZR § 22-10, which does not allow parking accessory to a commercial use as-of-right, and ZR § 22-14, which does not allow parking accessory to a medical office as-of-right; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the division of the site by a district boundary line; (2) history of commercial use at the site; (3) the site’s location at the intersection of two major thoroughfares; and (4) the irregular shape of the lot; and

WHEREAS, the applicant states that, in December 2006, the Douglaston-Little Neck Rezoning rezoned 65 percent of the site C1-2 (R3-1) and 35 percent of the site R2A; previously, approximately 90 percent of the site was within the C1-2 (R3-1) district; and

WHEREAS, the applicant notes that while a typical commercial overlay has a depth of 150 feet, the commercial overlay resulting from the rezoning of the subject site has a depth of only 100 feet; and

WHEREAS, consequently, the applicant states that, prior to the rezoning, it was able to utilize ZR § 77-11 to extend the permitted commercial uses in the C1-2 district to the R2A portion of the lot; however, subsequent to the rezoning, ZR § 77-11 was not available to extend the permitted commercial uses, because the lot line was relocated to more than 25 feet from the district boundary; likewise, the applicant notes that it is unable to utilize ZR § 73-52 to extend the district boundary and expand the portion of the lot that may be used for commercial uses because, as noted above, the site to be developed was not a lot of record held in single ownership prior to 1961; and

WHEREAS, the applicant asserts that the standard 150-foot depth is to accommodate the high accessory parking requirements for certain uses permitted as-of-right within C1-2 districts, and that the site is uniquely burdened by the absence of the 150 depth (width) along Little Neck Parkway; and

WHEREAS, the applicant also asserts that the zoning districts that many of the viable community facility uses that are permitted in the C1-2 district are prohibited in the R2A

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district and those community facility uses that are permitted as-of-right in both portions of the lot (schools or houses of worship) are economically infeasible; and

WHEREAS, finally, the applicant states that of the 28 lots affected by the Douglaston-Little Neck Rezoning, six split in a similar fashion to the site; however, each of the six is either occupied by an existing building that covers the entire lot or utilizes the rear of its respective lot for parking; therefore, the applicant asserts that only the site is unable to make practical use of its R2A portion following the rezoning; and

WHEREAS, as to the history of commercial use at the site, the applicant states that the site has been used for commercial purposes since the 1930s, including the long-standing use of the R2A portion of the lot for parking; and

WHEREAS, similarly, the existing building on the lot is partially within the R2A portion of the lot, but can no longer be used for commercial purposes due to its discontinuance pursuant to ZR § 52-61; in any event, the applicant asserts that the existing building is configured as a diner and cannot be renovated to accommodate a use other than a diner without significant cost; and

WHEREAS, as to the site's location at the intersection of two major thoroughfares, the applicant asserts that both Northern Boulevard and Little Neck Parkway are heavily-trafficked thoroughfares, which are well-suited to commercial or community facility use; and

WHEREAS, likewise, the applicant asserts the intersection of these streets is an undesirable location for the types of homes (one-family, detached residences) that predominate in the surrounding neighborhood; and

WHEREAS, as to the irregular shape of the lot, the applicant states that the lot's southeast corner forms an acute angle, which, when combined with the parking requirements, results in inefficient floorplates and the loss of rental square footage; and

WHEREAS, in addition, the shape of the site in combination with the location of the district boundary, result in inefficient as-of-right vehicular circulation and parking configurations; and

WHEREAS, the applicant also notes that while it is possible to locate all required parking for the proposal within the C1-2 portion of the lot, the neighborhood is heavily automobile-oriented; as such, the applicant asserts that additional parking is necessary in order for the development to succeed; and

WHEREAS, accordingly, the Board finds that the cited unique physical conditions create an unnecessary hardship and a practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as-of-right community facility development with daycare center use; (2) an as-of-right commercial retail and office building; (3) an as-of-right retail and office building with the residential portion of the site being developed with a single-family residence; (4) an as-of-right commercial office building with on-grade

parking below; (5) a lesser variance scenario that is identical to the proposal, but lacks the second-story community facility use; and (6) the proposed two-story mixed commercial and community facility building with 17 on-grade parking spaces partially within the R2A district; and

WHEREAS, the applicant concluded that only the proposal would result in a reasonable return due to the physical conditions of the site; and

WHEREAS, based upon its review of the submissions, per ZR § 72-21(b), the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use of the site will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by low-rise commercial and community facility uses along the major streets (e.g., Northern Boulevard and Little Neck Parkway) and predominantly two-story, single-family detached residences along the residential streets (e.g., Browvale Lane and 44th Avenue); and

WHEREAS, the applicant asserts that the proposal is consistent with the uses immediately adjacent to the site, which include, a shopping center to the south, a large accessory parking lot to the west, a series of two-story retail stores and an Off-Track Betting establishment across Little Neck Parkway to the north, and to the east, across Northern Boulevard, a small parking lot, one-story martial arts school, and two, two-story mixed retail buildings; and

WHEREAS, the applicant notes that the adjacent accessory parking lot is entirely within the subject R2A district and was authorized by Board variance under BSA Cal. No. 332-79-BZ; and

WHEREAS, in addition, the applicant states that the R2A portion of the lot has been used for commercial purposes for more than 60 years and the proposal would allow such use to continue, without an increase in its intensity or scope; and

WHEREAS, the applicant notes that the proposed building is well within the parameters of the C1-2 (R3-1) district and that the proposed FAR of 0.75 is three-quarters of that which is permitted as-of-right (1.0 FAR); and

WHEREAS, finally, the applicant states that it has configured the curb cuts and parking spaces on the site so as to minimize the traffic impacts on the R2A district; specifically, traffic will enter the site along Little Neck Parkway and exit onto Northern Boulevard; and

WHEREAS, at hearing, the Board questioned the necessity of the "bridge" connecting the building segments on either side of the exit driveway and requested additional landscaping for portions of the site; and

WHEREAS, in response, the applicant explained that the bridge and the floor area that will be accessed by it are

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integral to the project and that removing them would make the development financially infeasible; in addition, the applicant amended its site plan to include additional landscaping; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the split-lot condition and ownership history of Lot 53; and

WHEREAS, likewise, the Board finds the proposal to allow accessory parking spaces within the R2A portion of the site to be the minimum variance necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA-067Q, dated December 11, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C1-2 (R3-1) zoning district and partially within an R2A zoning district, an accessory parking lot to a medical office (Use Group 4) and retail (Use Group 6) on the R2A portion of the site, which is contrary to ZR §§ 22-10 and 36-21, *on condition* that any and all work shall substantially conform to drawings as they apply to the

objections above noted, filed with this application marked "Received October 17, 2013" - three (3) sheets and *on further condition*:

THAT the following will be the bulk parameters of the site: two stories, 5,612.7 sq. ft. of floor area (0.75 FAR) (1,999.6 sq. ft. of community facility floor area and 3,613.1 sq. ft. of commercial floor area), 17 parking spaces (12 parking spaces within the R2A district), a maximum wall height of 18'-6", and a maximum building height of 28'-0", as indicated on the BSA-approved plans;

THAT the use of the parking lot is limited to an accessory parking for principal uses on the lot;

THAT screening and landscaping will be installed and maintained as per the BSA-approved plans;

THAT all exterior lighting within the parking area shall be directed away from adjacent residential use;

THAT the above conditions will be noted on the Certificate of Occupancy;

THAT this grant will apply to the lot as depicted on the BSA-approved plans and the lot may not be altered without prior application to and approval from the Board;

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

THAT construction will proceed in accordance with ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

13-13-BZ & 14-13-BZ

CEQR #13-BSA-085K

APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.

SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decisions of the Brooklyn Borough

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Commissioner, dated January 28, 2013, acting on Department of Buildings Application Nos. 320547654 and 320547645, read in pertinent part:

Proposed one (1) family dwelling (UG-2) in proposed zoning lot within an M1-1 zoning district is contrary to Section 42-10 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of two, three-story, single-family residential buildings (Use Group 2), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in the *City Record*, with continued hearings on June 4, 2013 and July 9, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of DeGraw Street, between Van Brunt Street and Columbia Street, within an M1-1 zoning district; and

WHEREAS, the site comprises Tax Lots 22 and 23, each of which has a width of 17.5 feet and a depth of 100 feet, for a combined lot width of 35 feet, and a combined lot area of 3,500 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct two, three-story, single-family residential buildings on separate zoning lots in accordance with the bulk regulations applicable in an R6A district; and

WHEREAS, the applicant states that the building on Lot 22 will have 3,152 sq. ft. of floor area and the building on Lot 23 will have 3,044 sq. ft. of floor area for a combined floor area of 6,196 (1.77 FAR) (the maximum permitted FAR in an R6A district is 3.0); one accessory off-street parking space is proposed for each building, and both buildings will have a street wall height of 31'-8" and a maximum building height of 36'-0" (the maximum permitted street wall height in an R6A district is 60'-0"; the maximum permitted building height in an R6A district is 70'-0"); and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, the applicant requests the subject variance; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is vacant, and has a small lot size of 3,500 sq. ft. and a narrow lot width of 35 feet; (2) the site is adjacent to residential buildings on two sides; (3) the site fronts on a narrow street; and (4) the site is burdened with sub-surface soil conditions that significantly increase the cost of construction; and

WHEREAS, the applicant represents that the site's narrowness and small lot size would result in a conforming

manufacturing or commercial building with inefficient, narrow floor plates that would be inadequate space for providing a loading dock; further, the applicant states based on the small lot size, a conforming development would provide a maximum floor plate of 3,500 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, in support of its claim that the site—with its narrow lot width and small lot size—is not feasible for modern manufacturing use, the applicant surveyed the surrounding manufacturing uses and found that most conforming uses are located on larger lots; the applicant also found that out of the 121 lots that are less than 3,500 sq. ft., only eight lots (6.61 percent) contain buildings that are occupied by a conforming use and that all such buildings were built prior to 1977, except two: an architectural office and a mechanic's shop; and

WHEREAS, thus, the applicant concludes that: (1) where commercial and manufacturing uses exist on narrow lots within the surrounding neighborhood, they are long-standing uses within existing buildings; and (2) modern manufacturing uses require larger lots; and

WHEREAS, in addition, the applicant notes that for approximately 100 years (until 1991), the site was occupied by two single-family dwellings; as such, the size and width of the site has historically been to accommodate residential uses; and

WHEREAS, the applicant further represents that the site is adjacent to residential uses on both sides and that the existence of residential buildings on the adjacent lots further devalues the site for a conforming use and would result in lower rental incomes and higher vacancy rates; and

WHEREAS, the applicant also submitted study of the surrounding properties within an area bounded by DeGraw Street to the north, Columbia Street to the east, and Hamilton Avenue to the south and Van Brunt Street to the west to support its representations regarding uniqueness; and

WHEREAS, the applicant represents that, of the 121 lots surveyed, there are 27 lots that share the following basic characteristics with the subject lot: the lots are vacant, have narrow lot widths of 35 feet or less, lot areas of 3,500 sq. ft. or less, and are located in the subject M1-1 district; however, of these 27 lots, only six lots (4.96 percent) are also adjacent to residential uses on both sides which constraint access to the site for larger vehicles; and

WHEREAS, the applicant concludes that the site is uniquely unsuitable for a manufacturing use because of its width, size, and adjacency to residential uses; and

WHEREAS, the applicant also states that the width of DeGraw Street (60'-0")—which, as a practical matter, is narrowed further by the existence of a bike lane and permitted parking on both sides of the street—makes the site incapable of handling the truck traffic associated with a conforming use; accordingly, rent would have to be decreased to reflect a tenant's increase in loading costs; and

WHEREAS, finally, the applicant represents that the site's unique sub-surface soil conditions create an additional impediment to conforming development; and

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WHEREAS, the applicant submitted a letter from an engineer, which concluded that, due to the soil composition at the site, an as-of-right building at the site would require deep foundations and the installation of 58 helical piles, which increase the cost of construction; and

WHEREAS, the Board notes that it does not find that DeGraw Street is particularly narrow or that its width is unique or inherently unsuitable for manufacturing uses; on the contrary, the Board observes that a width of 60 feet is typical to the neighborhood and to most areas of the city, including where bike and parking lanes are provided; and

WHEREAS, nevertheless, the Board finds that the site has a combination of unique physical conditions including its lot width and size, the adjacent residential uses and the sub-surface conditions, which, in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations;

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return on an as-of-right industrial building at the site and the proposal; and

WHEREAS, according to the study, a one-story building with 3,500 sq. ft. of floor area occupied by a conforming use would yield a negative rate of return; the proposed residential buildings, on the other hand, would realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the subject block is a mix of residential, commercial, and manufacturing/industrial uses; the applicant notes that while the western half of the block is predominantly manufacturing/industrial, the eastern half, where the site is located, is predominantly residential with a total of 26 dwelling units and ground floor commercial uses along Columbia Street (which forms the eastern boundary of the block); and

WHEREAS, the applicant notes that, based on a series of Sanborn maps, the site was occupied by two single-family buildings for the majority of the 20th Century, until 1991, when the buildings were demolished; further, nine of the ten residential buildings on the eastern half of the block have existed for approximately 100 years, and the tenth was built around 1930; thus, the block has remained residential in character despite its designation as an M1-1 zoning district; and

WHEREAS, the applicant also notes that the Columbia Street frontage of the block directly across the street from the site is planned to be developed as an access point to the Brooklyn Waterfront Greenway and will include outdoor recreation and green space; and

WHEREAS, as to bulk, as noted above, the applicant states that the proposed building complies with all bulk regulations of a R6A zoning district, which is mapped on portions of the blocks directly to the northeast, east, southeast, and south of the subject block; and

WHEREAS, further, the applicant notes that the proposed buildings are designed to maintain the contextual streetscape, will align with the height of the residential building directly to the east of the site (31'-8"), and be compatible with the two buildings directly west (three feet shorter than one; three feet taller than the other); and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's historic lot dimensions, adjacent residential uses, and soil conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13BSA085K, dated December 24, 2012; and

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

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

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

WHEREAS, DEP requested that a P.E.-certified

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Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the results of noise monitoring and determined that a minimum of 26 dBA window-wall noise attenuation and an alternate means of ventilation (provided by a rooftop ERV/HRV system) should be provided in the proposed building's residential units in order to achieve an interior noise level of 45 dBA; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, the construction of two three-story, single-family residential buildings (Use Group 2), contrary to ZR § 42-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 25, 2013" – seven (7) sheets; and *on further condition*:

THAT the total floor area on the lots shall not exceed 6,196 sq. ft.;

THAT the following are the bulk parameters of the building on Lot 23: a floor area of 3,044; a maximum street wall height of 31'-8"; a maximum building height of 36'-0"; and one parking space, as indicated on the BSA-approved plans;

THAT the following are the bulk parameters of the building on Lot 22: a floor area of 3,152; a maximum street wall height of 31'-8"; a maximum building height of 36'-0"; and one parking space, as indicated on the BSA-approved plans;

THAT DOB shall not issue certificates of occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT a minimum of 26 dBA window-wall noise attenuation and an alternate means of ventilation (provided by a rooftop ERV/HRV system) shall be provided in the proposed building's residential units;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

55-13-BZ
CEQR #13-BSA-089K

APPLICANT – Stuart A. Klein, Esq., for Yeshivas Novominsk, owners.

SUBJECT – Application February 1, 2013 – Variance (§72-21) to permit the enlargement of an existing yeshiva and dormitory (*Yeshiva Novominsk*), contrary to floor area (§24-11), wall height and sky exposure plane (§24-521), and side yard setback (§24-551). R5 zoning district.

