
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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February 24, 2015

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DOCKETS

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24-15-BZ

71-17 Roosevelt Avenue, Frontage on Roosevelt Avenue and 72nd Street, Block 1282, Lot(s) 141,151,160, Borough of **Queens, Community Board: 3**. Special Permit (73-66): proposed to construct a 15-story building at a height of 161.5 feet above ground level containing a mix of community facility, retail and residential uses in the above premises, located within an R6-C2-3 zoning district. R6/C2-3 district.

25-15-BZ

71 Lewis Avenue, 5-story building on the east side of Lewis Avenue between Willoughby Avenue and Hart Street., Block 1592, Lot(s) 1, Borough of **Brooklyn, Community Board: 3**. Special Permit (73-36) to allow accessory off-street parking spaces required for dwelling units created by a conversion a five-story community facility, located within an R6B zoning district. R3-6 district.

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57 Alberta Avenue, North Side of Alberta Avenue between Victory Boulevard and Wild Avenue, Block 02637, Lot(s) 0019, Borough of **Staten Island, Community Board: 2**. Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3A zoning district. R3A district.

27-15-A

61 Alberta Avenue, North Side of Alberta Avenue between Victory Boulevard and Wild Avenue, Block 02637, Lot(s) 0020, Borough of **Staten Island, Community Board: 2**. Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3A zoning district. R3A district.

28-15-BZ

88 Fulton Street, Southeast corner of Fulton Street between William and Gold Street, Block 00077, Lot(s) 0024, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow the operation of a physical culture establishment (Spa 88) on the first, cellar and sub-cellar floors of the existing building. C6-4 zoning district C6-4 district.

29-15-BZ

200-204 East 61st Street, East side of 3rd Avenue between East 60th and East 61st Street, Block 01415, Lot(s) 7501, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to allow the operation of a physical culture establishment at the cellar level of an existing building. C6-4 zoning district C1-9 district.

30-15-BZ

224-12/16/20 Francis Lewis Boulevard, Located on the South side of Francis Lewis Boulevard between 224th and 225th Streets, Block 12825, Lot(s) 111, 112, 116, Borough of **Queens, Community Board: 13**. Variance (§72-21) to permit the construction of a House of Worship (UU 4) and Accessory Educational Facility with sleeping accommodations (UG 3) contrary to bulk regulation. R2A zoning district R2A district.

31-15-BZ

2800 Victory Boulevard, Canterbury Avenue and Victory Boulevard on Loop Road, Block 02040, Lot(s) 0001, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-30) to permit the modification of an existing wireless facility. R3-2 zoning district R3-2 district.

32-15-BZ

2847 West 8th Street, East side of West 8th Street, 125.67 ft. south of the intersection of West 8th Street and Sheepshead Bay Road, Block 07279, Lot(s) 0162, Borough of **Brooklyn, Community Board: 13**. Special Permit (§73-36) to allow the operation of a physical culture establishment within portions of an existing building. C8-2 (OP) zoning district C8-2 (OP) district.

33-15-BZ

5510 Broadway, north east corner of Broadway and West 230th Street, Block 03266, Lot(s) 21 & 23, Borough of **Bronx, Community Board: 8**. Special Permit (§73-36) to allow the operation of a physical culture establishment within a new commercial building. C8-2 (OP) zoning district C4-4 district.

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34-15-BZ

2316 Ocean Parkway, between Avenue "W" and Lancaster Avenue, Block 07181, Lot(s) 0014, Borough of **Brooklyn**, **Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing two story dwelling with attic contrary to floor area ratio, side yard and rear yard requirements. R4 zoning district. R4 district.

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

CALENDAR

MARCH 10, 2015, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 10, 2015, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

174-04-BZ

APPLICANT – Kramer Levin Naftalis & Franked LLP, for 124 West 24th Street Condominium, owner.
SUBJECT – Application October 31, 2014 – Amendment: to amend and the approval of the conveyance of unused development rights appurtenant to the subject site. The variance previously granted by the Board located within and M1-5 zoning district.
PREMISES AFFECTED – 124 West 24th Street, location on the south side of West 24th Street, between Sixth and Seventh Avenues. Block 799, Lots 1001, 1026. Borough of Manhattan.

COMMUNITY BOARD #4M

MARCH 10, 2015, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 10, 2015, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

46-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Boerum Place LLC, owner; for Blink Atlantic Avenue, Inc., lessee.
SUBJECT – Application March 20, 2014 – Special Permit (§73-36) to allow the physical culture establishment (*Blink Fitness*) within portions of a new commercial building. C2-4 (R6A) (DB) zoning districts.
PREMISES AFFECTED – 252/60 Atlantic Avenue, southeast corner of intersection of Atlantic Avenue and Boerum Place, Block 181, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

143-14-BZ

APPLICANT – Eric Palatnik, P.C., for Wanda Y. Ng, owner; 99 Health Club Inc., lessee.
SUBJECT – Application June 20, 2014 – Special Permit (§73-36) to allow for the proposed physical culture establishment (*99 Health Club Inc.*) in the cellar, first and

second floor of two story building in an M1-1 zoning district.

PREMISES AFFECTED – 746 61st Street, between 7th and 8th Avenue, Block 5794, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #7BK

241-14-BZ

APPLICANT – Warshaw Burstein, LLP, for Tiago Holdings, LLC, owner; East River Plaza Fitness Group, LLC, lessee.

SUBJECT – Application October 3, 2014 – Special Permit (§73-36) to allow the operation of physical culture establishment (*Planet Fitness*) on a portion of the third floor of the existing large scale development. C4-4 zoning district.
PREMISES AFFECTED – 517 East 117th Street, located within a large scale development located along FDR Drive between East 116th Street and 119th Streets, Block 1715, Lot(s) 22, 8, Borough of Manhattan.

COMMUNITY BOARD #11M

Ryan Singer, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 3, 2015
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

131-93-BZ

APPLICANT – Eric Palatnik, P.C., for Paul Memi, owner.
SUBJECT – Application April 25, 2014 – Extension of
Term (§11-411) of a previously approved variance which
permitted the operation of an Automotive Service Station
(UG 16B) with accessory uses which expires on November
22, 2014. C2-2/R5 zoning district.

PREMISES AFFECTED – 3743-3761 Nostrand Avenue,
north of the intersection of Avenue "Y", Block 7422, Lot 53,
Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 14,
2015, at 10 A.M., for continued hearing.

318-06-BZ

APPLICANT – Eric Palatnik, LLP for Sun Company Inc.
(R&M), owner.

SUBJECT – Application August 9, 2013 – Extension of
Term (§11-411) of a previously approved variance which
permitted the operation of an automotive service station (UG
16B), which expired on May 22, 2013; Extension of Time to
Obtain a Certificate of Occupancy which expired on
November 22, 2007; Waiver of the Rules. R4 zoning
district.

PREMISES AFFECTED – 49-05 Astoria Boulevard,
Noreast corner of Astoria Boulevard and 49th Street. Block
1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to April 14,
2015, at 10 A.M., for adjourned hearing.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikchemny,
owner.

SUBJECT – Application July 22, 2014 – Extension of
Time to Complete Construction of a previously granted
Special Permit (73-622) for the enlargement of an existing
two family home to be converted into a single family home
which expired on January 27, 2013; Waiver of the Rules.
R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, between
Oriental Boulevard and Hampton Street, Block 8749, Lot
25, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 14,

2015, at 10 A.M., for deferred decision.

APPEALS CALENDAR

113-14-A

APPLICANT – Howard Goldman, Esq., for Speakeasy 86
LLC c/o Newcastle Realty Service, owner.

SUBJECT – Application May 29, 2014 – Appeal seeking
revocation of a permit issued that allows a nonconforming
use eating/drinking establishment to resume after being
discontinued for several years. R6 zoning district.

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

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Vice-Chair Hinkson, Commissioner Ottley-Brown
and Commissioner Montanez3

Absent: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an appeal of the Department of
Buildings' reinstatement of DOB Permit Number 120174658-
01-A, re-issued April 29, 2014 (the "Permit"), which
constitutes the final determination at issue herein and which
reads, in pertinent part:

Alteration Type 1 – Convert Existing 3 Family
House to 1 Family. Existing Restaurant to Remain
on Ground Floor...; and

WHEREAS, a public hearing was held on this appeal on
December 16, 2014, after due notice by publication in *The
City Record*, and then to decision on February 24, 2015; and

WHEREAS, Vice-Chair Hinkson and Commissioner
Ottley-Brown performed inspections of the subject premises,
site and neighborhood; and

WHEREAS, the subject site is located at the northeast
corner of Bedford Street and Barrow Street, within an R6
zoning district, within the Greenwich Village Historic
District, in Manhattan; and

WHEREAS, the site is a single zoning lot occupied by
five buildings: the subject three-story building at 86
Bedford Street (the "Subject Building") and four other
buildings (82/84 Bedford Street, 58 Barrow Street and 56
Barrow Street) (collectively, the "Buildings"); and

WHEREAS, the Buildings were constructed in the
early 1800s; and

WHEREAS, the ground floor and cellar at the Subject
Building (the "Premises") have historically been occupied
by an eating and drinking establishment (Use Group 6)
known as Chumley's, with residential use above; and

WHEREAS, this appeal of DOB's issuance of the
Permit is brought by the owner of an adjacent building (88
Bedford Street) (the "Appellant"); and

WHEREAS, as set forth below, the Appellant asserts

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that DOB erred in reinstating the Permit, because the Permit authorizes the resumption of the non-conforming eating and drinking establishment use contrary to the Zoning Resolution; and

WHEREAS, DOB, the Appellant and the owner of the Subject Building (the "Owner"), all represented by counsel, appeared and made submissions in support of or in opposition to the instant appeal; and

BACKGROUND

WHEREAS, on May 12, 2006, the chimney and interior portions of 82/84 Bedford Street collapsed; and

WHEREAS, on or about April 4, 2007, the chimney and the south bearing wall of the Subject Building partially collapsed; on that same day, DOB was notified of the collapse and responded by issuing a Vacate Order; and

WHEREAS, the Vacate Order remains in effect and Chumley's has not operated since it was issued; and

WHEREAS, subsequent to the partial collapse of the chimney and south bearing wall of the Subject Building, the Owner was required to remove the existing south masonry wall and two chimneys from the Subject Building; and

WHEREAS, according to DOB and the Owner, the repair work related to the reconstruction of 82-84 Bedford Street and the Subject Building (the "Work") was complicated by the relationship of those two buildings to each other and to the remainder of the buildings on the zoning lot; and

WHEREAS, in order to facilitate the Work, the Owner regularly consulted with DOB and LPC personnel and was directed by representatives of the aforesaid agencies with respect to the Work; and

WHEREAS, after working with DOB to perform the Work for nearly two years, in March 2009, the Owner, at the direction of DOB, hired a DOB-licensed site safety manager to monitor the conditions at the Buildings; and

WHEREAS, thereafter, in addition to the Work which was supervised by DOB and LPC, the Owner was required to perform the following DOB-mandated repairs to the Buildings: (1) pursuant to a DOB Emergency Declaration dated July 2, 2009, the Owner was required to demolish the structurally compromised rear extension of the Subject Building and perform shoring and bracing of the exterior walls and interior floors of that building; (2) pursuant to a second DOB Emergency Declaration dated July 2, 2009, the Owner was directed to address structural conditions at 82-84 Bedford Street; and (3) pursuant to DOB Emergency Declaration dated December 9, 2009, the Owner was required to demolish and replace a bearing wall at 58 Barrow Street that was adjacent to the Subject Building; and

WHEREAS, in order to complete the Work, the Owner was required to file four applications with DOB and six post approval amendments related to the Subject Building; and

WHEREAS, on October 8, 2009, the Owner applied to DOB for the Permit, seeking approval to convert the Subject Building from a three-family to a one-family and to maintain the non-conforming eating and drinking establishment (Use Group 6) at the ground floor; and

