BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:
40 Rector Street, 9th Floor, New York, N.Y. 10006.

Volume 98, No. 3 January 23, 2013

DIRECTORY

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CONTENTS

CONTENTS

New Case Filed Up to January 15, 2013

3-13-BZ
3231-3251 Richmond Avenue, east side Richmond Avenue between Arthur Kill Road, Getz and Gurley Aves., Block 5533, Lot(s) 47,58,62,123, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-1 (SRD) zoning district.

4-13-BZ
1623 Flatbush Avenue, East 32nd Street and New York Avenue, Block 7578, Lot(s) 49, Borough of **Brooklyn, Community Board: 17**. Special Permt (§73-36) a Physical Culture Establishment on ground and cellar floors. C8-2 zoning district.

5-13-BZ
34-47 107th Street, Eastern side of 107th Street, midblock between 34th and 37th Avenues., Block 1749, Lot(s) 66,67, Borough of **Queens, Community Board: 3**. Variance (§72-21) to permit the construction of an education center (Use Group 3A) in connection with an existing community facility contrary to lot coverage, front yard, side yard, side yard setback, and planting strips. R5 zoning district.

6-13-BZ
2899 Nostrand Avenue, east side of Nostrand Avenue and Avenue P and Marine Parkway., Block 7691, Lot(s) 13, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to permit the construction of a synagogue and school at the premises, which is contrary to bulk regulations for community facility in the residential use districts. R3-2 zoning district.

7-13-BZ
1644 Madison Place, south side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot(s) 58, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-621) for the enlargement of an single family contrary to floor area, open space and lot coverage (ZR23-141). R3-2 zoning district.

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

CALENDAR

FEBRUARY 5, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 5, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

167-95-BZ
APPLICANT – Walter T. Gorman, P.E., for Springfield L. I. Cemetery Society, owners.
SUBJECT – Application September 21, 2012 – Extension of Term of a previously approved variance (§72-21) which permitted the maintenance and repairs of motor operated cemetery equipment and parking and storage of motor vehicles accessory to the repair facility which expired on February 4, 2012. An amendment of the resolution by reducing the area covered by the variance. R3A zoning district.
PREMISES AFFECTED – 121-18 Springfield Boulevard, west side of Springfield Boulevard, 166/15' south of 121st Avenue, Block 12695, Lot 1, Borough of Queens.
COMMUNITY BOARD #12Q

211-00-BZ
APPLICANT – Sheldon Lobel, P.C., for Hoffman & Hoffman, LLC, owner.
SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved Variance (§72-21) which permitted the legalization of residential units on the second through fourth floors of a mixed use four story building, manufacturing and residential (UG 17 & 2) which expired on April 17, 2005; Amendment for minor modification to the approved plans; Waiver of the Rules. M1-2 zoning district.
PREMISES AFFECTED – 252 Norman Avenue, southeast corner of the intersection of Norman Avenue and Monitor Street, Block 2657, Lot 1, Borough Brooklyn.
COMMUNITY BOARD #1BK

APPEALS CALENDAR

190-12-A, 191-12-A & 192-12-A
APPLICANT – Davidoff Hutcher & Citron, LLP, for Fuel Outdoor LLC.
OWNER OF PREMISES – JRR Realty Co., Inc.
SUBJECT – Application June 13, 2012 – Appeals from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 zoning district.
PREMISES AFFECTED – 42-45 12th Street, north of Northeast corner of 12th Street and 43rd Street, Block 458, Lot 83, Borough of Queens.
COMMUNITY BOARD #2Q

203-12-A
APPLICANT – Davidoff Hutcher & Citron LLP, for CBS Outdoor, Inc.
OWNER OF PREMISES – Gemini 442 36th Street H LLC.
SUBJECT – Application June 28, 2013 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign. C2-5 /HY Zoning District
PREMISES AFFECTED – 442 West 36th Street, east of southeast corner of 10th Avenue and 36th Street, Block 733, Lot 60, Borough of Manhattan.
COMMUNITY BOARD #4M

FEBRUARY 5, 2013, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 5, 2013, at 1:30 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

50-12-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building contrary to use regulations, ZR 22-00. R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.
COMMUNITY BOARD #12Q