PREMISES AFFECTED – 1690 60th Street, north side of 17th Avenue between 60th and 61st Street, Block 5517, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,

Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 2, 2013, acting on Department of Buildings Application No. 320752912 reads, in pertinent part:

1. Proposed floor area is contrary to ZR 24-11;
2. Proposed wall height and sky exposure plane are contrary to ZR 24-521;
3. Proposed side yard setback is contrary to ZR 24-551; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, a two-story enlargement of a three-story and mezzanine community facility building occupied as a religious school (Use Group 3), which does not comply with the district regulations for floor area, wall height, sky-exposure plane, and side yard setback, contrary to ZR §§ 24-11, 24-521, and 24-551; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on November 19, 2013, and then to decision on December 10, 2013; and

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

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Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Yeshiva Novominsk (the "Yeshiva"); and

WHEREAS, the subject site is an irregular corner lot that spans the full length of the block on the west side of 17th Avenue between 60th Street and 61st Street, within an R5 zoning district; and

WHEREAS, the site has 140 feet of frontage along 60th Street, 200 feet of frontage along 17th Avenue, 150 feet of frontage along 61st Street, and 29,000 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a three-story plus mezzanine religious school building, with 55,290 sq. ft. of floor area (1.91 FAR); and

WHEREAS, the applicant represents that the building currently includes the following uses: (1) classrooms for the Yeshiva; (2) prayer halls; (3) a gymnasium; (4) a rabbi's apartment; (5) conference rooms; and (6) a dormitory; and

WHEREAS, the applicant proposes to construct a two-story enlargement atop the southern wing of the existing building (61st Street frontage) in order to expand the Yeshiva's dormitory facilities; and

WHEREAS, the applicant states that although the proposed enlargement will provide complying lot coverage and front and rear yards, it will also: (1) result in an increase in floor area from 55,290 sq. ft. (1.91 FAR) to 65,799 sq. ft. (2.27 FAR), which will exceed the maximum FAR of 2.0, contrary to ZR § 24-11; (2) increase the wall height from 37'-0" to 58'-6", which will exceed the maximum wall height of 37'-0"; (3) eclipse the required sky exposure plane of 1:1, contrary to ZR § 24-521; and (4) not provide the required side setbacks of 22'-6" at a height of 45'-0" above the side yard level, and 27'-6" at a height of 55'-0" above the side yard level, contrary to ZR § 24-551; and

WHEREAS, the proposal would allow for an increase in the number of dormitory beds from 177 beds to 269 beds; and

WHEREAS, the applicant states that the Yeshiva's programmatic need to provide sufficient dormitory space for its 292 students necessitates the requested variances; and

WHEREAS, in particular, the applicant asserts that providing sleeping accommodations for its student body is essential to achieving the pedagogical and religious objective of the Yeshiva; and

WHEREAS, the applicant states that students enrolled in the Yeshiva (40 ninth-graders, 41 tenth-graders, 41 eleventh-graders, 47 twelfth-graders, and 123 post-high school students) come from across the United States and Europe and attend the Yeshiva because of its uniquely rigorous secular and religious curriculum; and

WHEREAS, the applicant states that students at the Yeshiva are immersed in the curriculum—which includes prayers, meals, and recreation time—from as early as 7:30 a.m. to as late as 11:00 p.m.; thus, the Yeshiva must be able to provide sleeping accommodations for all students who do not live in the immediate vicinity; and

WHEREAS, the applicant represents that there is a

direct nexus between the requested waivers and the design of the proposal; and

WHEREAS, specifically, the applicant states that vertically enlarging the building without setbacks is necessary due to the limitations created by the structural elements of the existing building; and

WHEREAS, in addition, the applicant represents that the two-story enlargement's floor plates and layouts mirror those of the existing dormitory at the second and third stories of the building, which provides the most efficient and structurally-sound enlargement; and

WHEREAS, the applicant represents that extending the enlargement horizontally across the roof instead of vertically above the existing dormitory would require: (1) demolition of the existing beams and columns above the *Batei Midrash* (study hall) and portions of the roof slab; (2) reinforcement of the transfer girders, which were only designed to carry the loads imposed by the roof and exterior wall; and (3) demolition and reconstruction of the some walls and ceilings of the study hall spaces, which the applicant states are the most intricately-finished spaces in the building; and

WHEREAS, thus, the applicant represents that alternative designs expanding the existing footprint of the building or providing some or all of the required setbacks would be infeasible due to the extensive structural and plumbing work that would be required, at significant cost; and

WHEREAS, further, the applicant notes that an off-site dormitory would be both costly and impractical given the comprehensive nature of the Yeshiva's curriculum; the Yeshiva does not bus students and it does not want its students taking public transportation late into the evening due to safety concerns; and

WHEREAS, finally, the applicant represents that if the Yeshiva is unable to increase the size of its dormitory, it may be forced to turn away prospective students who do not live in the immediate vicinity of the school; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious and educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 N.Y.2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board accepts that the Yeshiva's programmatic needs are furthered by the construction of the proposed dormitory; and

WHEREAS, the Board also recognizes that the proposed enlargement above the existing dormitory is the most efficient, practical, and cost-effective to construct the dormitory and that such proposal cannot be accomplished without the requested height, setback, and floor area waivers;

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and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed enlargement will not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, consistent with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a diverse mix of low- to medium density residential, community facility and manufacturing uses; and

WHEREAS, as to height, the applicant states that although other nearby uses include, across 61st Street, two-story industrial buildings, across 60th Street, a one-story warehouse and a two-story residence, and, across 17th Avenue, a two-story branch of the Brooklyn Public Library, and two-story residences, there are a number of nearby community facility buildings that are similar in height and FAR to the subject building, including: (1) the Edward B. Shallow Junior High School (four stories, 184,000 sq. ft. of floor area (2.2 FAR) within an R5 district); (2) The Seeall Academy (five stories, 157,261 sq. ft. of floor area (2.12 FAR) partially within an R5 district and partially within an R6 district); (3) Bais Sarah School (three stories, 61,148 sq. ft. of floor area (2.04 FAR) within an M1-1 district); and (4) Public School 48 (five stories, 72,400 sq. ft. of floor area (1.81 FAR) within an R5 district); and

WHEREAS, the applicant also states that it chose to locate the enlargement on the 61st Street frontage of the lot, so as to minimize its impact upon the R5 district; and

WHEREAS, as to bulk, the applicant states, as noted above, that the enlargement maintains the complying front and rear yards, does not increase the building's complying lot coverage, and only exceeds the permitted FAR by 0.27, which represents a 13.5 percent increase over the maximum permitted 2.0 FAR; and

WHEREAS, the applicant notes that although there is a two-story residence directly west of the site along 61st Street, it is a total of 13 feet away from the Yeshiva building and no windows are proposed in the enlarged portion of the school facing that residence; and

WHEREAS, at hearing, the Board requested clarification regarding the proposed occupant load and questioned whether enrollment was anticipated to increase; and

WHEREAS, in response, the applicant submitted amended plans indicating that occupant loads would be subject to DOB approval; in addition, the applicant submitted a statement confirming that enrollment is expected to remain at current levels; and

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

WHEREAS, the applicant states that, per ZR § 72-21(d), the hardship was not self-created and that no development that would meet the programmatic needs of the Yeshiva could occur on the existing lot; and

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

WHEREAS, the applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Congregation's programmatic needs, in accordance with ZR § 72-21(e); and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA090K, dated January 27, 2013; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, a two-story enlargement of a three-story and mezzanine community facility building occupied as a religious school (Use Group 3), which does not comply with the district regulations for floor area, wall height, sky-exposure plane, and side-yard setback, contrary to ZR §§ 24-11, 24-521, and 24-551; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 4, 2013" – Eight (8) sheets; and *on further condition*:

THAT the building parameters will be: a floor area of

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65,799 sq. ft. (2.27 FAR); a maximum wall height of 58'-6"; and five stories, as illustrated on the BSA-approved plans;

THAT any change in the control or ownership of the building will require the prior approval of the Board;

THAT the above conditions will be listed on the Certificate of Occupancy;

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

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

THAT construction will proceed in accordance with ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

90-13-BZ

APPLICANT – Akerman Senterfitt, LLP, for Eleftherios Lagos, owner.

SUBJECT – Application March 18, 2013 – Variance (§72-21) to permit the construction of a single-family dwelling, contrary to open area requirements (§23-89). R1-2 zoning district.