WHEREAS, on December 20, 2010, DOB approved the

Permit; and

WHEREAS, on December 2, 2011, following an audit of the Permit, DOB issued a Notice of Objections including 12 objections pertaining to the Zoning Resolution and the Building Code; among the objections was a ZR § 52-61 objection that the non-conforming Use Group 6 was discontinued for two consecutive years and, therefore, that the eating and drinking establishment (Use Group 6) was not permitted; and

WHEREAS, based on the objections remaining unresolved, including the issue of discontinuance of the eating and drinking establishment, DOB revoked the approval and Permit on March 8, 2013; and

WHEREAS, on April 29, 2013, the Owner filed an appeal of DOB's revocation to the Board under BSA Cal. No. 123-13-A; and

WHEREAS, initially, DOB defended its revocation of the Permit; however, through the hearing process, DOB was persuaded that the Owner was entitled to resume its non-conforming use, and on January 21, 2014, DOB issued a letter to the Board stating that the discontinuance of the eating and drinking establishment use for a period of greater than two years was within the tolling standards set forth in *149 Fifth Avenue Corp. v Chin*, 305 AD2d 194 (1st Dept 2003); and

WHEREAS, in its letter to the Board, DOB stated that it:

has been provided with sufficient evidence that the repair work was diligently completed in light of the complexity of the task of repairing damage on landmark-designated buildings constructed in the early [1800s] on five interrelated buildings accessed through a narrow alley. The Department recognizes that the repair work, imposed by multiple emergency declarations and under supervision of a Department engineer who directed the sequence of repair work, is tantamount to being a legal mandate; and

WHEREAS, on April 8, 2014, DOB accepted the earlier audit and on April 29, 2014, it reinstated the Permit; and

WHEREAS, on May 6, 2014, the Owner withdrew the appeal before the Board, which the Board recognized had been rendered moot by DOB's determination that the two-year period of discontinuance had been tolled; and

WHEREAS, on May 29, 2014, the Appellant filed the subject appeal based on DOB's reinstatement of the Permit; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 (*Definitions*)

Non-conforming, or non-conformity

A "non-conforming" *use* is any lawful *use*, whether of a *building or other structure* or of a *zoning lot*, which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

* * *

ZR § 52-11 (*Continuation of Non-Conforming*)

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Uses)

General Provisions

A *non-conforming use* may be continued, except as otherwise provided in this Chapter; and

* * *

ZR § 52-22 (*Structural Alterations*)

General Provisions

* * *

No structural alterations shall be made in a *building or other structure* substantially occupied by *non-conforming use*, except when made . . . (a) in order to comply with requirements of law . . .;

* * *

ZR § 52-61 (*Discontinuance*)

General Provisions

If, for a continuous period of two years, either the *nonconforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land or *building or other structure* shall thereafter be used only for a conforming *use*. Intent to resume active operations shall not affect the foregoing . . .

Except in Historic Districts as designated by the Landmarks Preservation Commission, the provisions of this Section shall not apply to vacant ground floor or *basement* stores in *buildings designed for residential use* located in R5, R6 or R7 Districts where the changed or reactivated *use* is listed in Use Group 6A, 6B, 6C or 6F . . .; and

THE ISSUE PRESENTED

WHEREAS, the issues to be decided on appeal are (1) whether DOB properly issued the Permit notwithstanding that the non-conforming use of the Premises was discontinued as of April 4, 2007, and (2) whether the Owner was permitted to perform structural alterations to the Building; and

LEGAL STANDARDS

THE RESUMPTION OF A NON-CONFORMING USE

WHEREAS, DOB and the Appellant agree that the site is currently within an R6 zoning district and that an eating and drinking establishment is not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the Permit was issued in error, the Appellant must demonstrate that the Owner is precluded from reestablishing its non-conforming eating and drinking establishment (Use Group 6) at the Premises notwithstanding DOB's determination that (1) the Owner's use of the Premises meets the Zoning Resolution's criteria for a "non-conforming use" as defined at ZR § 12-10, and (2) that the Owner's discontinuance of the non-conforming use of the Premises does not preclude the reestablishment of such use pursuant to ZR § 52-61 because of the tolling doctrine announced in *149 Fifth Avenue Corp. v Chin*; and

WHEREAS, ZR § 12-10 defines "non-conforming" use as "any lawful *use*, whether of a *building or other structure* or

of a tract of land, which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto"; and

WHEREAS, ZR § 52-61 (*Discontinuance, General Provisions*) states that: "[i]f, for a continuous period of two years, either the *non-conforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming *use*"; and

WHEREAS, the Board acknowledges that in certain instances, the two-year period beyond which a non-conforming use may not be reestablished can be tolled pursuant to the doctrine set forth in *149 Fifth Avenue Corp. v Chin*, in which the owner of a non-conforming advertising sign removed the sign for a period of 27 months in order "to permit legally mandated building façade inspections and repairs." 305 AD2d at 194; and

WHEREAS, in *149 Fifth Avenue Corp.* the Appellate Division, First Department ruled that because the non-conforming use at issue was disrupted in order to perform "legally mandated, duly permitted and diligently completed repairs, the nonconforming use may not be deemed to have been 'discontinued' within the meaning of [ZR § 52-61]." *149 Fifth Avenue Corp. v Chin*, 305 AD2d at 195; and

WHEREAS, the Appellate Division, First Department reiterated that the two-year period set forth in ZR § 52-61 was appropriately tolled where the discontinuance of the underlying non-conforming use was occasioned by the owner's need "to satisfy a legal mandate." *Id.*; and

WHEREAS, thus, the Board will examine whether the discontinuance of the subject non-conforming use should be tolled pursuant to *149 Fifth Avenue Corp. v Chin*; and *THE OWNER'S ABILITY TO PERFORM STRUCTURAL ALTERATIONS TO A BUILDING SUBSTANTIALLY OCCUPIED BY A NON-CONFORMING USE*

WHEREAS, in order to establish that the Permit was issued in error, the Appellant must demonstrate that (1) structural alterations were made to the Subject Building; (2) that the Subject Building was substantially occupied by the non-conforming eating and drinking establishment (Use Group 6); and (3) that such structural alterations were not made (a) in order to comply with requirements of law, (b) in order to accommodate a conforming use, (c) in order to conform to the applicable district regulations or performance standards, or (d) in the course of enlargement permitted under ZR §§ 52-41 through 52-46; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant raises two issues on appeal: (1) that the non-conforming use of the Premises was discontinued for a period of more than two years in violation of ZR § 52-61 and, therefore, that the Premises can only be used for a conforming use; and (2) that the Owner performed substantial structural alterations to the Subject Building thereby forfeiting the Owner's right to maintain the non-conforming use at the Premises; and

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WHEREAS, the Appellant's position is that the non-conforming eating and drinking establishment at the site was discontinued for a period longer than two years; therefore, per ZR § 52-61, the Owner is not permitted to resume such use; and

WHEREAS, specifically, the Appellant states that it is undisputed that the eating and drinking establishment has not operated since the April 2007 vacate order; and

WHEREAS, the Appellant argues that the period of discontinuance permitted pursuant to ZR § 52-61 cannot be tolled pursuant to *149 Fifth Avenue Corp.* and attempts to distinguish that case from the instant matter on the grounds that (1) the non-conforming use at issue in *149 Fifth Avenue Corp.* was an insignificant nuisance where as the subject non-conforming use is of significant nuisance potential for nuisance; (2) the discontinuation in *149 Fifth Avenue Corp.* was for a period of 27 months whereas the underlying discontinuance was for a period of over seven years; (3) that the granting of the subject appeal does not effect a regulatory taking while the lawful status of the non-conforming use at issue in *149 Fifth Avenue Corp.*, if vitiated, would have effected a taking; and

WHEREAS, the Appellant further argues that the final paragraph of ZR § 52-61, which exempts certain uses in certain buildings from the two-year discontinuance provision but excludes from that exemption buildings in historic districts designated by the LPC, suggests that the tolling doctrine announced in *149 Fifth Avenue Corp.* should not apply to ground floor commercial uses in R5, R6 and R7 districts which are also within historic districts; and

WHEREAS, the Appellant also asserts that the court in *149 Fifth Avenue Corp.* intended its decision to be narrow and to apply only in like circumstances; and

WHEREAS, accordingly, the appellant concludes that DOB's reinstatement of the permit was contrary to the plain text of ZR § 52-61 and inconsistent with *149 Fifth Avenue Corp.*; and

WHEREAS, in addition, the Appellant contends that that the Permit authorizes substantial structural alterations to the Subject Building in violation of ZR § 52-22, which, in relevant part, provides that:

[n]o structural alterations shall be made in a building or other structure substantially occupied by non-conforming use, except when made ... (a) in order to comply with requirements of law...; and

WHEREAS, the Appellant submits that ZR § 52-22 is intended to "phase-out" non-conforming uses and therefore prohibits the performance of structural alterations to buildings except when made to comply with the requirements of law; and

WHEREAS, the Appellant asserts that while the vacating and securing of the Subject Building were mandated by law, the structural alterations to the Subject Building were not; and

WHEREAS, therefore, the Appellant contends that DOB's issuance of the Permit violates ZR §§ 52-22 and 52-61; and

THE DEPARTMENT OF BUILDINGS' POSITION

WHEREAS, DOB states that the reinstatement was proper and conforms to the requirements of ZR § 52-61 as informed by *149 Fifth Avenue Corp.*; and

WHEREAS, DOB cites to *149 Fifth Avenue Corp.*, in which the Court stated:

Where, as here, interruption of a protected nonconforming use is compelled by legally mandated duly permitted and diligently completed repairs, the nonconforming use may not be deemed to have been "discontinued" in the meaning of Zoning Resolution § 52-61; and

WHEREAS, DOB states that by including the language "as here," the Court clearly contemplated applying its limited tolling principle in cases with facts different than those concerning a sign at *149 Fifth Avenue*; and

WHEREAS, DOB disagrees with the Appellant's position that the analysis in *149 Fifth Avenue Corp.* be limited to the specific facts and circumstances of the sign at 149 Fifth Avenue; and

WHEREAS, DOB states that the circumstances and work history at the site meet the criteria set forth by the Court in *149 Fifth Avenue Corp.*, thereby allowing the tolling of the two-year discontinuance provision of ZR § 52-61 and the issuance of the Permit; and

WHEREAS, specifically, DOB states that (1) it "legally mandated" the scope of work performed at the site; and (2) the Owner "diligently completed repairs" as per DOB's directives; and

WHEREAS, as to the legal mandate, DOB states that the work that was required to repair the damage to the Subject Building following the April 2007 partial collapse progressed under its direction and in response to unforeseen conditions at the site including that the zoning lot includes five interrelated Buildings which were constructed in the early 1800s; and

WHEREAS, specifically, DOB states that after the initial filing of the application to remove the south masonry wall and two chimneys from the Subject Building, the Owner was required to file four additional applications and six Post Approval Amendments due to the unique site conditions and interconnected nature of the historic buildings on the lot; and

WHEREAS, DOB notes that among the latent and unforeseeable conditions the Owner encountered at the site was the absence of a foundation, which necessitated the amendment of the plans for the reconstruction; and

WHEREAS, DOB notes that the prior appeal included the submission of engineering reports that further detail the structural complexity and instability of the site, including a broken steam pipe that caused significant soil erosion and interdependent building walls; one engineer opined that buildings were actually leaning upon one another; and

WHEREAS, DOB states that subsequently, in late 2008, the wall adjacent to 88 Bedford Street as well as the entire roof were determined to require replacement, thus requiring further modification and re-sequencing of the Work; and

WHEREAS, DOB states that in 2009, the planned reconstruction had to be further amended to account for a lack

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of foundation at the rear of the Subject Building; and

WHEREAS, further, also in 2009, DOB issued Emergency Declarations for the Subject Building and the as well as for 82-84 Bedford Street, which required the Owner to amend the plans once again while allowing for temporary shoring; and

WHEREAS, DOB states that in August 2009, the work at the Subject Building's second floor had to be halted following a finding of potential instability in the adjoining bearing wall at 58 Barrow Street; and