PREMISES AFFECTED – 166-05 Cryders Lane, northeast corner of the intersection of Cryders Lane and 166th Street, Block 4611, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decisions of the Queens Borough Commissioner, dated February 15, 2013, acting on Department of Buildings Application No. 402460608, read in pertinent part:

Proposed building creates non-compliance with open area requirements and is contrary to ZR Section 23-891; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R1-2 zoning district, construction of a two-story single-family home that does not provide the required minimum open area, contrary to ZR § 23-891; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in *The City Record*, with a continued hearing on November 19, 2013, and then to decision on December 10, 2013; and

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

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

WHEREAS, the subject site is located on the northeast corner of the intersection of 166th Street and Cryders Lane, within an R1-2 zoning district; and

WHEREAS, the site is a rectangular zoning lot with 100 feet of frontage along Cryders Lane, 103 feet of frontage along 166th Street, and a lot area of 10,300 sq. ft.; and

WHEREAS, the site comprises two tax lots, Lots 1 and 3, which were declared to be a single zoning lot pursuant to a 2006 declaration; and

WHEREAS, the applicant represents that the site previously comprised a single tax lot, Lot 3, and that it was occupied by a single-family home that was demolished in 2001; and

WHEREAS, the applicant states that Lot 3 is currently occupied by a two-story, single-family home that has 1,929.46 sq. ft. of floor area and was completed in 2005; and

WHEREAS, the applicant states that Lot 1 is vacant; and

WHEREAS, the applicant proposes to construct a two-story, single-family home on Lot 1, and that the addition of the proposed building to the zoning lot results in the following compliances: 2,611.52 sq. ft. of floor area is proposed, for a total of 4,504.98 sq. ft. of floor area on the zoning lot (0.44 FAR for the zoning lot) (the maximum permitted FAR is 0.50); an open space ratio of 153 percent, (the minimum open space ratio is 150 percent); front yards with a depths of 24'-0" and 20'-0" (front yards with minimum depths of 20'-0" and 15'-0" are required) (the building on Lot 3 has a front yard depth of 20'6"); an open area of 20'-0" measured perpendicular to the rear wall (a minimum of 20'-0" is required for a corner lot); a wall height of 24'-0" (the maximum permitted wall height is 25'-0"); and one parking space (one parking space is required for each dwelling unit on the zoning lot and there is one existing parking space on Lot 3, for a complying total of two parking spaces on the lot); and

WHEREAS, however, the applicant states that, per ZR § 23-891(b), where there are two buildings located on a corner lot within an R1-2 district, the interior building must provide a minimum open area of 30 feet measured perpendicular to the rear wall; therefore, the construction of the proposed building creates a new non-compliance with respect to the existing building on Lot 3, because that building only provides 23'-5" feet of open space; and

WHEREAS, the applicant notes that, similarly, subdividing the zoning lot would create a non-compliance on Lot 3 with respect to the requirement for a rear yard with a minimum depth of 30'-0"; and

WHEREAS, accordingly, in order to construct the building proposed on Lot 1, the applicant seeks a waiver of the open area requirement for the existing building on Lot 3;

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and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in compliance with underlying district regulations: (1) the underdevelopment of the site; and (2) the history of development on the site, including the location of the existing home on the site; and

WHEREAS, the applicant states that the subject zoning lot is a large, significantly under-developed corner lot; and

WHEREAS, specifically, the applicant states that the zoning lot has a lot area of 10,300 sq. ft. and is currently occupied by a single-family home with a floor area of 1,929.46 sq. ft. (0.19 FAR), which is significantly underdeveloped based on the maximum allowable floor area of 5,150 sq. ft. (0.50 FAR) for the site; and

WHEREAS, the applicant also states that such underdevelopment is due to history of development on the lot; and

WHEREAS, in particular, the applicant states that Lot 3 was historically a single tax lot that was subdivided into Lots 1 and 3, in order to construct two as-of-right single-family homes; development of Lot 3 proceeded and was completed in 2005; subsequently, in 2008, ZR § 23-891 (“Open Area Requirements for Residences”) was amended so that if a home were to be constructed on Lot 1, the home on Lot 3 would become non-complying with respect to its open area at the rear; and

WHEREAS, accordingly, the applicant states, as noted above, that any development of Lot 1 would require removing significant portions of the rear of the home on Lot 3 to provide a minimum open area of 30 feet; and

WHEREAS, the applicant asserts that the sequence of development, the orientation of the existing home on Lot 3 (which was complying when the home was designed and built), and the underdevelopment of the lot is unique among similar sites in the surrounding area; and

WHEREAS, in support of this assertion, the applicant submitted the results of a study of the 82 corner lots within 900 feet of the site that are subject to ZR § 23-891; and

WHEREAS, based on this study, the applicant states that 73 out of 82 lots potentially impacted by ZR § 23-891 are smaller than the subject lot, significantly developed, and cannot be subdivided; and

WHEREAS, accordingly, the applicant contends that there are only nine lots out of 82 in the study area that may be reasonably considered to be similar in size to the subject site; however, the subject site is the most underdeveloped at 0.19 FAR and, more importantly, the other sites have existing homes that occupy a central location on their respective site, making subdivision impossible without demolition of the existing home; and

WHEREAS, the applicant asserts that, as such—and in contrast to the subject site whose existing building leaves ample room for a second home but for the requirements of ZR § 23-891—the development potential of the nine underdeveloped sites that are similar in size to the subject site lies in enlarging their respective centrally-located single-

family homes; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable regulations; and

WHEREAS, the applicant asserts and the Board agrees that because of the site’s unique physical conditions, there is no reasonable possibility that the owner will be able to develop the site without the requested waiver; and

WHEREAS, the applicant represents that, consistent with ZR § 72-21(c), the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding community is characterized by single-family, detached homes; and

WHEREAS, the applicant states that the proposal is contextual in terms of use and bulk and complies in all respects with the R1-2 regulations; as noted above, the only non-compliance on the zoning lot that would result from the proposal is a failure of the existing home on Lot 3 to provide a 30-foot open area; and

WHEREAS, the applicant also notes that a 20-foot distance has been provided between the rear wall of the proposed home on Lot 1 and the side lot line of the adjacent Lot 46, which is well in excess of the eight feet that would be required if this lot line were considered a side lot line for Lot 1; and

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

WHEREAS, the applicant asserts that the unnecessary hardship in developing the site in compliance with underlying district regulations is not self-created but is inherent to the site’s history of development and the location of the existing home, in accordance with ZR § 72-21(d); and

WHEREAS, specifically, the applicant states that Lots 1 and 3 were subdivided for the sole purpose of developing them independently, and at the time of subdivision—indeed, even at the time that the home on Lot 3 was completed—it was not foreseeable that the Zoning Resolution would be amended in manner that would make as-of-right development of both lots infeasible; and

WHEREAS, for reasons set forth above, the Board agrees that the unnecessary hardship in developing the site in compliance with underlying district regulations was not self-created; and

WHEREAS, finally, the applicant asserts and the Board agrees that a reduction in the open area from the required 30’-0” to 23’-5” is consistent with ZR § 72-21(e) and, thus, is proposal is the minimum necessary to afford the owner relief; and

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

Therefore it is Resolved, that the Board of Standards and

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Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, in an R1-2 zoning district, construction of a two-story single-family home that does not provide the required minimum open area, contrary to ZR § 23-891; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 18, 2013"- (7) sheets, "November 6, 2013"- (2) sheets and "November 12, 2013"- (4) sheets; and *on further condition*:

THAT the parameters of the site will be as follows: 2,611.52 sq. ft. of floor area (Lot 1), for a total of 4,504.98 sq. ft. of floor area on the zoning lot (0.44 FAR) (Lots 1 and 3); an minimum open space ratio of 153 percent (Lots 1 and 3); front yards with minimum depths of 24'-0" and 20'-0" (Lot 1); a maximum wall height of 24'-0" (Lot 1); a minimum open area of 20'-0" measured perpendicular to the rear wall (Lots 1 and 3); and one parking space for each home on the zoning lot, for a total of two parking spaces (Lots 1 and 3); as illustrated in the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed home will be as reviewed and approved by DOB;

THAT there will be no habitable room in the cellar;

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

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

THAT construction will proceed in accordance with ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

105-13-BZ

CEQR #13-BSA-125K

APPLICANT – Law Office of Fred A Becker, for Nicole Orfali and Chaby Orfali, owners.