WHEREAS, DOB states that even with the remedial shoring measures in place, it had to issue a third Emergency Declaration in December 2009 to demolish the bearing wall at 58 Barrow Street, thereby delaying further performance of the Work at the Subject Building; and

WHEREAS, DOB adds that in addition to compliance with the legal mandate imposed by the filings and amendments, the Subject Building was subject to a full or partial Stop Work Order ("SWO") for significant periods of time between the April 2007 collapse and April 2014; and

WHEREAS, according to DOB records, a full SWO was placed on the Subject Building on April 5, 2007 and was not fully lifted until June 30, 2009; and

WHEREAS, subsequent partial SWOs were in effect from July 23 to July 30, 2009, November 16 to December 22, 2009, April 14 to May 10, 2011, and May 10, 2012 to April 24, 2014; and

WHEREAS, DOB concludes that its direction to the Owner to file and obtain approval for amendments to plans to make the Subject Building safe and compliant and the imposition of SWOs for significant periods of time as tantamount to "legal mandates" that justify tolling of the discontinuance provisions akin to the legally mandated façade inspections that were sufficient to toll the discontinuance in *149 Fifth Avenue Corp.*; and

WHEREAS, as to the second finding in *149 Fifth Avenue Corp.*, DOB states that it accepts that the Owner diligently completed repairs as per its directives; and

WHEREAS, DOB notes that the Owner's submissions in the prior BSA appeal as well as its staff engineer's affidavit, describe the extensive, complex and interconnected repairs required at the Subject Building and the adjacent and contiguous Buildings following the 2007 collapse; and

WHEREAS, DOB asserts that it is important to make a distinction between *149 Fifth Avenue Corp.* "diligently" completed and the general concept of "quickly" completed work; and

WHEREAS, DOB finds that the owner satisfies the common definition of diligent which is "characterized by steady, earnest, and energetic effort" in that the Owner repeatedly advised DOB of changing circumstances and conditions in a complex and multi-faceted project and always sought DOB's approval before proceeding with actions required to address the changing circumstances and conditions; and

WHEREAS, DOB also notes that in the prior appeal, the Owner provided substantial evidence that work at the site was

nearly constant; such evidence included copies of contracts between the Owner and various sub-contractors and monthly payment requisitions; and

WHEREAS, DOB states that further evidence of the Owner's diligence in its attempt to legalize the eating and drinking establishment use is that from April 5, 2007 to date DOB issued 19 Environmental Control Board Notices of Violation (ECB), which have all been resolved; and

WHEREAS, additionally, DOB states that it issued 32 ECBs for the other Buildings on the lot, all of which are now resolved; and

WHEREAS, DOB concludes that taking into account the complexity of working on five interconnected historic Buildings, the Owner's ongoing communication with DOB and its success in resolving all outstanding ECBs, the owner has diligently completed repairs as accepted by the Court in *149 Fifth Avenue Corp.*; and

WHEREAS, finally, DOB states that based on the Owner's diligence, the failure to reestablish the eating and drinking establishment within two years should not lead to a termination of the use or the Owner's inability to complete the application as approved; and

THE OWNER'S POSITION

WHEREAS, the Owner, through counsel, submitted testimony reiterating its position that Chumley's discontinuance was tolled under *149 Fifth Avenue Corp.*, because the eating and drinking establishment's active operation was interrupted by legally-mandated repairs that were diligently completed under a valid permit; and

CONCLUSION

WHEREAS, the Board notes that it is uncontested that Owner's use of the Premises was lawful as of December 15, 1961, was not discontinued for a period of two years until April 2007 and remains discontinued at this time; and

WHEREAS, the Board finds that the two-year period of discontinuance set forth in ZR § 52-61 is properly tolled pursuant to *149 Fifth Avenue Corp.*, because the non-conforming use at issue was interrupted by legally-mandated repairs that were diligently completed under a valid permit; and, in addition, the Board finds that nothing in the record demonstrates that the Owner was precluded from performing structural alterations at the site; and

WHEREAS, as to the evidence of the legal mandate, the Board credits the affidavit of Timothy Lynch, sworn to on December 1, 2014, in which Mr. Lynch, the Assistant Commissioner for Investigative Engineering Services with the New York City Department of Buildings, avers that he: (1) directed Owner's representatives to install emergency and secondary shoring at the Subject Building; (2) directed Owner's representatives to complete hand demolition of the masonry wall and chimneys at both the Subject Building and the adjacent 82-84 Bedford; and (3) worked with Owner's representatives to fashion a sequence of construction [of the Buildings]; and

WHEREAS, as to evidence of the diligent completion of the Work, the Board notes that, in response to latent conditions related to the age of the Buildings, DOB issued

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three separate Emergency Declarations which dictated the sequencing of the Work; and

WHEREAS, the Board also notes that the Subject Building was subject to a series of full and partial Stop Work Orders issued by DOB during the period commencing on April 5, 2007 and ending in April of 2014 when the Permit was reissued; and

WHEREAS, the Board finds that “diligent” completion of the work need not be expedient where, as here, the Owner has undertaken steady, earnest and energetic efforts to perform the Work; and

WHEREAS, the Board agrees with DOB that the Owner’s evidence of diligence, including the contracts and monthly payment requisitions, demonstrates that work at the site was nearly constant; and

WHEREAS, the Board credits DOB’s determination that, taking into account the complexity of the Buildings and Work, Owner’s ongoing communication with DOB and adherence to DOB and LPC directives and instructions and Owner’s resolution of all related outstanding ECB violations, that the Owner of the Subject Building has diligently completed repairs in an effort to re-establish its non-conforming use of the Premises as contemplated by the Appellate Division, First Department, in *149 Fifth Avenue Corp.*; and

WHEREAS, as to the final element of the *149 Fifth Avenue Corp.* tolling doctrine—that the work have been performed pursuant to a validly-issued permit—there is no dispute regarding the validity of the building permits issued by DOB throughout the course of the Work undertaken in order to resume the non-conforming use, except insofar as the Appellant asserts that the Permit violates ZR §§ 52-22 and 52-61; thus, the Board finds that legally-mandated, diligently performed repairs were performed pursuant to a valid permit; and

WHEREAS, the Board finds Appellant’s argument that the tolling doctrine of *149 Fifth Avenue Corp.* should not apply to ground floor commercial uses in R5, R6 and R7 districts which are also within historic districts unavailing, and notes that neither the language relief upon by Appellant nor the undisputed fact that the Subject Building is located within an historic district impact the analysis proscribed in *149 Fifth Avenue Corp.*; and

WHEREAS, as to the Appellant’s arguments that *149 Fifth Avenue Corp.* is distinguishable from the matter on appeal, the Board finds no merit in Appellant’s argument that *149 Fifth Avenue Corp.* is applicable only in instances where the non-conforming use at issue is not of “significant nuisance potential,” nor does the Board find merit in Appellant’s contention, which is made in contravention of the Zoning Resolution, that advertising signs do not constitute a significant nuisance; and

WHEREAS, as to the Appellant’s arguments that *149 Fifth Avenue Corp.* is distinguishable from the matter on appeal because the non-conforming use at issue in that case was discontinued for 27 months while the non-conforming use at issue herein was discontinued for many years, the Board

finds that, while an important factor in determining whether repair work was diligently completed, the period of discontinuance beyond that which is permitted in ZR § 52-61 is not dispositive; and

WHEREAS, the Board notes that the extensive and complicated repairs required to renovate the Subject Building, which are unique to two-hundred year old interrelated structures with extensive latent defective conditions, mitigate against strict adherence to the two-year period of permitted discontinuance where, as here, the Work was diligently completed; and

WHEREAS, as to the Appellant’s arguments that *149 Fifth Avenue Corp.* is distinguishable from the matter on appeal because the Appellate Division, First Department, noted that a result contrary to its holding may raise a question about whether the Zoning Resolution authorized an unconstitutional taking, the Board finds that the Court’s musing was mere *dicta* and was not relevant to the tolling doctrine announced therein; and

WHEREAS, in conclusion, the Board finds that DOB has sufficiently demonstrated that the Owner of the Subject Building would have re-established the non-conforming use of the Premises within the allowable time but for its performance of legally-mandated and diligently completed repairs which were performed in response to latent and undiscoverable conditions of the interrelated, 200-year old Buildings and which necessitated a re-sequencing of the Work so that the completion of the repairs necessary to reestablish the non-conforming use of the Premises were necessarily subordinate to the completion of repairs at the adjacent Buildings; and

WHEREAS, as to the Appellant’s argument that ZR § 52-22 precludes the performance of the Work at the Building, the Board finds (1) that Appellant appears to have abandoned this argument and (2) that, in any event, failed to establish that the Building was “substantially occupied” by the non-conforming use at issue; therefore, the Board declines to examine whether, for the purposes of ZR § 52-22, the Work was performed “to comply with the requirements of law”; and

Therefore it is Resolved, that this appeal challenging the April 29, 2014 Final Determination is hereby *denied*.

Adopted by the Board of Standards and Appeals, February 24, 2015.

192-14-A thru 198-14-A

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

SUBJECT – Application August 15, 2014 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-2(SRD) zoning district.

PREMISES AFFECTED –

- 10 Winslow Place, Block 6373, Lot 40
- 12 Winslow Place, Block 6373, Lot 42
- 18 Winslow Place, Block 6373, Lot 43
- 20 Winslow Place, Block 6373, Lot 45
- 26 Winslow Place, Block 6373, Lot 145

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30 Winslow Place, Block 6373, Lot 146

32 Winslow Place, Block 6373, Lot 147

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated July 15, 2014, acting on Department of Buildings Application Nos. 520200345, 520200354, 520200363, 520200372, 520200381, 520200390, and 520200407 read, in pertinent part:

The street giving access to the proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of [the] General City Law
- B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to Section 502.1 of the 2008 NYC Building Code; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, with continued hearings on January 5, 2015 and February 10, 2015, and then to decision on February 24, 2015; and

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

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the subject consists of seven proposed zoning lots located west of Winslow Place, southwest of the intersection of Winslow Place and Amboy Road, within an R3-2 zoning district within the Special South Richmond Development District, in Staten Island; and

WHEREAS, the applicant states that the site does not front a mapped street, but that the seven proposed dwellings will front on Winslow Place, a two-way private road running from the south side of Amboy Road, a final mapped street, to the southern border of the proposed Lot 147; and

WHEREAS, Winslow Place is currently open, and will be paved to a width of 34'-6" with a sidewalk/landscaped area on the west side of street; and

WHEREAS, the applicant represents that each of the tentative lots will be subdivided from existing lots 38 and 145 of block 6373, and that each lot shall exceed the minimum required lot area (1700 sq. ft.) and minimum required width (18 ft.) for a zoning lot in an R3-2(SRD) zoning district for a single-family semi-detached house in that each of the tentative lots shall have a width of between 26.33 ft. and 30.93 ft., and

shall have a depth of 130.72 ft., for a total lot area ranging from 3,441.86 sq. ft. to 3,513.1 sq. ft.; and

WHEREAS, by letter dated December 15, 2014, the FDNY advised the Board that the following conditions must be met: (1) the minimum curb to curb width of Winslow Place must be 34 ft.; (2) all of the proposed buildings must be fully sprinklered; and (3) a fire hydrant must be installed at the head of the dead end of Winslow Place; and

WHEREAS, on December 30, 2014, the applicant submitted a revised site plan showing the inclusion of a proposed hydrant near the dead end of Winslow Place; and

WHEREAS, by letter dated December 31, 2014, the FDNY advised the Board that Winslow Place does not meet minimum curb to curb street width requirements of 34 ft.; and

WHEREAS, by letter dated January 27, 2015, the applicant advised the Board that because Winslow Place, which is a record street and, therefore, a "public street," of substandard width, the proposed buildings must, pursuant to the 2008 Fire Code, be protected throughout by sprinkler system; and

WHEREAS, by letter dated January 27, 2015, the applicant further advised the Board that the site plan was revised to include the sprinklering requirement; and

WHEREAS, by letter dated January 27, 2015, the applicant further advised the Board that the minimum curb to curb width applicable to Fire Apparatus Access Roads do not pertain to Winslow Place, because Winslow Place is a public street and, as such, the paved width of Winslow Place is compliant with Fire Code provisions; and

WHEREAS, by letter dated February 11, 2015, the FDNY advised the Board that, based on the Applicant's submissions and the Board's February 10, 2015 hearing, it had no further objections to the Application; and

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

Therefore it is Resolved, that the decisions of the Staten Island Borough Commissioner, dated July 15, 2014, acting on Department of Buildings Application Nos. 520200345; 520200354; 520200363; 520200372; 520200381; 520200390; 520200407 are modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawings filed with the application marked "December 31, 2014" (1) sheet; and *on further condition*

THAT the proposal will comply with all applicable zoning district requirements and all other applicable laws, rules, and regulations;

THAT all required approvals from the Department of City Planning will be obtained prior to the issuance of building permits;

THAT the proposed buildings shall be fully sprinklered in accordance with BSA-approved plans;

THAT a fire hydrant shall be installed at the head of the dead end of Winslow Place;

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THAT any conditions requested by the Fire Department shall be implemented before the Temporary Certificate of Occupancy and Certificate of Occupancy are issued;

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

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

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

Adopted by the Board of Standards and Appeals on February 24, 2015.

166-12-A

APPLICANT – NYC Department of Buildings.
OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to March 31, 2015, at 10 A.M., for adjourned hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to March 31, 2015, at 10 A.M., for adjourned hearing.

11-14-A thru 14-14-A

APPLICANT – Sheldon Lobel, P.C., for Trimountain LLC, owner.

SUBJECT – Application January 22, 2014 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3-2 zoning district.

PREMISES AFFECTED – 47-04, 47-06, 47-08 198th Street, south side of 47th Avenue between 197th Street and 198th Street, Block 5617, Lot 34, 35, 36, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 19, 2015, at 10 A.M., for continued hearing.

128-14-A

APPLICANT – Bryan Cave LLP, for Alicat Family LLC & AEEE Family LLC, owner.

SUBJECT – Application June 6, 2014 – Appeal challenging DOB determination that the proposed off-street loading berth is not accessory to a medical office. C2-5/R7A zoning district.

PREMISES AFFECTED – 47 East 3rd Street, East 3rd Street between First and Second Avenues, Block 445, Lot 62, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to April 28, 2015, at 10 A.M., for continued hearing.

180-14-A

APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for EXG 332 W 44 LLC c/o Edison Properties, owner.

SUBJECT – Application August 1, 2014 – Appeal challenging the Department of Building's determination that the subject façade treatment located on the north wall is an impermissible accessory sign as defined under the ZR Section 12-10. C6-2SCD zoning district.

PREMISES AFFECTED – 332 West 44th Street, south side West 44th Street, 378 west of the corner formed by the intersection of West 44th Street and 8th Avenue and 250' east of the intersection of West 44th Street and 8th Avenue, Block 1034, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to March 3, 2015, at 10 A.M., for adjourned hearing.

ZONING CALENDAR

327-13-BZ

CEQR #14-BSA-089K

APPLICANT – Goldman Harris LLC, for JCWH Coney Island LLC, owner.

SUBJECT – Application December 23, 2014 – Special Permit (§73-44) to reduce the required number of accessory parking spaces from 346 to 272 spaces for a mixed use building containing UG4 health care and UG 6 office uses. C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, aka 1498, 1526, 1528, 1532-1538 Coney Island Avenue, property occupies the northwest corner of Coney Island

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Avenue and Avenue L. Block 6536, Lot(s) 28, 30, 34, 40, 41, 42, 43, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 26, 2013, acting on DOB Application No. 301820698, reads, in pertinent part:

The number of accessory parking spaces provided for ambulatory diagnostic or treatment facilities listed in Use Group 4 and uses in parking requirement category B1 do not comply with ZR 36-21; and

WHEREAS, this is an application under ZR §§ 73-03 and 73-44 to permit, on a site partially within a C8-2 zoning district and partially within an R5 (C2-3) zoning district, within the Special Ocean Parkway District, a reduction in the required number of accessory parking spaces for an eight-story mixed commercial and community facility building occupied by a department store (Use Group 10A), retail stores (Use Groups 6A and 6C), offices (Use Group 6B), an ambulatory diagnostic or treatment health care facility (Use Group 4A), and a philanthropic or non-profit institution without sleeping accommodations (Use Group 4A), contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in the *City Record*, with continued hearings on September 9, 2014, October 21, 2014, December 9, 2014 and January 30, 2015, and then to decision on February 24, 2015; and

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

WHEREAS, Community Board 12, Brooklyn, recommends disapproval of this application, citing concerns about traffic along Coney Island Avenue and parking; and

WHEREAS, Councilperson David Greenfield submitted testimony in opposition to the application, citing concerns about traffic and parking; and

WHEREAS, certain members of the surrounding community provided testimony in opposition to the application, citing concerns about traffic, parking, and the height of the proposed building; and

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

WHEREAS, the subject site is rectangular lot located on the northwest corner of the intersection of Coney Island Avenue and Avenue L, partially within a C8-2 zoning district and partially within an R5 (C2-3) zoning district, within the Special Ocean Parkway District; and

WHEREAS, the site has 340 feet of frontage along Coney Island Avenue, 100 feet of frontage along Avenue L, and 34,000 sq. ft. of lot area; and

WHEREAS, Tax Lots 28, 30, 34, 40, 41, 42, 43, and 45 comprise the site; Lot 28 is located within the R5 (C2-3) portion of the site; all other lots are within the C8-2 portion of the site; and

WHEREAS, the applicant states that there are no buildings on the site; however, foundation work for an as-of-right building has been commenced; and

WHEREAS, the applicant proposes to construct an eight-story mixed commercial and community facility building with 145,983 sq. ft. of floor area (4.78 FAR in the C8-2 district; 0.68 in the R5 (C2-3) district) to be occupied by a Use Group 10A department store (37,173 sq. ft. of floor area), Use Group 6A retail stores (20,514 sq. ft. of floor area), Use Group 6B offices (3,413 sq. ft. of floor area), a Use Group 4A ambulatory diagnostic or treatment health care facility (56,569 sq. ft. of floor area), and a Use Group 4A philanthropic or non-profit institution without sleeping accommodations (28,314 sq. ft. of floor area); and

WHEREAS, the applicant proposes to provide the required number of accessory parking spaces for the department store, the retail store(s), and the philanthropic or non-profit institution without sleeping accommodations; however, pursuant to ZR § 73-44, the applicant seeks a reduction in the required number of parking spaces for the offices and the ambulatory diagnostic or treatment health care facility, as set forth below; and

WHEREAS, the applicant states that, pursuant to ZR § 36-21, 346 parking spaces are required for all uses at the site (142 for ambulatory diagnostic or treatment health care facility, nine for the offices, 124 for the department store, 60 for the retail store(s), and 11 for the philanthropic or non-profit institution without sleeping accommodations); and

WHEREAS, the applicant calculates the ambulatory diagnostic or treatment health care facility office parking requirement as follows: pursuant to ZR § 36-21, within both the C8-2 district and the R5 (C2-3) district, the subject Use Group 4 ambulatory diagnostic or treatment health care requires one accessory parking space for every 400 sq. ft. of floor area; thus, the proposed Use Group 6 office floor area at the site generates 142 required accessory parking spaces; however, the applicant seeks to provide 72 parking spaces, resulting in a deficit of 70 parking spaces; and

WHEREAS, the applicant calculates the office parking requirement as follows: pursuant to ZR § 32-15, within both the C8-2 district and the R5 (C2-3) district, the subject Use Group 6 office is in parking requirement category B1, and, per ZR § 36-21, uses within parking requirement category B1 require one accessory parking space for every 400 sq. ft. of floor area; thus, the proposed Use Group 6B office floor area at the site generates nine required accessory parking spaces; however, the applicant seeks to provide five parking spaces, resulting in a deficit of four parking spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board may grant a special permit allowing a reduction in the required

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number of accessory off-street parking spaces for the Use Group 6 office use in parking category B1 and for the Use Group 4A ambulatory diagnostic or treatment health care facility; in the subject zoning districts (C8-2 and R5 (C2-3)), the Board may reduce the required parking for such uses from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 73-44, the Board must, prior to granting the waiver, determine that the use proposed in the B1 parking category and the Use Group 4 use are contemplated in good faith; and

WHEREAS, to satisfy the good-faith requirement, the applicant submitted letters from real estate brokers acting as leasing agents, which indicate that substantial interest has been expressed by prospective tenants; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, in addition, the special permit under ZR § 73-44 requires and the applicant represents that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, at hearing, the Board directed the applicant to demonstrate that the application satisfies 73-03(a); specifically, the Board requested additional information on how the proposed reduction in parking will impact the surrounding community in terms of parking and traffic; the Board also directed the applicant to provide additional information regarding the operations and peak parking demand of the Pomegranate grocery store, which is located across the street from the site and which, based on the record, has inadequate onsite parking and is a major source of traffic in the area; finally, the Board inquired as to what measures the application will take to ensure that the garage will be available for all patrons of the uses within the building; and

WHEREAS, in response, the applicant submitted a parking demand and utilization study, which reflects that the proposed reduction will not have significant negative impacts on the surrounding community; the study concludes that proposed parking garage capacity will be sufficient to accommodate the parking demand created by the uses at all times, and that, as such, traffic will not be increased as a result of patrons circulating the neighborhood in search of parking; and

WHEREAS, in addition, the applicant clarified the number of reservoir spaces within the garage, eliminated on-street queuing, and provided additional information regarding the proposed automated parking system, including how it will manage parking demand and ensure that enough spaces will be available to accessory parkers; and

WHEREAS, the applicant also provided the requested information regarding Pomegranate; and

WHEREAS, lastly, the applicant agreed to: (1) install signage at the garage exit prohibiting left turns; and (2) request that DOT explore additional traffic mitigation measures, including but not limited to changes in signal timing and additional signage; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit uses is outweighed by the advantages to be derived by the community; the Board notes that it reviewed numerous iterations of the parking and traffic study and that even under the most conservative set of criteria, there will be adequate parking for all uses at the site; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-089K, dated December 23, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Unlisted action prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-03 and 73-44 to permit, on a site partially within a C8-2 zoning district and partially within an R5 (C2-3) zoning district, within the Special Ocean Parkway District, a reduction in the required number of accessory parking spaces for an eight-story mixed commercial and community facility building occupied by a department store (Use Group 10A), retail stores (Use Groups 6A and 6C), offices (Use Group 6B), an ambulatory diagnostic or treatment health care facility (Use Group 4A), and a philanthropic or non-profit institution without sleeping accommodations (Use Group 4A), contrary to ZR § 36-21; on condition that all work shall substantially conform to drawings as they apply to the objections above

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noted filed with this application marked "Received March 19, 2014"- (19) sheets and "April 11, 2014"-(1) sheet, and on further condition:

THAT a minimum of 272 parking spaces shall be provided at the site;

THAT a "No Left Turn" sign shall be installed at the exit of the garage prior to the issuance of the temporary certificate of occupancy and shall be maintained at all times;

THAT there shall be no change in the uses at the site without prior review and approval by the Board;

THAT a certificate of occupancy shall not be issued if either of the uses for which parking has been reduced has been changed to a use listed in parking category B, unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT the applicant shall request that DOT consider additional traffic mitigation measures;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by February 24, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, February 24, 2015.

117-14-BZ CEQR #14-BSA-161M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Trinity Episcopal School Corporation, owner; Trinity Housing Comp. Inc., lessee.

SUBJECT – Application June 3, 2014 – Variance (§72-21) to permit the enlargement of a school (*Trinity School*), including construction of a 2-story building addition with rooftop turf field, contrary to required rear yard equivalents, lot coverage, height and setback, and minimum distances between buildings. Split zoning lot within R7-2 and C1-9 zoning districts.