SUBJECT – Application April 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461); perimeter wall height (§23-631) and less than the minimum rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1932 East 24th street, west side of East 24th street, between Avenue S and Avenue T, Block 7302, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 3, 2013, acting on Department of Buildings Application No. 320726087, reads in pertinent part:

The proposed enlargement of the existing one-family residence in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio, contrary to Section 23-141 of the Zoning Resolution;
2. Creates non-compliance with respect to lot coverage and open space, contrary to Section 23-141 of the Zoning Resolution
3. Creates non-compliance with respect to the side yard by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution;
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution;

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in *The City Record*, with continued hearings on October 22, 2013 and November 19, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 24th Street, between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the site has a total lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 1,729 sq. ft. (0.43 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 1,729 sq. ft. (0.43 FAR) to 4,168 sq. ft. (1.04 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

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WHEREAS, the applicant seeks to increase the lot coverage from 28 percent to 43 percent; the minimum required open space is 35 percent; and

WHEREAS, the applicant seeks to reduce the open space from 72 percent to 57 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant seeks to maintain the width of one existing side yard (4'-8½") and decrease the width of the other existing side yard from 11'-10" to 8'-0" (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each); and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 33'-5¼" to 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant notes that, initially, it proposed to maintain its existing, non-complying perimeter wall height of 22'-0"; however, in response to the Board's concerns, the applicant amended the proposal to provide a 21'-0" perimeter wall height, in accordance with ZR § 23-631(b); and

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

WHEREAS, in particular, the applicant represents that the proposed 1.04 FAR is consistent with the bulk in the surrounding area and submitted an analysis showing that there are ten homes in the immediate vicinity (the subject block and the nearest three blocks between Avenue S and Avenue T) with an FAR of 1.01 or greater; and

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

WHEREAS, at hearing, the Board directed the applicant to clarify the portions of the building being retained; and

WHEREAS, in response, the applicant submitted plans providing additional details regarding the portions of the building to be retained; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to

drawings as they apply to the objections above-noted, filed with this application and marked "Received November 6, 2013"- (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,168 sq. ft. (1.04 FAR), a maximum lot coverage of 43 percent, a minimum open space of 57 percent, a minimum rear yard depth of 20'-0", and side yards with minimum widths of 4'-8½" and 8'-0", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

122-13-BZ

CEQR # 13-BSA-131K

APPLICANT – Law Office of Fredrick A Becker, for Jacqueline and Jack Sakkal, owners.

SUBJECT – Application April 29, 2013 – Special Permit (§73-621) for the enlargement of an existing two-family home to be converted into a single family home, contrary to floor area (§23-141). R2X (OP) zoning district.

PREMISES AFFECTED – 1080 East 8th Street, west side of East 8th Street between Avenue J and Avenue K, Block 6528, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 11, 2013, acting on Department of Buildings ("DOB") Application No. 320588280, reads in pertinent part:

Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio is greater than the maximum permitted; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio

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("FAR"), contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on November 19, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East Eighth Street, between Avenue J and Avenue K, within an R2X zoning district within the Special Ocean Parkway District; and

WHEREAS, the site has a total lot area of 4,820 sq. ft. and is occupied by a two-story and attic single-family home with a floor area of 2,990.65 sq. ft. (0.63 FAR), and an accessory parking garage; and

WHEREAS, the applicant proposes to demolish the garage and enlarge the home, resulting in an increase in floor area from 2,990.65 sq. ft. (0.63 FAR) to 5,398.4 sq. ft. (1.12 FAR) the maximum floor area permitted is 4,097 sq. ft. (0.85 FAR) with a 20 percent attic bonus, which brings the maximum permitted floor area to 4,916.4 sq. ft. (1.02 FAR); and

WHEREAS, the special permit authorized by ZR § 73-621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant submitted a tax photograph from 1940 depicting the subject building; thus, the applicant states that the building existed well before June 20, 1989, which is the operative date within the subject R2X district; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home, provided that the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, the applicant represents that the proposed floor area is 109.8 percent of the maximum permitted; and

WHEREAS, the applicant notes that, initially, it proposed to maintain its existing, non-complying perimeter wall height of 22'-0"; however, in response to the Board's concerns, the applicant amended the proposal to provide a 21'-0" perimeter wall height, in accordance with ZR § 23-631(b); and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, at hearing, the Board expressed concerns regarding the following: (1) the enclosure of the proposed balconies and porch; (2) whether the proposed parking space has sufficient maneuvering area; (3) the adequacy of the proposed landscaping; (4) the scope of the proposed structural work; (5) the calculation of the attic bonus; and (6) the size of the trusses and collars within the attic; and

WHEREAS, in response, the applicant clarified that the rear balcony is enclosed and included in floor area, but the front balcony is not enclosed and not included in floor area, and that the open porch at the front is subject to DOB approval; and

WHEREAS, in addition, the applicant submitted amended plans showing sufficient maneuvering area for the parking space, complying landscaping and plantings, and detailed information regarding the scope of the structural work, the calculation of the attic bonus, and the size of the trusses and collars within the attic; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), contrary to ZR § 23-141; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 27, 2013" - eleven (11) sheets and "December 5, 2013"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: two stories and an attic and a maximum floor area of 5,398.4 sq. ft. (1.12 FAR), as illustrated on the BSA-approved plans;

THAT DOB will verify that the FAR attic bonus is limited to 20 percent of the 1.12 FAR and is calculated in accordance with 23-141(b)(1);

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

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DOB/other jurisdiction objections(s);

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

THAT construction proceed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

162-13-BZ

CEQR #13-BSA-145M

APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.

SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units, ground floor retail, and 11 parking spaces, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100’ south of Spring street, Block 490, Lot 27, 35, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins1

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated April 3, 2013, acting on Department of Buildings Application No. 121329589, reads, in pertinent part:

1. ZR 42-10 – Proposed UG 2 is not permitted; contrary to ZR 42-10
2. ZR 42-14 (D)(2)(b) – Proposed UG 6 is not permitted below the floor level of the second story; contrary to ZR 42-14 (D)(2)(b)
3. ZR 13-12(a) – Proposed number of accessory parking spaces for UG 2 exceeds the maximum permitted; contrary to ZR 13-12(a); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-5B zoning district, a 16-story residential building, with 33 dwelling units, commercial use on the first floor and cellar level, and ten accessory parking spaces, which is contrary to ZR §§ 42-10, 42-14 (D)(2)(b), and 13-12(a); and

WHEREAS, a public hearing was held on this application on September 24, 2013 after due notice by publication in the *City Record*, with continued hearings on October 22, 2013 and November 19, 2013, and then to

decision on December 10, 2013; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of the use variance but recommends a reduction for the FAR to 3.44 and a reduction of the building height; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to the proposed building citing concerns about the potential incompatibility with the surrounding area and that the proposal does not reflect the minimum variance; and

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

WHEREAS, certain members of the community provided oral and written testimony in opposition to the application, primarily citing concerns with the proposed building’s bulk; and

WHEREAS, the subject triangular site is located at the intersection of Avenue of the Americas and Sullivan Street with 356.74 feet of frontage on Avenue of the Americas and 343.38 feet of frontage on Sullivan Street; and

WHEREAS, Lot 27 is currently vacant, but was formerly occupied by a gasoline service station and Lot 35 is occupied by a car wash that ceased operations in April 2013; and

WHEREAS, the applicant initially proposed an 18-story building, which included a three-story base with a 15-story tower adjacent to four attached four-story townhouses and rose to a total height of 223 feet; and

WHEREAS, at the Board’s direction and in response to the community’s concern about the building’s scale, the applicant now proposes a 16-story building, which includes an extended four- and five-story base with a 14-story tower adjacent to the four attached four-story townhouses for a total of 33 residential units; the proposed building will have a total floor area of 81,565 sq. ft. with a resulting 5.0 FAR, of which 1,802 sq. ft. will be commercial on the first floor (0.11 FAR) (Use Group 6) and 79,763 sq. ft. (4.89 FAR) will be residential (Use Group 2); the proposal has a height of 204.75 feet to the top of the parapet; and

WHEREAS, the four townhouses will occupy the northern portion of the site, with frontage on Sullivan Street, and the 16-story portion will occupy the southern tip of the site and will include commercial use on the ground floor and cellar level of the base and 10 parking spaces accessory to the residential use; and

WHEREAS, the applicant seeks relief in the form of use variances pursuant to ZR § 72-21 to permit: (1) residential use in the building, which is contrary to ZR §§ 42-10; (2) commercial use on the first floor and cellar level, contrary to ZR § 42-14 (D)(2)(b); and (3) 10 accessory residential parking spaces, contrary to ZR § 13-12(a), which

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allows a maximum of six accessory off street parking spaces for residential developments; and

WHEREAS, accordingly, the owner now seeks a variance from the Board, which would permit the construction of the proposed building; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the size and shape of the site; (2) sloping topography; (3) the proximity of the Eighth Avenue subway along the Avenue of the Americas' frontage; and (4) environmental conditions associated with the historic use of the site as a car wash and gasoline service station; and

WHEREAS, as to the site's size and shape, the applicant states that it is a long narrow triangle, with its sides measuring 356.73 feet along Avenue of the Americas, 343.38 feet along Sullivan Street, and 94.97 feet across the base of the triangle along the northern portion of the site parallel with Spring Street; and