PREMISES AFFECTED – 101 W 91st Street, 121 & 139 W 91st St and 114-124 W 92nd St, bounded by West 91st and 92nd street and Amsterdam and Columbus Avenues, Block 1222, Lot(s) 17, 29, 40, 9029, Borough of Manhattan.

COMMUNITY BOARD # 7M

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 12, 2014, acting on Department of Buildings Application No. 121185225, reads in pertinent part:

1. ZR 24-11 – Proposed enlargement exceeds the maximum lot coverage; contrary to ZR 24-11;
2. ZR 24-382(a) – Proposed enlargement over an existing one-story building within the R7-2 portion of the zoning lot is contrary to the 23 foot one-story permitted in the required rear yard equivalent; contrary to ZR 24-382(a);
3. ZR 24-522 – Proposed height for the enlargement exceeds the maximum permitted height within the initial setback distance; contrary to ZR 24-522;
4. ZR 23-711 – Proposed enlargement is contrary to the required distance of 50 feet between wall of the proposed enlargement and existing legally required windows; contrary to ZR 23-711; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of existing school buildings (Use Group 3), which do not comply with zoning regulations for lot coverage, rear yard equivalent, encroachment into the required initial setback distance, and minimum distance between wall and a legally-required window, contrary to ZR §§ 24-11, 24-382, 24-522, and 23-711; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in the *City Record*, with continued hearings on December 9, 2014 and January 13, 2015, and then to decision on February 24, 2015; and

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

WHEREAS, Community Board 7, Manhattan, recommended disapproval of the original version of the application based on the following concerns: (1) that the proposed building would block off the entire west side of the loggia of the Trinity House (adjacent residential tower on the same zoning lot as the Trinity School); (2) that the proposal would result in the construction of air ventilation structures within the loggia; and (3) that the sunshade above the athletic field is unnecessary and inappropriate and will have a negative visual impact on the residents of the Trinity House and other nearby buildings; and

WHEREAS, Community Board 7 noted that it would recommend approval of the application if it were amended to:

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(1) eliminate approximately 30 feet at the third floor level so as to avoid blocking the loggia; (2) relocate or substantially reduce the size of the air ventilation structures within the loggia; and (3) eliminate the sunshade; and

WHEREAS, Manhattan Borough President Gale Brewer, Congressman Jerrold Nadler, Councilperson Helen Rosenthal, and Assemblyman Daniel O'Donnell submitted testimony noting their interest in the application; and

WHEREAS, certain members of the community, including some members represented by counsel and several tenants of the Trinity House, testified at the hearing and provided testimony in opposition to the application (collectively, the "Opposition"), citing the following primary concerns: (1) the impact of the proposal on the fourth story "loggia" of the Trinity House (an open area at the fourth story that provides recreational space for the Trinity House tenants); (2) the negative visual impacts of the sunshade, its potential to create a hazardous buildup of snow and ice, and its potential to diminish the light and ventilation of the Trinity House tenants and other nearby properties; (3) the impact of noise due to the elevation of the School's athletic field; (4) the decrease in parking spaces in the Trinity House garage, which the Opposition states is a critical revenue source that keeps the Trinity House rental units affordable; (4) the inconsistency of the proposal with the City Planning special permit that authorized the construction of the Trinity House and the Trinity Housing Company's obligations under the Mitchell-Lama program; (5) the non-compliance of the proposed garage with the Article I, Chapter 3 of the Zoning Resolution; (6) the noise and traffic caused by the operation of the garage and the movement (or idling) of large delivery vehicles and school buses around the site; and (7) the persistence of refuse and its attendant nuisances (odor, rodents, etc.) on the public sidewalks along West 92nd Street; and

WHEREAS, during the hearing process, the Opposition requested a number of modifications to the proposal, including: (1) a 30-foot open area between the Trinity House loggia and the enlarged portion of the school; (2) the removal of the sunshade; (3) the reduction of the height of the athletic field netting and structural supports to 24 feet; (4) an increase in the size of the netting openings from two-inch to four-inch; (5) a 20-foot setback of the netting/supports from the West 92nd Street façade; (6) a 50-foot open area between the netting/supports and the Trinity House; (7) the establishment of limited hours of operation for the use of the field; (8) a prohibition on non-emergency lighting of the field; (9) an analysis that demonstrates that 106 parking spaces will fit into the proposed garage; (10) a plan for traffic mitigation and management; and (11) a refuse disposal plan; and

WHEREAS, this application is brought on behalf of Trinity Episcopal School Corporation (the "School"), a non-profit educational institution founded in 1709; it is the oldest continuously-operating independent school in New York City and it serves students from grades kindergarten through 12; and

WHEREAS, the subject site comprises four tax lots (Lots 17, 29, 40, and 9029), which occupy the eastern half of

the block bounded by Amsterdam Avenue, West 91st Street, Columbus Avenue, and West 92nd Street; and

WHEREAS, the site is located partially within a C1-9 zoning district and partially within an R7-2 zoning district, with the C1-9 portion mapped along Columbus Avenue to a depth of 100 feet; the easternmost portion of the site—from Columbus Avenue to a depth of 150 feet—is also subject to a Large Scale Residential Development Plan and City Planning Commission (CPC") special permit, which was adopted in 1964 (CP-18505); and

WHEREAS, the site has 400 feet of frontage along West 91st Street, approximately 201 feet of frontage along Columbus Avenue, 400 feet of frontage along West 92nd Street, and 80,567 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by: (1) the four-story building located at 121 West 91st Street (the "Annex Building"), which the New York City Landmarks Preservation Commission ("LPC") has designated as a New York City landmark; (2) the three-story building located at 115 West 91st Street (the "Moses Building"); (3) the three-story-portion (the "Hawley Wing") of the 29-story apartment building located at 101 West 91st Street ("Trinity House"), which was developed pursuant to the above-referenced CPC special permit; and (4) the one-story building located at 132 West 92nd Street, which contains the School Cafeteria (the "Cafeteria"), the Trinity House Parking Garage (the "Garage"), and (atop the building) the School Athletic Field (the "Turf"); and

WHEREAS, the applicant notes that Trinity House was constructed in 1969 in connection with the West Side Urban Renewal Plan and is owned by the Trinity Housing Company ("THC"), a corporation organized under the New York State Mitchell-Lama program; as such, THC is subject to the oversight of the New York City Department of Housing Preservation and Development ("HPD"); and

WHEREAS, the applicant also notes that, in addition to the site, the School's campus includes Lots 11, 12, and 110, which are located directly west of the site along West 91st Street and are occupied by the Lower School building (an individual New York City landmark located on Lot 12) and administrative buildings (located on Lots 11 and 110); the applicant states that these buildings are on a separate zoning lot and are not part of the subject application, except insofar as there will be connections between the Lower School building and the buildings on the site, as set forth below; and

WHEREAS, the School proposes additions and major renovations to the campus to accommodate its programmatic needs (the "Proposed Development"); the three major components of the Proposed Redevelopment are: (1) the construction of two stories atop the existing Garage and Cafeteria (the "92nd Street Addition"); (2) the elevation and reduction in size of the Turf above the 92nd Street Addition and the construction of an arcing fence enclosure with an apex height of 81'-1" and a street wall height of 60'-0"; and (3) the construction of a three-story connector building between the Annex Building, the Lower School, and the 92nd Street Addition (the "Annex Link"); in addition, the Proposed

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Development includes the construction and relocation of vents and bulkheads for mechanical equipment and stairs along the eastern edge of the 92nd Street Addition, west of the Trinity House loggia; and

WHEREAS, as to the 92nd Street Addition, the applicant states that it will result in a three-story building; the first story of the 92nd Street Addition will continue to be used as the Cafeteria and the Garage; structural modifications to the existing spaces will be required to accommodate the loads of the new structure above, and a portion of the garage will be developed into new utility and mechanical rooms; and

WHEREAS, the applicant represents that although the area of the Garage will be reduced as a result of the project, there will be no change in the number of spaces permitted in the Garage since the Garage will be operated with attendants; the applicant states that the Garage has a licensed capacity of 106 spaces, that 106 spaces are shown on its certificate of occupancy, and that while the CPC special permit indicated that the zoning required only 92 accessory parking spaces for the Trinity House building, 106 spaces were provided; and

WHEREAS, the applicant states that the second story of the 92nd Street Addition will be provide performing arts spaces, including a new band room, an orchestra room, two Lower School music rooms, a chorus room, large and small practice rooms, a production studio, instrument storage, and the office of the performing arts faculty; and

WHEREAS, the applicant contends that the large floorplates of the 92nd Street Addition will allow these various performing arts spaces to be located on the same floor, side-by-side; in addition, a large multipurpose room, to be used for dance, wrestling, and other student activities best-suited to a large, unprogrammed space, will be located in the center of the floor, and the remainder of the second story will be occupied by the Upper School student lounge and study center, which will be located adjacent to the Upper School Dean's Office and other Upper School faculty offices; and

WHEREAS, the applicant states that the third story of the 92nd Street Addition will include biology, chemistry, and physics labs; in addition, there will be space for 13 new Upper School classrooms, which will be used for math, history, and English instruction for the Upper School; the applicant notes that locating these academic spaces on one floor level will allow for more time in classrooms by minimizing travel distances, will foster collaboration and exchanges among students and faculty, and will allow the efficient sharing of classroom materials; the applicant also notes that the new third story will align horizontally with the existing third story of the Hawley Wing, which holds the existing Upper School library, art rooms, and seminar rooms; and

WHEREAS, the applicant states that the new classrooms, on average, will be approximately 524 sq. ft. in size to accommodate 20 students (26 sq. ft. per student), which aligns with the New York City School Construction Authority's guidelines of approximately 730 sq. ft. for 30 students (24 sq. ft. per student); these classrooms will be designed to be flexible, to support various teaching and learning configurations; chemistry and physics labs will

average approximately 940 sq. ft. (including prep labs) to accommodate up to 16-20 students each, which allows approximately 55 sq. ft. per student; and

WHEREAS, as to the Turf Enclosure, the applicant states that it will be reduced in size from 31,500 sq. ft. (250 feet by 126 feet) to approximately 21,000 sq. ft. (196 feet by 107 feet); the Turf will continue to serve the physical education requirements of the School and its athletic teams; and

WHEREAS, the applicant states that the Turf will be enclosed with a fence on the sides and netting above it, as required by Building Code Section 1509.8.1, for ballplay areas located on the roof of a building; (the applicant notes that this Building Code requirement was instituted in 2008, so this type of enclosure is not required for the current Turf, which is enclosed with a standard 10-foot-high chain link fence); the netting over the Turf will require a steel lattice frame for support, with structural members of approximately six inches in diameter; the fence and netting will consist of one-mm diameter wire, which, the applicant represents is 88.4 percent transparent; and

WHEREAS, the applicant represents that the size of the structural supports is determined by the snow and ice load requirements for the netting and that the proposed supports are sufficient to carry the anticipated loads; the applicant states that the fence enclosure has been designed to preserve light and air to the residential apartments of Trinity House, in that the fence and netting will be located 30 feet away from the apartments and the structural supporting elements of the fence enclosure will be located 50 feet away from the apartments; and

WHEREAS, as to the Annex Link, the applicant states that it will provide new stair connections, aligned to serve all floor levels in both buildings, and horizontal connections between buildings; the Annex Link will also, by its connections to the 92nd Street Addition, allow elevators in the new building to serve the Lower School building, which currently has no elevator access to its upper floors at all levels; thus, the applicant asserts that the Annex Link thereby facilitates connections to all buildings on the campus; and

WHEREAS, the applicant notes that the south façade of the Annex Link will be set back from the adjacent building facades by 3'-9", and will be enclosed by highly transparent glass to maximize visibility of the side facades of the existing landmark buildings; and

WHEREAS, as to the vents, bulkheads, and mechanical equipment adjacent to the Trinity House loggia, the applicant states that the bulkheads have been minimized in size and arrangement, with stair bulkheads placed north and south of Trinity House, so as not to block the residential windows; in addition, design refinements have allowed those stair bulkheads to be lowered to provide the minimum required interior clearance, and, to the extent permitted by the Building Code, fenestration has been provided in the bulkheads to lighten their apparent mass; and