WHEREAS, the applicant represents that due to the unusual configuration and the narrowness of the triangle, the buildable portion of the site begins approximately 78 feet north of the apex where the site's east-west dimension is 21 feet; and

WHEREAS, the applicant states that the site's triangular-shaped block is one of a few sites created in the 1920s by the development of the IND subway line and the extension of the Avenue of the Americas, which sliced its way from the intersection of Carmine Street and Minetta Lane south to Canal Street; the development resulted in truncated blocks and buildings and a series of irregular rectangular and trapezoidal blocks; and

WHEREAS, the applicant represents that the changes to the area in the 1920s led to many buildings being demolished and others sheared in half; and

WHEREAS, the applicant asserts that new buildings replaced some of those that had been demolished to make way for the Avenue (ADT Building at Spring Street on the west side of the Avenue (1929); 100 Avenue of the Americas at Watts Street, on the east side of the Avenue (1930); Union Building at Grand on the west side of the Avenue (1991); and the James Hotel at Grand Street on the east side of the Avenue (2010)), but many sites remained vacant, or were occupied by small, temporary structures, or underbuilt commercial buildings; and

WHEREAS, accordingly, the applicant notes that the historic under use of the site is attributed to the effect of the subway line and Avenue construction; and

WHEREAS, the applicant notes that, due to the size and shape, where the site can be developed, the utility of the interior spaces is limited by the narrowness of the site, where a building would not reach a width of 50 feet until it is approximately 110 feet north of the triangle's apex, or back one third into the length of the site; and

WHEREAS, accordingly, the applicant asserts that the site's shape results in inefficient interior layouts; and

WHEREAS, to support its assertion, the applicant

submitted drawings for an as-of-right hotel building that would have to sit all the way to the top of the site along the northern boundary in order to accommodate feasible floor plates for hotel use, utilizing a 53-foot deep floor plate with a double-loaded hotel room corridor; and

WHEREAS, the applicant notes that height and setback regulations require at the sixth floor a 15-ft. setback from Avenue of the Americas and a 20-ft. setback from Sullivan Street; for the tower portion of the hotel, the regulations mandate further reduction in the floor plates above the 11th floor, with required setbacks of 10 feet from the Avenue and 15 feet from Sullivan Street, and aggregate tower area maximums of 1,875 sq. ft. within 50 feet of Sullivan Street and 1,600 sq. ft. within 40 feet of the Avenue pursuant to ZR § 43-45; and

WHEREAS, the applicant states that above the fifth floor, the floor plates would become long narrow trapezoids of only 4,765 sq. ft. that are ill-suited to the standard double-loaded corridor hotel floor and accommodate only eight rooms per floor, while at the tower portion of the building from the 11th to 18th floors, the floor plates reduce to only 2,787 sq. ft., permitting only three hotel rooms per floor; and

WHEREAS, as to the topography, the applicant notes that the site slopes steeply downward both from west to east and from north to south, with a difference in elevation from the Avenue of the Americas down to Sullivan Street of nearly five feet and along the Avenue of the Americas of nearly eight feet from the northern lot line of Lot 27 to the southern apex of Lot 35; and

WHEREAS, the applicant notes that the as-of-right drawings reflect that the west to east slope presents difficulties in accessing the shallow interior spaces, requiring a split-level design, which requires that the commercial space is entered at grade from Sixth Avenue at the northernmost portion of the site, but up a flight of six to eight steps midway down the Avenue and at the apex facing the plaza where the difference between sidewalk level and the interior space is between three and five feet; and

WHEREAS, further, the applicant states that the hotel entry vestibule and core would be at grade with Sullivan Street, but six feet lower than the commercial space on the other side of the wall that defines the vestibule and core; and

WHEREAS, the applicant asserts that the grade differential, resulting in the need for an elevated entry plaza on the Avenue side of the site and splitting the ground floor into multiple levels, compounds the problems owing to the narrow, irregular shape and size of the site, affecting not only the functionality of the ground floor but also greatly increasing development costs; and

WHEREAS, as to the proximity of the subway, the applicant represents that construction activity in close proximity to a subway line (typically, within a 50-ft. "zone of influence") requires a permit from the Metropolitan Transportation Authority (MTA), a condition of which is engineering review and approval by the MTA, adherence to strict vibration limits and continuous monitoring of any

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construction-related vibrations; certain standard construction methods such as pile driving, which are vibration inducing, and tiebacks, are not permitted and, thus lead to increased construction costs; and

WHEREAS, as to the uniqueness of the constraints imposed by the subway, the applicant performed an analysis which reflects that there are 15 properties in the M1-5 zoning district located along the Avenue of the Americas and Houston Street that are within the “zone of influence” of the subway, including the subject property; and

WHEREAS, further, the analysis reflects that the building line of the subject site is 20 to 21 feet from the subway tunnel and 14 to 15 feet from a subway vent and that the subject property’s frontage along Avenue of the Americas is 195.6 feet and 161.6 feet for a total of 357.2 feet; and

WHEREAS, the applicant notes that of the sites identified as being within the zone of influence of the subway tunnel, the building lines of five sites are closer than 20 feet to the subway tunnel, and the building lines of two sites are closer than 14 feet to a subway vent; of the 15 sites, including the subject property, only the subject site (357.2 feet) and three others have frontage in excess of 150 feet, while no property, other than the subject property, has frontage greater than 201 feet; and

WHEREAS, the applicant concludes that given that the subject site is the only one in the study group with a building line located 20 feet from the subway tunnel and 14 feet from the subway vent with frontage that exceeds significantly the frontages of other sites in the study area, the subject site is uniquely burdened; and

WHEREAS, the applicant represents that there are premium costs of approximately \$4,603,000 associated with the construction on the subject site due to its shape, topography, and proximity to the subway; and

WHEREAS, as to the environmental conditions, the applicant notes that the southern, Lot 35 portion of the site was occupied by a car wash from 1979 until April 2013 and the car wash building is still on the site but will be demolished for the proposed building; the northern, Lot 27 portion of the site was occupied by a gasoline service station from August 1985 to December 2006, which was demolished in 2009 and this portion of the site is currently vacant; and

WHEREAS, the applicant states that in October 1992, during construction on the adjacent Eighth Avenue subway tunnel, the New York City Transit Authority (“NYCTA”) observed petroleum impacts and a spill was reported to the New York State Department of Environmental Conservation (“NYSDEC”); and

WHEREAS, the applicant notes that a spill number (92-07631) was assigned to Lot 27 by NYSDEC and the spill remains open; and

WHEREAS, the applicant states that since 1992, environmental investigations and remedial measures (e.g., tank removal, mass excavation, product recovery systems, and chemical oxidant injections) have been completed both

on and off Lot 27, and that the most recent remedial plan for Lot 27 is the February 2012 Revised Supplemental Remedial Action Plan (“RSRAP”), which was approved by the NYSDEC and any subsequent development on Lot 27 must comply with the requirements made in the RSRAP; and

WHEREAS, the applicant states that in addition to compliance with the NYSDEC RSRAP, development of the site requires compliance with the New York City Department of Environmental Protection (“NYCDEP”) Remedial Action Work Plan (“RAWP”), which requires development of the site that includes additional soil excavation in excess of what would be required to accommodate a single cellar, installation of a monitoring and remediation well system, a sub-slab depressurization system and engineering controls; and

WHEREAS, the applicant represents that pursuant to the RSRAP, excavation must extend to approximately 23 feet below the average existing site grade (approximately 18.5 to 16.5 feet excavated to approximately elevation -4.5 feet), which amounts to an over-excavation beyond that required for foundation construction and one cellar level; and

WHEREAS, the applicant’s expert submitted that based on boring reports, natural soils with adequate bearing capacity for a mat foundation were encountered at the desired cellar slab level at elevations +4.4 to -3.6; however, due to the requirement to remove contaminated soils, excavation must extend to depths that are between one and nine feet below the bearing level of the foundations and then must be backfilled using one to nine feet of imported structural fill; and

WHEREAS, the applicant represents that the over-excavation generates additional costs and complications relating to dewatering, soil disposal, support of excavation, backfilling, oversight, and general site work; and

WHEREAS, the applicant states that the RSRAP requires installation of a vapor barrier to mitigate the potential migration of contaminants into the proposed buildings and compliance with the NYCDEP RAWP requires installation of a submembrane depressurization system; and

WHEREAS, the applicant represents that additional measures also include monitoring, injection, an extraction well, piping, and an access vault; and