WHEREAS, the applicant notes that the Proposed Development was also modified to relocate the air intake

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vents from the Trinity House fourth floor loggia; these intake ducts already exist within the Hawley Wing, extending from the basement mechanical plant, up through the Upper School library, with air intake openings pointed westward, over the Turf and the School's original design solution was to elevate the ducts by one floor, into the Trinity House loggia (which is located directly above the Upper School library), with new, west-facing intake openings one story higher; however, in response to concerns raised by the Board and by Opposition, the vents were relocated and a mechanical well was created within the 92nd Street Addition just below the height of the existing parapet of the Trinity House loggia, which will create a 20-foot open area opposite the Trinity House loggia; this modification allows the western opening of the loggia to remain open from the height of the loggia parapet to the ceiling; and

WHEREAS, further, the applicant states that the wall of the mechanical well that is opposite the loggia will be clad in brick, and planters will be installed in the 20-foot space adjacent to the loggia, creating an attractive garden amenity for the Trinity House residents, which, upon the approval of the Department of Buildings, will be made available to Trinity House tenants for outdoor, passive recreation; and

WHEREAS, the applicant states that the Proposed Development is confined to the R7-2 portion of the site and will result in an increase in floor area from 172,561 sq. ft. (2.86 FAR) to 229,689 sq. ft. (3.80 FAR), which is well below the maximum permitted (392,763 sq. ft. (6.5 FAR)); in addition, the Proposed Development will increase the height of the Annex Link from 16'-8" to 52'-6" and increase the height of the 92nd Street Addition from 17'-0" to 47'-2"; and

WHEREAS, the applicant also represents that the Proposed Development will not be located within the portion of the site subject to the CPC special permit, and therefore does not require the approval of CPC; and

WHEREAS, the applicant states that the Proposed Development does not comply with the bulk regulations in the R7-2 portion of the site for: (1) rear yard equivalent (no rear yard equivalent is proposed; a rear yard equivalent with a minimum depth of 60 feet is required for a through lot with a depth of at least 110 feet, per ZR § 24-382); (2) lot coverage (88 percent lot coverage is proposed; lot coverage is limited to 65 percent on a through lot, per ZR § 24-11); (3) initial setback distance (no initial setback distance is proposed for the netting structure, however, the netting will be set back 3'-0" from the street line; for portions of a building fronting on a narrow street, there is a maximum front wall height of 60 feet or six stories, whichever is less, a required initial setback distance of 20 feet, and a sky exposure plane of 2.7 to 1, per ZR § 24-5220); and (4) minimum distance between a wall and a legally-required window (a distance of 30 feet is proposed between the netting and a legally-required window; where there is more than one building on a zoning lot, the minimum distance between a residential window providing legal light and air and a wall of any other building is 50 feet, for buildings with an average height of greater than 50 feet, per ZR § 23-711); the applicant also notes that the proposed

distance from the netting structure and the legally required window is 50'-0"; and

WHEREAS, because the Proposed Development does not comply with the applicable bulk regulations in the R7-2 portion of the site, the applicant seeks the requested variance pursuant to ZR § 72-21; and

WHEREAS, the applicant contends that, per ZR § 72-21(a), the history of development of the site is a unique physical condition, which, when coupled with the School's programmatic needs, creates practical difficulties and unnecessary hardships in developing the site in compliance with the zoning regulations; and

WHEREAS, the applicant identifies the existence of two landmarked buildings (the Lower School and the Annex Building) and unique physical relationship of the Hawley Wing and the Trinity House as practical impediments to as-of-right development of the School's campus; and

WHEREAS, the applicant states that the Lower School, which is not on the site but will connect to the buildings on the site, and the Annex Building were constructed in the 1890s and cannot structurally support new construction; further, even if structural modifications were feasible, the applicant contends that it is unlikely that LPC would find enlargements that would satisfy the School's programmatic—full-floorplates with shear walls—to be appropriate additions to the historic buildings; and

WHEREAS, the applicant asserts that, similarly, the Hawley Wing is uniquely constrained in its ability to expand due to its having been constructed physically beneath the 29-story Trinity House in 1969; and

WHEREAS, the applicant states that an enlarged Hawley Wing would have to setback a minimum of 50 feet from the Trinity House, which would result in a slender, eight-story building that would have inefficient floorplates (a high vertical circulation-to-program space ratio) and lack the adjacencies of the Proposed Development; the applicant also notes that expansion of the Hawley Wing would not be as-of-right but would, due to the Large Scale Residential Development plan and special permit, be subject to the approval of CPC; and

WHEREAS, the applicant also asserts that the School requires the requested waivers to construct a facility that meets the School's programmatic needs; and

WHEREAS, the applicant states that the primary programmatic needs of the Proposed Development are: (1) to improve existing facilities and programs (the School represents that no growth in student enrollment is planned in connection with the renovations); (2) to create functional adjacencies and relocate certain program space; (3) to preserve the Turf; and (4) to improve internal circulation; and

WHEREAS, the applicant states that the Proposed Development seeks to address the following current space deficiencies of the School: (1) the School cannot add any curricular offerings to the Upper School program of study because it does not have available classrooms in which to schedule additional classes; Upper School general classrooms are scheduled 96 percent of the day in the academic year

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2013-2014; the standard rule of thumb for school scheduling is that an 85 percent utilization rate provides the necessary flexibility for an effectively functioning high school schedule; (2) in response to the growing importance of science and technology in education, the School needs to expand the number and size of its laboratories and laboratory prep rooms; the five existing Upper School science labs, which are scheduled 100 percent of the day, are insufficient to fulfill the School's curricular goals, since the School is unable to provide juniors and seniors with the opportunity to enroll in more than one science class each year; the School has determined that it needs at least seven labs to allow students to take introductory as well as advanced courses in biology, chemistry, and physics during their four years of high school; (3) Class sizes in Fifth and Sixth grades are 33 percent larger than in any other grade level, and the student-teacher ratio in those grades far exceeds that in all other grades because the School does not have space to create additional classrooms; thus, the School needs to add three classrooms to accommodate the Fifth and Sixth graders once they reach Middle School; (4) the Lower School currently does not have a classroom devoted to modern language instruction, significantly limiting the materials that teachers can bring into class to enrich students' study of global cultures and languages; (5) Lower School teachers routinely teach reading groups in the hallways because there is no available classroom space to hold these groups; this practice creates a distracting environment for the students; (6) many classrooms, teacher offices, and breakout spaces have no windows, are located in basement spaces, are not co-located with related academic teaching areas, and/or have inadequate light, air, and circulation; (7) the School's performing arts practice rooms (choral, orchestra, and jazz rehearsal rooms) are not large enough to accommodate the number of Upper School students enrolled in these performing arts; as a result, all of the students in the Upper School chorus cannot rehearse at the same time in the choral room and they routinely come together as a full chorus for the first time only during actual performances; in addition, the School needs space where students can practice or rehearse individually or in small ensembles; (8) the School's current theater lacks a backstage, a dressing/make-up room, a scene shop, and a lobby; and (9) the School needs to increase the allocation of space used for life-fitness instruction in physical education; and

WHEREAS, the applicant represents that no increase in enrollment is anticipated or planned and that the Proposed Development seeks to address the School's current space deficiencies and is not intended to allow the School to increase its enrollment; and

WHEREAS, in addition, the applicant states that many of the areas of the School lack appropriate access for people with disabilities; thus, the Proposed Development seeks to improve access for all members of the Trinity community (students, faculty, staff, and visitors) and to ensure that prospective students do not reject the School due to accessibility challenges; and

WHEREAS, the applicant asserts that because the

School has expanded incrementally over many years, its different program areas are spread over its four main academic buildings in an unplanned and haphazard fashion, and in some cases students must travel significant distances from one class to the next; accordingly, students often devote time traveling to classes – time that would be better spent on instruction and study; for example, currently, Upper School Science labs are scattered throughout the Hawley Wing and prep spaces, and offices are not contiguous to the labs; similarly, the School's performing arts classrooms and faculty offices are scattered across three buildings, and the Library is isolated from the Upper and Middle Schools; and

WHEREAS, thus, the applicant states that the Proposed Development will create functional adjacencies and relocate program space, including the creation of a central core for science and math classrooms and labs, the clustering of nearly all performing arts classrooms, and the creation of a direct link between the Hawley Wing and the Library; additionally, the Upper School student lounge and study center will be moved from the entrance of the School to a more central and expanded location near faculty offices and with direct access to the Library, facilitating more opportunities for small group collaboration among students, and access to faculty members and research materials between periods; and

WHEREAS, in addition to addressing the School's current deficiencies with respect to classroom sizes and program adjacencies, the Proposed Development will preserve the Turf at a minimum functional size for use in physical education, athletic, and recreational programs; the applicant states that the School's athletic program teaches the value of hard work to achieve meaningful goals while encouraging the development of self-discipline and self-sacrifice, character and sportsmanship, teamwork and cooperation, as well as loyalty and pride in one's self and in the school community; and

WHEREAS, the applicant notes that the Turf is used actively from 8:30 am to 6:00 pm each school day; Lower and Middle School students use the Turf four times per week for physical education and fitness classes, as well as additional periods for recess, and Upper School students use the Turf for physical education and fitness class twice every six days; typical Middle School students who participate in athletics use the Turf three times per week for after-school practice, and typical Upper School students use it four times per week for athletic practice; and

WHEREAS, the applicant asserts that the ability to use the Turf for these activities allows athletics to be integrated into the school day rather than interrupting the day for travel to distant fields; and

WHEREAS, the Board notes that, initially, the School proposed to enclose the Turf with a permanent fabric sunshade to allow full utilization of the Turf during inclement weather; however, through the hearing process and in response to concerns raised by the Board and by the Opposition, the proposal was revised to reflect the removal of the sunshade; and

WHEREAS, finally, the Proposed Development will improve the internal circulation of the School by replacing the

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disjointed and sometimes confusing circulation patterns with a network of natural-light-filled passages and stairways that will be more intuitive and direct, and foster communication between and among students and personnel in the three divisions of the School; and

WHEREAS, the applicant examined the feasibility of an as-of-right redevelopment of the School; in particular, the applicant assessed whether a five-story, 59,545 sq.-ft. enlargement with a total building height of 112'-0" and complying lot coverage, yards, and setbacks would satisfy the School's programmatic needs to improve existing facilities, create functional adjacencies, preserve the Turf and improve internal circulation; and

WHEREAS, the applicant determined that the as-of-right scenario was deficient, in that it would: (1) result in a tower-like, elevator-dependent structure that would be largely isolated from the other program areas of the School; (2) be highly inefficient in terms of student movement, with the only means of common access being a first-story corridor; (3) not allow the intended improvements in ADA accessibility; (4) not provide the desired adjacencies among the academic spaces, and so would not create the same opportunities for communication and collaboration; (5) result in constrained floorplates, which reduce the sizes of the classrooms and labs; and (6) reduce the size of the Turf, which would significantly limit its utility for physical education classes, and athletic team practices and games; and

WHEREAS, accordingly, the applicant states that the Proposed Development most effectively meets the School's programmatic needs; and

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

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, an application for a variance that is needed in order to meet the programmatic needs of a non-profit educational institution is entitled to significant deference and shall be permitted unless the application can be shown to have an adverse effect upon the health, safety, or welfare of the community (*see, e.g., Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board acknowledges that, as set forth in Cornell, 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 observes that Cornell deference has been afforded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submissions; and

WHEREAS, the applicant states that based on an extensive review of its facility and operations, the proposal is the most efficient and effective use of its educational programmatic space, and the applicant concludes that the bulk relief requested is necessary to meet the School's programmatic needs; and

WHEREAS, the Board finds that the proposal has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in Cornell; and

WHEREAS, the Board concurs that the waivers will facilitate construction that will meet the School's articulated needs; and

WHEREAS, in sum, the Board concludes that the applicant has fully explained and documented the need for the waivers to accommodate the School's programmatic needs; and