WHEREAS, the applicant represents that the costs associated with environmental remediation of the below grade contamination will add \$2,445,750 to construction; and

WHEREAS, the applicant asserts that its use waivers and for four additional accessory parking spaces are necessary to compensate for the premium construction costs; and

WHEREAS, the Board views the configuration of the site, the topography, the presence of the subway, and the environmental conditions as legitimate unique physical conditions, in the aggregate and are relatively unique within the area; and

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WHEREAS, based upon the above, the Board finds that the site conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing: (1) an as-of-right conforming hotel scenario, (2) an as-of-right conforming hotel scenario on a site unencumbered by the site's unique physical conditions, and (3) the initially-proposed 18-story 5.0 FAR building; and

WHEREAS, the applicant determined that the theoretical as-of-right hotel on a standard site would be marginally feasible, but only the initially-proposed building would realize a truly reasonable rate of return; and

WHEREAS, at the Board's direction, the applicant analyzed three additional development scenarios with residential development: (1) a 3.44 FAR lesser variance; (2) a 5.0 FAR building with a higher, five-story base structure surmounted by an 11-story tower; and (3) a 4.6 FAR building with a 13-story tower; and

WHEREAS, the applicant concluded that only the 5.0 FAR extended base scenario realized a reasonable rate of return due in large part to the loss of the most valuable high floor units in the other scenarios; and

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

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

WHEREAS, the applicant states that the immediate area surrounding the site contains significant residential use and ground floor Use Group 6 use; and

WHEREAS, specifically, the applicant cites to the immediate north of the site where there are two six- and seven-story, mixed-used residential and retail buildings, a six-story retail building with joint living-work quarters for artists and a six-story retail and office building, all with frontage on Spring Street (202 through 208 Spring Street); to the east, directly across Sullivan Street from the site are three- to five-story residential rowhouses and tenements; and

WHEREAS, the applicant notes that an R7-2 zoning district with a C1-5 overlay is located immediately north of the site, to the northeast is an R7-2 zoning district and to the southeast is the M1-5B in which the site itself is also located; and

WHEREAS, the applicant states that due to the manner in which the Avenue of the Americas was laid out in the 1920s to facilitate the Avenue's southerly extension, the portion of the Avenue of the Americas to the west of the site is more than 180 feet wide and is one of the widest sections along the entirety of the Avenue's length; and

WHEREAS, the applicant asserts that the Avenue of

the Americas extends north and south along the diagonal, cutting through Tribeca, SoHo and Greenwich Village, and defining transitions in scale between the lower-rise portions on small lots of SoHo to the east of the site and the higher-rise portions on larger lots to the north and south of the site along the Avenue of the Americas and across the Avenue to the west at Hudson Square; and

WHEREAS, the applicant asserts that the site is at the crossroads of two neighborhoods and two scales, with three- to seven-story low rise to the immediate east of the site, buildings with heights ranging from 180 to 277 feet to the immediate south of the site on the east side of the Avenue of the Americas and 170 feet to 246 feet (with the Trump SoHo tower at 510 feet) on the west side of the Avenue; and

WHEREAS, as to bulk, the applicant notes that R7-2 districts permit a maximum of 4.0 FAR for residential use within 100 feet of a wide street and 6.5 FAR for community facility uses; M1-5 districts, which prohibit residential use as-of-right, permit a maximum of 5.0 FAR for commercial uses and up to 6.5 FAR for community facility uses; and the M1-6 in the Special Hudson Square District permits up to 10.0 FAR for commercial, community facility and residential use, with an additional 2.0 FAR for projects employing Inclusionary Housing bonuses; and

WHEREAS, accordingly, the applicant asserts that its proposed 5.0 FAR is compatible with the surrounding area; and

WHEREAS, additionally, the applicant notes that it has designed the site with four single-family residential townhouses fronting on and entered from Sullivan Street at the northern portion of the triangular site and extend 100 feet south along Sullivan Street and that the revised proposal with the extended base provides a transition from the four-story townhouses to the 14-story tower at the south of the site at a height of 204.75 feet to the parapet; and

WHEREAS, the applicant asserts that the location of the tower at the southern portion of the block, pulls the tallest portion of the building onto the Avenue of the Americas and away from the context of Sullivan Street; and

WHEREAS, the applicant asserts that the configuration of the building speaks directly to the development history of the area and the block with the townhouses and three-story base building, located along the northern portion of the site, responding to the low scale of Sullivan Street's 19th Century conditions, and the larger residential tower to the southern portion of the site reflecting development trends occurring to the immediate south and across the Avenue to the west of the site; and

WHEREAS, the applicant states that the proposed building, with its brick rowhouses and three-story brick base building located adjacent to the brick tower with large window openings, and which rises to its full height without setback, reflects the formal and textural conditions found in the area; and

WHEREAS, the applicant submitted renderings to support its point that the proposed building is compatible with the surrounding area; specifically, the applicant asserts

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that from many vantage points, the tower cannot be seen from within SoHo and that when it is visible between buildings or along streets within SoHo, it appears to be located outside of the SoHo neighborhood; and

WHEREAS, the applicant notes that on approaching the site from the west side of the Avenue, the low scale townhouses at the north of the site permit a view from SoHo Square through to the lower scale portions of SoHo (which would have been blocked by a bulkier as-of-right building), while the tower at the southern portion of the site picks up the high-rise street wall created by 100 Avenue of the Americas (204 feet) and the James Hotel (277 feet) at Grand Street; and

WHEREAS, the applicant notes that the revised height of 204.75 feet to the top of the parapet matches the 204.55 feet to the top of the parapet of 100 Avenue of the Americas, which is directly to the south of the site on the east side of the Avenue; and

WHEREAS, the applicant notes that there are six projects expected to be built by 2016 within the area of the site, including several large-scale residential developments; and

WHEREAS, as to the accessory parking for the proposed residential use, accessory parking for a hotel is permitted as-of-right in the district at a rate of 15 percent of the hotel rooms to a maximum of 150 spaces; accordingly, the as-of-right hotel with 130 rooms, could have up to 19 parking spaces; and

WHEREAS, consequently, the applicant asserts that the proposed number of accessory parking spaces for the residences—which initially was 11 but through the hearing process was reduced to ten—exceeds that permitted by ZR § 13-12(a) by only four spaces; thus, the accessory parking would have no impact on the use of adjoining properties, the public welfare or the character of the neighborhood, particularly in light of the prior uses of the site as gasoline service station and car wash; and

WHEREAS, additionally, the applicant asserts that the entrance to the accessory parking is through an existing curb cut at the Avenue of the Americas frontage; and

WHEREAS, the applicant notes that the entrance to the Use Group 6 space is at the corner of the site, off of the Sullivan Street frontage, where Sullivan Street and the Avenue of the Americas frontage; and

WHEREAS, the Board agrees that the area is best characterized as mixed-use, and that the proposed residential use and commercial space is compatible with the character of the community; and

WHEREAS, as to the nature of the hardship, as noted above, the unique configuration of the site is due to the construction of the IND subway line and the widening of the Avenue of the Americas in the 1920s and was not created by the owner; and

WHEREAS, at hearing, the Board inquired about the history of the site's environmental contamination and if there was documentation to establish that once the gasoline spill problems were identified, they were addressed appropriately

and not permitted to worsen due to inaction; and

WHEREAS, in response, the applicant submitted a report documenting the prior owner's remediation efforts between 1992 and 2004; based upon this analysis, the applicant's consultant concludes that ExxonMobil, who operated a gasoline filling station on the site until 2006, took appropriate action, since spill discovery, to effectively stop, control and remediate the spill and, thus, they assert that the hardship claimed with respect to required remediation at the site was not created by the owner or a predecessor in title; and

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

WHEREAS, as to the minimum variance, as noted, the Board directed the applicant to analyze additional development scenarios from the original 18-story proposal, including buildings with 3.44 FAR and 4.6 FAR and a 5.0 FAR with an extended base and 16 stories; and

WHEREAS, the applicant revisited its analysis and concluded that the extended base alternative, but none of the reduced FAR scenarios, realized a reasonable rate of return due to the reduction of the number of the more valuable units; and

WHEREAS, in addition, the applicant reduced the proposed number of parking spaces accessory to residences from 11 to ten; and

WHEREAS, the Board has reviewed the revised feasibility analysis and agrees that the 5.0 FAR scenario with the extended base represents the degree of relief necessary to overcome the site's inherent hardship while resulting in a building that is compatible with the surrounding context; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13BSA145M, dated December 6, 2013 and

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

WHEREAS, the New York City Landmarks Preservation Commission's ("LPC") requested that a Construction Protection Plan be prepared to address any

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potential proposed site construction effects and/or or impacts on the LPC, State and National Register-listed houses located at 83 Sullivan Street and 85 Sullivan Street; and

WHEREAS, NYCDEP's Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, NYCDEP reviewed and accepted the May 2013 Remedial Action Plan and Construction Health and Safety Plan for the subject site's lots 27 and 35; and

WHEREAS, NYCDEP also indicated that the proposed sub-slab depressurization system ("SSDS") discussed in the RAP should have the capability of being converted to an active SSDS, if warranted based on future conditions and should be incorporated into the design plan of the proposed construction project; and

WHEREAS, NYCDEP requested that a Remedial Closure Report be submitted to NYCDEP for review and approval upon completion of the proposed project; and

WHEREAS, the remediation on the subject site's Lot 27 should comply with the requirements of the RSRAP; the remediation required under Consent Order No. D2-0030-02-07SWO and Spill No. 9207631 should continue in accordance with the NYSDEC requirements; and

WHEREAS, a copy of the NYSDEC-approved Remedial Closure Report should also be submitted with Remedial Closure Report submitted to NYCDEP for review and approval; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-5B zoning district, a 16-story residential building, with 33 dwelling units, commercial use on the first floor and cellar, and 10 accessory parking spaces, which is contrary to ZR §§ 42-10, 42-14 (D)(2)(b), and 13-12(a), *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2013" –(24) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a total floor area of 81,565 sq. ft., (5.0 FAR) (including 79,763 sq. ft. of residential floor area (4.89 FAR) and 1,802 sq. ft. of commercial floor area (0.11 FAR)); 16 stories; a 203'-0" building height (204.75 feet at the top of the parapet), a maximum of 33 residential units, and a maximum of 10 accessory residential parking spaces, as illustrated on the BSA-approved plans;

THAT DOB will not issue a permit until the Landmarks Preservation Commission has reviewed and approved the Construction Protection Plan;

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

THAT the sound attenuation measures in the proposed building will be maintained as reflected on the BSA-approved plans;

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

THAT construction will proceed in accordance with ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

232-13-BZ

CEQR #14BSA-018R

APPLICANT – Rothkrug Rothkrug & Spector LLP, for SDF12 Bay Street, LLC, owner; Staten Island Fitness, LLC, lessee.

SUBJECT – Application August 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within portions of proposed commercial building, M1-1 zoning district.

PREMISES AFFECTED – 364 Bay Street, northwest corner of intersection of Bay Street and Grant Street, Block 503, Lot 1 and 19, Borough of Staten Island.

COMMUNITY BOARD #ISI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 9, 2013, acting on Department of Buildings ("DOB") Application No. 500902810, reads in pertinent part:

Proposed Physical Culture Establishment on second floor of two story commercial building located in an M1-1 Zoning District is contrary to Section 42-10 of the New York City Zoning Resolution and must be referred to the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36

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and 73-03, to permit, on a site located in an M1-1 zoning district, the operation of a physical culture establishment ("PCE") on portions of the first and second floors of a proposed two-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in *The City Record*, and then to decision on December 10, 2013; and

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

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

WHEREAS, the subject site is an irregularly-shaped lot bordered Bay Street to the east, Grant Street to the south by Van Duzer Street to the west, and St. Julian Place to the north, within an M1-1 zoning district; and

WHEREAS, the site has 103.45 feet of frontage along Bay Street, 289.67 feet of frontage along Grant Street, 276.36 feet of frontage along Van Duzer Street, 152.29 feet of frontage along St. Julian Place and 60,663.75 sq. ft. of total lot area; and

WHEREAS, under construction at the site is a two-story commercial building; and

WHEREAS, the PCE is proposed to occupy 19,618.07 sq. ft. of floor area on portions of the first floor and second floor of the building; and

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

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

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:00 a.m. to 11:00 p.m., and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that there are 11 open Environmental Control Board ("ECB") violations and three open DOB violations; however, those violations were issued prior to the current owner taking title to the subject site and the applicant represents that the current owner will be able to resolve the violations upon the completion of the proposed building and grant of this application; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA018R, dated August 5, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in an M1-1 zoning district, the operation of a PCE on portions of the first and second floors of a proposed two-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 18, 2013" – (3) sheets and "November 12, 2013"-(1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on December 10, 2023;

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

THAT the above conditions will appear on the Certificate of Occupancy;

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

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

MINUTES

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

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

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

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

Adopted by the Board of Standards and Appeals, December 10, 2013.

6-12-BZ

APPLICANT – Syeda Laila, owner.

SUBJECT – Application January 13, 2013 – Variance (§72-21) to permit a four-story residential building, contrary to floor area, (§103-211), dwelling unit (§23-22), front yard (§23-46), side yard (§23-46) and height (§23-631) regulations. R4 zoning district.

PREMISES AFFECTED – 39-06 52nd Street aka 51-24 39th Avenue, Block 128, Lot 39, 40, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collin1

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for decision, hearing closed.

54-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

COMMUNITY BOARD #6Q

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

311-12-BZ

APPLICANT – Eric Palatnik, P.C., for 964 Dean Acquisition Group LLC, owner.

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block 1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

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

6-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Ohr Yisrael, owner.

SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of a synagogue and school (*Yeshiva Ohr Yisrael*), contrary to floor area and lot coverage (§24-11), side yard (§24-35), rear yard (§24-36), sky exposure plane (§24-521), and parking (§25-31) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2899 Nostrand Avenue, east side of Nostrand Avenue, Avenue P and Marine Parkway, Block 7691, Lot 13, Brooklyn of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

65-13-BZ

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

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

78-13-BZ

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit a new four-story, four-unit residential building (UG 2), contrary to use regulations, ZR §42-00. M1-1& R7A/C2-4 zoning districts.

PREMISES AFFECTED – 876 Kent Avenue, located on the west side of Kent Avenue, approximately 91' north of Myrtle Avenue. Block 1897, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #3BK

MINUTES

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

81-13-BZ

APPLICANT – Nasir J. Khanzada, for Aqeel Klan, owner.
SUBJECT – Application February 28, 2013 – Re-Instatement (§11-411) of a variance which permitted an auto service station (UG16B), with accessory uses, which expired on November 6, 1992; Amendment (§11-413) to permit the change of use from auto service station to auto repair (UG 16B) with accessory auto sales; Waiver of the Rules. R2 zoning district.

PREMISES AFFECTED – 264-12 Hillside Avenue, Block 8794, Lot 22, Borough of Queens.

COMMUNITY BOARD # 13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collin1

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

130-13-BZ

APPLICANT – Rothkrug Rothdrug & Spector, for Venetian Management LLC, owner.

SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a variance which permitted a one-story motor vehicle storage garage with repair (UG 16B), which expired on February 14, 1981; Amendment (§11-413) to change the use to retail (UG 6); Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1590 Nostrand Avenue, southwest corner of Nostrand Avenue and Albemarle Road. Block 5131, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #17BK

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

153-13-BZ

APPLICANT – Eric Palatnik, PC, for Williamsburg Workshop, LLC, owner; Romi Ventures, LLC, lessee.

SUBJECT – Application May 10, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Soma Health Club*) contrary to §32-10. C4-3 zoning district.

PREMISES AFFECTED – 107 South 6th Street, between Berry Street and Bedford Avenue, Block 2456, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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

154-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Ralph Avenue Associates, LLC, owner.

SUBJECT – Application May 14, 2013 – Variance (§72-21) to allow the construction of a retail building (UG 6), contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1054-1064 Bergen Avenue, bounded by Bergen Avenue to the north, Avenue K to the east, East 73rd Street to the south, and Ralph Avenue to the west, Block 8341, Lot (Tentative lot 135), Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

212-13-BZ

APPLICANT – Eric Palatnik, P.C., for Andrey Novikov, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 151 Coleridge Street, Coleridge Street between Oriental Boulevard and Hampton Avenue, Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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

218-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 37 W Owner LLC; Ultrafit LLC, lessee.

SUBJECT – Application July 19, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Ultrafit*). C6-3A zoning district.

PREMISES AFFECTED – 136 Church Street, southwest corner of the intersection formed by Warren and Church Streets in Tribeca, Block 133, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

Jeff Mulligan, Executive Director

Adjourned: P.M.