WHEREAS, the Opposition argues that the applicant has failed to make the finding set forth at ZR § 72-21(a) because, unlike in Cornell, there are negative impacts to the public welfare, namely the nearby residences, which are not outweighed by the proposal's benefits; and

WHEREAS, specifically, the Opposition cites to the impacts of the Turf enclosure, the 92nd Street Addition, and the Garage renovation upon the residents of the Trinity House; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other evidence, provide the required specificity concerning its programmatic space requirements, establish that the requested variances are necessary to satisfy its programmatic needs consistent with Cornell, and that the Opposition has failed to establish that any potential negative impacts either meet the threshold set forth by the courts or outweigh the benefits; the Board also notes that the School modified its proposal significantly in response to the Opposition's concerns and, as set forth below, has agreed to a number of conditions to mitigate the impact of the Proposed Development and the general operation of the School on nearby residents; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals for religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, based upon the above, the Board finds that, consistent with ZR § 72-21(a), the programmatic needs of the School along with the existing constraints of the site create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit educational institution and the variance is needed to further its educational mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

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WHEREAS, the applicant states that the surrounding area is characterized by low- to high-density mixed residential, commercial and community facility buildings, including townhouses in the mid-block, apartment houses on the avenues, large schools and religious institutions, playgrounds, and ground floor commercial uses along Columbus Avenue and Amsterdam Avenue; and

WHEREAS, the applicant states, as noted above, that both the Lower School and the Annex Building are designated New York City landmarks; as such, LPC approval for portions of the Proposed Development was required, and it issued by Certificate of No Effect, dated April 17, 2014; and

WHEREAS, the applicant asserts that the requested waivers will have little discernible impact on the surrounding neighborhood, as the 92nd Street Addition will be built to the same height as the townhouses located to the west and across the street; and

WHEREAS, the applicant notes that the primary impact of the waivers is to allow a deeper building, which is not visible from the street; further, while the rooftop fence and netting enclosure would rise to a height of approximately 80 feet, the fence enclosure is, as noted above, more than 88 percent transparent; thus, its visual impact upon the streetscape will be minimal; and

WHEREAS, the applicant also notes that the Proposed Development is well below the maximum permitted floor area and that an as-of-right building could rise to a height of more than 110 feet; and

WHEREAS, as to adjacent uses, the applicant states that in response to the concerns of the Board and the Opposition, it has: (1) as noted above, removed the sunshade; (2) modified the configuration of the Turf and the 92nd Street Addition to provide a buffer of 20'-0" between the Turf level and the level of the Trinity House loggia; (3) modified the structural supports for the Turf netting and the netting itself to provide a horizontal distance of 30'-0" between the netting and the Trinity House and a horizontal distance of 50'-0" between the structural supports and the Trinity House; (4) relocated mechanical ventilation ducts to an area in the 92nd Street Addition that is 10'-0" to the west of the Trinity House; (5) created a new terrace abutting the Trinity House loggia, which, upon DOB approval, will be available to Trinity House residents for passive recreation; (6) reduced the height of the wall opposite the loggia to 3'-2" above the loggia parapet; (7) reduced the height of the eastern bulkheads for the 92nd Street Addition; and (8) reduced the height of the western bulkheads adjacent to the townhouses; and

WHEREAS, the applicant asserts and the Board agrees that the modifications will mitigate the impact of the Proposed Development on the light and ventilation of neighboring properties; and

WHEREAS, as to the Opposition's concerns regarding the Turf netting and support *vis à vis* snow and ice, the Board observes that the design must comply with the applicable provisions of the Building Code and such design is subject to the review and approval of DOB; and

WHEREAS, as the Opposition's concerns regarding the

elevated Turf's potential noise impacts, the applicant agreed to limitations on the hours of use, degree of lighting, and use of sound amplification equipment; and

WHEREAS, as to the Opposition's concern about the size of the openings in the netting, the applicant provided support for its assertion that a four-inch opening would be too large and would create a risk of balls breaching the netting during certain games; and

WHEREAS, turning to traffic and parking, the applicant contends that the Proposed Development will have no significant impact; the applicant states, as noted above, that the number of parking spaces within the Trinity House garage will remain at 106, in accordance with the CPC special permit; and

WHEREAS, at hearing, in part in response to the concerns of the Opposition, the Board directed the applicant to provide additional information regarding the operation of the Garage and the general management of traffic around the site; and

WHEREAS, in response, the applicant submitted multiple analyses and plans from its traffic and parking consultant, which reflect that the garage can accommodate a minimum of 106 vehicles in accordance with ZR § 25-62, which requires a minimum of 200 feet per parking space in an attended garage; and

WHEREAS, the applicant also agreed to revise its lease with the Garage operator to prohibit the use of the Garage for more than 106 vehicles, the obstruction of the sidewalks and the flow of traffic along West 92nd Street; and

WHEREAS, as to the Opposition's concerns regarding late-night and early-morning truck traffic, the applicant agreed to restrict the hours of pickup and deliveries of goods; and

WHEREAS, as to Opposition's assertion that the Garage does not comply with various provisions of the Zoning Resolution regarding certain parking garages, the applicant contends that the garage was constructed as an accessory parking garage for a multiple dwelling prior to the 1982 amendments to the Zoning Resolution; as such, it complies with the pre-1982 version of Article II, Chapter 5 and need not be altered to comply with requirements of Article I, Chapter 3, which applies to new or enlarged parking facilities; and

WHEREAS, as to the Opposition's concerns regarding the negative impacts of the current refuse management of the School—which the Board shares—the applicant agreed to provide a refrigerated food refuse storage area in the interior of the 92nd Street Addition; and

WHEREAS, as to the Opposition's assertion that CPC and HPD, must approve the Proposed Development prior to any action by the Board, the Board disagrees and finds that nothing in the record indicates that CPC or HPD approval is a pre-condition to the subject application; and

WHEREAS, as to the Opposition's assertion that the Proposed Development will result in a diminution of Garage revenue for the Trinity House contrary to certain private agreements, the Board takes no position on its merit and finds that the issue is beyond the scope of the Board's jurisdiction in this matter; and

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

WHEREAS, the 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 School could occur given the history of development of the site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the School; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs, in accordance with ZR § 72-21(e); and

WHEREAS, the Board notes that it reviewed dozens of written submissions, held numerous hearings, and accepted hours of testimony from the applicant, representatives from the School, the Opposition, counsel for the Opposition, Trinity House tenants, and surrounding neighbors regarding the Proposed Development, the necessary waivers, the potential impacts on surrounding uses; the record reflects that the School responded to every concern raised by the Opposition and either modified its proposal or provided detailed, programmatic needs-based reasons why it could not; and

WHEREAS, based on this exhaustive review, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-161M, dated November 19, 2014; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in

accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of existing school buildings (Use Group 3), which do not comply with zoning regulations for lot coverage, rear yard equivalent, encroachment into the required initial setback distance, and minimum distance between wall and a legally-required window, contrary to ZR §§ 24-11, 24-382, 24-522, and 23-711, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 24, 2015"—eighteen (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the Proposed Development: a maximum floor area of 229,689 sq. ft. (3.80 FAR) in the R7-2 portion of the site; a maximum height to the roof of the 92nd Street Addition (excluding bulkheads, netting, and structural members) of 47'-2"; a maximum height to the roof of the Annex Link of 52'-6"; a maximum apex height for the supports for the Turf netting of 81'-1"; a maximum height at the street line for the supports for the Turf netting of 60'-0"; a minimum distance between the street line and the Turf netting of 3'-0"; a minimum distance of 50'-0" between the Trinity House and the major structural members for the Turf netting; a minimum distance of 30'-0" between the Trinity House and the Turf netting (except where the Turf netting connects to the stair bulkheads, where the distance shall range from 30' to 21'-6"); a minimum distance of 20'-0" between the Trinity House loggia and the Turf level; a maximum height for the eastern bulkheads not to exceed a height of 170'-0"; a maximum height of the western bulkheads not to exceed a height of 175'-9"; a maximum height to the top of the Turf level wall located opposite the Trinity House loggia of 162'-0¼"; a maximum height of the finished floor at the terrace level located within 20'-0" of the Trinity House Loggia not to exceed 158'-10 3/4"; as illustrated on the BSA-approved plans;

THAT the maximum height of the finished floor at the terrace level located within 20'-0" of the Trinity House loggia shall be no higher than the Trinity House loggia parapet;

THAT any new or amended certificates of occupancy issued in connection with the Proposed Development shall include the following note: "Use of the site shall be in accordance with the conditions set forth in BSA Cal. No. 117-14-BZ.";

THAT the use of the Turf shall be limited to the hours between sunrise and sunset;

THAT the Turf shall not have any lighting, other than lighting required by the Building Code for emergency egress;

THAT the Turf shall not include any permanent sound amplification equipment;

THAT to the extent that temporary sound amplification equipment, including but not limited to electronic equipment,

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is used in connection with activities occurring on the Turf, such amplification equipment shall commence no earlier than 9:30 a.m. and shall cease no later than 7:30 p.m.;

THAT air horns and similar voice amplification equipment shall not be used in connection with activities occurring on the Turf; however, whistles shall be permitted;

THAT the School shall take reasonable steps to ensure the safety of pedestrians within and around the site, including but not limited to ensuring that snow and ice accumulations from the Turf and its enclosure do not create a safety hazard;

THAT the Garage shall provide a minimum of 106 parking spaces;

THAT the School shall establish a traffic management plan to improve traffic flow at the site, including operation of the Garage, student loading and offloading, refuse pickup, and Cafeteria and other deliveries;

THAT pickup and delivery of goods, refuse, materials, supplies, etc.—everything other than the students themselves—shall be limited to Monday through Friday, from 6:00 a.m. and 8:00 p.m., and on Saturday and Sunday, from 9:00 a.m. to 8:00 p.m.;

THAT the School shall apply to the Department of Transportation for an extension of the no-parking time in the no-parking zone outside the Cafeteria, from 7:00 a.m. to 4:00 p.m. to 6:00 a.m. to 4:00 p.m.;

THAT the School shall insure that the Garage operations do not obstruct the flow of traffic;

THAT that there shall be no vehicle parking or standing on the sidewalks at any time;

THAT the new lease entered into between the Garage operator and Trinity Housing Company subsequent to the construction of the Proposed Development, and any subsequent lease, shall contain (a) an affirmative representation by the garage operator that the operator acknowledges the number of spaces permitted by law for the garage, (b) covenants that the operator will abide by all governmental laws, rules, and regulations applicable to the operation of the garage, and will employ responsible operational practices consistent with industry standards; and (c) that no parking or standing on the sidewalk will be permitted and that garage operations will not obstruct the movement of traffic along West 92nd Street;

THAT vehicles with more than two axles making deliveries or pickups at the site shall not park or stand along West 91st Street or West 92nd Street; however, this condition shall not apply to passenger buses; and

THAT subject to DOB approval, the School shall allow Trinity House tenants access to the terrace on the roof of the 92nd Street Addition for passive recreation;

THAT the School shall consult in good faith with Trinity House tenants in the selection of materials to be used in constructing the wall opposite the loggia and the plantings and any furniture to be provided on the terrace;

THAT the School shall be responsible for maintaining all fencing, railings, materials, plantings, and furnishing within the terrace area;

THAT the School shall replace the chain-link fence over

the Brass Pavilion with the same mesh material that will be used on the School's rooftop enclosure, and shall scrape and repaint the metal vents on the Brass Pavilion; and the School shall maintain these elements in good condition;

THAT a refrigerated trash storage area shall be provided within the interior of the School Building; the refrigerated trash storage area shall be of sufficient capacity to accommodate the School's kitchen and cafeteria related trash and a separate trash storage area sufficient to contain all of the School's non-perishable trash shall also be provided within the interior of the School Building;

THAT all school trash shall be stored within the interior of the building until immediately before pickup;

THAT all construction shall be in conformance with the LPC Certificate of No Effect, dated April 17, 2014;

THAT any necessary CPC approvals for the Proposed Development shall be obtained prior to the issuance of DOB permits;

THAT all necessary HPD approvals for the Proposed Development shall be obtained prior to the issuance of DOB permits;

THAT any change in the use, occupancy, or operator of the School shall require review and approval by the Board;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by February 24, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, February 24, 2015.

177-14-BZ CEQR #15-BSA-035K

APPLICANT – Eric Palatnik, PC, for MADDD Properties LLC 34 Arden Lane, owner; CF Flatbush LLC, lessee.

SUBJECT – Application July 24, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within a portion of an altered building. C4-4A/R6A zoning district.

PREMISES AFFECTED – 1038 Flatbush Avenue, 180' south of intersection of Flatbush Avenue and Regent Place, Block 5123, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson,

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Commissioner Ottley-Brown and Commissioner Montanez .4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 20, 2014, acting on DOB Application No. 121662664, reads, in pertinent part:

ZR 32-10 Physical Cultural [SIC] establishment is not permitted as of right on C4-4A/R6A zoning district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4A/R6A zoning district, the operation of a physical culture establishment (“PCE”) on the cellar, first, second, and third floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in the *City Record*, with a continued hearing on February 3, 2015, and then to decision on February 24, 2015; and

WHEREAS, Vice Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown performed site and neighborhood examinations of the premises and surrounding area; and

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

WHEREAS, the subject site has approximately 80 feet of frontage on the west side of Flatbush Avenue, between Regent Place and Beverly Road, and consists of 7,290 sq. ft. of lot area; and

WHEREAS, the site is located within a C4-4A/R6A zoning district; and

WHEREAS, pursuant to ZR §77-11, the C4-4A zoning district regulations are applicable to the entire site; and

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

WHEREAS, the proposed PCE shall occupy 2,299 sq. ft. of floor space at the cellar level, 4,518 sq. ft. of floor area at the first floor, 5,849 sq. ft. of floor area at the second floor, and 5,068 sq. ft. of floor area at the third floor; and

WHEREAS, the PCE’s hours of operation are Monday through Saturday, from 5:00 a.m. to 11:00 p.m., and on Sunday, from 7:00 a.m. to 9:00 p.m.; and

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

WHEREAS, the Fire Department states that it has no objection to the proposal; and

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

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

WHEREAS, the Board finds that, under the conditions

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

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 15-BSA-035K, dated July 25, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4A/R6A zoning district the entirety of which is subject to the C4-4A zoning district regulations, the operation of a PCE on the cellar, first, second, and third stories of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked “July 25, 2014”- (4) sheets; *on further condition*:

THAT the term of the PCE grant will expire on February 24, 2025;

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

THAT all signage displayed at the site by the applicant shall conform to applicable regulations;

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

THAT accessibility compliance will be as reviewed and approved by DOB;

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by February 24, 2019;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

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

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

Adopted by the Board of Standards and Appeals, February 24, 2015.

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78-11-BZ & 33-12-A thru 37-12-A

APPLICANT – Sheldon Lobel, P.C., for Indian Cultural and Community Center, Incorporated, owner.

SUBJECT – Applications May 27, 2011 and February 9, 2012 – Variance (§72-21) to allow for the construction of two assisted living residential buildings, contrary to use regulations (§32-10).

Proposed construction of two mixed use buildings that do not have frontage on a legally mapped street, contrary to General City Law Section 36. C8-1 Zoning District.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street, Block 7880, Lots 550, 500 Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to March 10, 2015, at 10 A.M., for deferred decision.

30-12-BZ

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Remand Back to Board of Standards and Appeals; seeks a judgment vacating the resolution issued on January 15, 2013 and filed on January 17, 2013. R6-/C2-2 zoning district.

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 14, 2015, at 10 A.M., for continued hearing.

343-12-BZ

APPLICANT – Akerman Senterfitt, LLP., for Ocean Ave Education Support, Inc., owner.

SUBJECT – Application December 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 3 school (*Brooklyn School for Medically Frail Children*) with dormitory facilities in a split zoning lot, contrary to lot coverage (§24-11), yard requirements (§24-382, §24-393, §24-33) and use regulations (§22-13). R1-2/R7A zoning district.

PREMISES AFFECTED – 570 East 21st Street, between Dorchester Road and Ditmas Avenue, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 14, 2015, at 10 A.M., for continued hearing.

8-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Oleg Saitskiy, owner.

SUBJECT – Application January 16, 2014 – Special Permit (§73-622) for the enlargement of an existing single family

home, contrary to floor area, open space and lot coverage (23-141); side yards requirements (§23-461) and less than the rear yard requirement (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1824 East 22nd Street, west side of East 22nd Street between Quentin Road and Avenue R, Block 6804, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 24, 2015, at 10 A.M., for adjourned hearing.

41-14-BZ

APPLICANT – The Law Office of Jay Goldstein, for United Talmudical Academy, owner.

SUBJECT – Application March 7, 2014 – Special Permit (§73-19) to legalize an existing school/yeshiva (UG 3). M1-2 zoning district.

PREMISES AFFECTED – 21-37 Waverly Avenue aka 56-58 Washington Avenue, between Flushing Avenue and Park Avenue front both Washington and Waverly Avenues, Block 1874, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to March 10, 2015, at 10 A.M., for adjourned hearing.

64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern & Goldie Stern, owners.

SUBJECT – Application April 29, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1320 East 23rd Street, west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to March 24, 2015, at 10 A.M., for adjourned hearing.

94-14-BZ

APPLICANT – Dennis D. Dell'Angelo, for Rivka Shapiro, owner.

SUBJECT – Application May 5, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1150 East 22nd Street, west side of East 22nd Street, 140' north of Avenue "K", Block 7603, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to March 24, 2015, at 10 A.M., for adjourned hearing.

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146-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Fair Only Real Estate Corps., owner; LES Fitness LLC., lessee.

SUBJECT – Application June 23, 2014 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Bowery CrossFit*) in the cellar of an existing building. C6-1G zoning district.

PREMISES AFFECTED – 285 Grand Street, south side of Grand Street approximately 25’ west of the intersection formed by Grand Street and Eldridge Street, Block 306, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 24, 2015, at 10 A.M., for decision, hearing closed.

169-14-BZ

APPLICANT – Simons & Wright LLC, for Midyan Gate Realty No. 3 LLC., owner.

SUBJECT – Application July 21, 2014 – Special Permit (§73-19) to allow a pre-school and child care services (Use Group 3) (*Inner Force Y*) within the existing building. M1-1 Ocean Parkway Special Zoning District.

PREMISES AFFECTED – 325 Avenue Y, southwest corner of Avenue Y between Shell Road and West 3rd Street, Block 7192, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 14, 2015, at 10 A.M., for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, FEBRUARY 24, 2015

1:00 P.M.

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

ZONING CALENDAR

98-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 404-414 Richmond Terrace Inc., owner.

SUBJECT – Application May 8, 2014 – Variance (§72-21) to permit the reestablishment of a banquet facility (catering hall -UG 9) with accessory parking. Located in an R5 and R3A zoning districts within the St. George Historic District.

PREMISES AFFECTED – 404 Richmond Terrace, southeast corner of Richmond Terrace and Westervelt Avenue, Block 3, Lot(s) 40, 31, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to April 14, 2015, at 10 A.M., for continued hearing.

157-14-BZ

APPLICANT – Lewis Garfinkel, for Cham Tessler, owner.

SUBJECT – Application July 3, 2014 – Special Permit (§73-622) for the enlargement of an existing single family, two story semi-detached residence to be combined into a single family, two story detached residence contrary to floor area and open space ZR 23-141; side yard ZR 23-461 and less than the required rear yard ZR 23-47. R-2 zoning district.

PREMISES AFFECTED – 1151 East 29th Street, east side of East 29th St. 360 feet north from the corner of Avenue L, Block 7629, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 10, 2015, at 10 A.M., for decision, hearing closed.

170-14-BZ

APPLICANT – Mango & Lacoviello, LLP, for Mansion Realty LLC, owner; David Barton Gym, lessee.

SUBJECT – Application July 21, 2014 – Special Permit (§73-36) to allow the operation of the proposed physical culture establishment (*David Barton Gym*) on the first floor second & third floors, located within an C6-2-A, C6-4A zoning districts.

PREMISES AFFECTED – 652-662 Avenue of the Americas, northeast corner of West 20th Street and Avenue of the Americas, Block 822, Lot(s) 1 & 2, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 3, 2015, at 10 A.M., for decision, hearing closed.

Ryan Singer, Executive Director

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CORRECTION

This resolution adopted on January 30, 2015, under Calendar No. 38-14-BZ and printed in Volume 100, Bulletin Nos. 5-6, is hereby corrected to read as follows:

38-14-BZ

APPLICANT – Eric Palatinik, P.C., for Yury Dreysler, owner.

SUBJECT – Application February 28, 2014 – Special Permit (§73-622) for the enlargement of single family home, contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 116 Oxford Street, between Shore boulevard and Oriental Boulevard, Block 8757, Lot 89, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

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

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated February 4, 2014, acting on DOB Application No. 320870063, reads in pertinent part:

1. Proposed floor area ratio is contrary to ZR 23-141(a).
2. Proposed open space contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141(a).
4. Proposed side yards (exist. Non-compliance) contrary to ZR 23-461(a).
5. Proposed rear yard is contrary to ZR 23-47.
Minimum required: 30’
Proposed: 20’

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, with continued hearings on November 18, 2014, November 25, 2014, and January 6, 2015, and then to decision on January 30, 2015; and

WHEREAS, Chair Perlmutter, Vice Chair Hinkson and Commissioners Montanez and Ottley-Brown performed inspections of the subject premises and site, together with its surrounding area and neighborhood; and

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

WHEREAS, the subject site is located on the west side of Oxford Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has 25 feet of frontage along Oxford Street and approximately 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story, single-family home with 834 sq. ft. of floor area (0.33 FAR); and

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

WHEREAS, the applicant now seeks to enlarge the single-family home by enlarging the first floor of the existing building and adding an additional two floors, thereby increasing the floor area of the building from 834 sq. ft. (0.33 FAR) to 2,489 sq. ft. (0.99 FAR) (the maximum permitted floor area is 1,500 sq. ft. (0.6 FAR) which includes the 300 square feet (0.1 FAR) that must be provided directly under a sloping roof) and increasing the height of the building from 16’-9” to 35’-0”; and

WHEREAS, in order to comply with applicable flood regulations the applicant shall raise the building by removing the existing floor beams from the north and south walls thereof, increasing the height of the shelf upon which the existing floor currently rests using solid brick masonry and replacing the existing floor beams so that the first floor elevation will be increased from 6’-7” to 13’-00”; and

WHEREAS, the applicant seeks to decrease the open space ratio from 67 percent to 53.5 percent; the minimum required open space ratio is 65 percent; and

WHEREAS, the applicant seeks to maintain existing side yard widths of 0’-1” and 2’-11”; the general requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, however, as per ZR § 23-48, the minimum total width of 13’-0” is not required at the subject site; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 34’-2” to 20’-0”; a rear yard with a minimum depth of 30’-0” is required; and

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

WHEREAS, the applicant asserts that the proposed 0.99 FAR and 2,489 sq. ft. of floor area is consistent with the bulk and lot area of one and two-family homes in the surrounding area; and

WHEREAS, in support of this assertion, the applicant provided evidence of 19 one- or two-family homes within 400’ of the subject site with an FAR equal to or in excess of 0.99 and floor area equal to or in excess of 2,450 sq. ft.; and

WHEREAS, at hearing, the Board directed the applicant to narrow its analysis of neighborhood character to focus on the block on which the site is located, as such character is, in the subject area, block specific; and

WHEREAS, in response, the applicant identified one and two-family homes on the subject block which consist of

MINUTES

two or more stories and provided a streetscape which included the proposed building; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, 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 “December 18, 2014”– (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of to 2,489 sq. ft. (0.99 FAR), a minimum open space of 53.5 percent, side yards with minimum widths of 0’-1” and 2’-11”, and a minimum rear yard depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 30, 2015.

The resolution has been amended. Corrected in Bulletin Nos. 9-10, Vol. 100, dated March 4, 2015.