161-12-BZ
APPLICANT – Francis R. Angelino, Esq., for Soly D. Bawabeh, for Global Health Clubs, LLC, owner.
SUBJECT – Application May 31, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Retro Fitness*) on the ground and second floor of an existing building. C8-2 zoning district.
PREMISES AFFECTED – 81 East 98th Street, corner of East 98th Street and Ralph Avenue, Block 3530, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #16BK

238-12-BZ
APPLICANT – Harold Weinberg, for Stuart Ditchek, owner.
SUBJECT – Application August 1, 2012 – Special Permit (§73-622) for the enlargements of single family home contrary floor area and lot coverage (ZR §23-141); side yards (ZR 23-461) and less than the required rear yard (ZR §23-47). R 3-2 zoning district.
PREMISES AFFECTED – 1713 East 23rd Street, between Quentin Road and Avenue R, Block 6806, Lot 86, Borough of Brooklyn.
COMMUNITY BOARD #15BK

296-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 2374 Concourse Associates LLC, owner; Blink 2374 Grand Concourse Inc., lessee.
SUBJECT – Application October 16, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within existing building. C4-4 zoning district.
PREMISES AFFECTED – 2374 Grand Concourse, northeast corner of intersection of Grand Concourse and East 184th Street, Block 3152, Lot 36, Borough of Bronx.
COMMUNITY BOARD #5BX

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JANUARY 15, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

812-61-BZ
APPLICANT – Peter Hirshman, for 80 Park Avenue Condominium, owner.
SUBJECT – Application June 28, 2012 – Extension of Term (§11-411) of approved variance permitting the use of accessory multiple dwelling garage for transient parking, which expires on October 24, 2012. R10, R8B zoning district.
PREMISES AFFECTED – 74-82 Park Avenue, southwest corner of East 39th Street and Park Avenue, Block 868, Lot 7502, Borough of Manhattan.
COMMUNITY BOARD #6M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on October 24, 2012; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 15, 2013; and

WHEREAS, Community Board 6, Manhattan, does not object to this application; and

WHEREAS, the subject site is located on the southwest corner of Park Avenue and East 39th Street, partially within an R8B zoning district and partially within an R10 zoning district; and

WHEREAS, portions of the cellar and first floor are occupied by a 91-space accessory parking garage; and

WHEREAS, on October 24, 1961, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law ("MDL") to permit a maximum of 149 surplus parking spaces to be used for transient parking for a term of 21 years; and

WHEREAS, most recently, on August 5, 2003, the Board granted a ten-year extension of term, which expired on October 24, 2012; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on October 24, 1961, so that, as amended, this portion of the resolution shall read: "to permit an extension of term for an additional 10 years from the expiration of the prior grant, to expire on October 24, 2022; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked 'Received June 18, 2012-(2) sheets and 'December 31, 2013'-(1) sheet; and *on further condition*:

THAT this term will expire on October 24, 2022;

THAT a sign stating that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days' notice to the owner be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 100493814)

Adopted by the Board of Standards and Appeals, January 15, 2013.

135-01-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.
SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.
PREMISES AFFECTED – 1815/17 86th Street, 78'-8.3"northwest 86th Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.
COMMUNITY BOARD #11BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term, and an extension of time to obtain a certificate of occupancy for a high speed auto laundry (Use Group 16), which expired on October 30, 2011; and

WHEREAS, a public hearing was held on this application on February 7, 2012, after due notice by publication in *The City Record*, with continued hearings on May 1, 2012 and June 5, 2012, and then to decision on January 15, 2013; and

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

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

WHEREAS, the site is an irregularly-shaped through lot with 71.3 feet of frontage on the west side of New Utrecht Avenue and 42.25 feet of frontage on the north side of 86th Street, within a C1-2 (R5) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 30, 1957 when, under BSA Cal. No. 318-56-BZ, the Board granted a variance to permit the construction of a high speed auto laundry, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on October 25, 1997; and

WHEREAS, on October 30, 2001, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a high speed auto laundry, for a term of ten years, which expired on October 30, 2011; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by October 30, 2002; and

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

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board raised concerns about the canopy on the building, which was not reflected on the previously-approved plans, and questioned whether the signage on the site was in compliance with C1 district regulations; and

WHEREAS, in response, the applicant submitted a photograph from October 9, 2000 which reflects that the canopy on the building has been in place since the previous approval and that its omission on the previously-approved plans was an oversight; and

WHEREAS, the applicant also submitted photographs reflecting that the signage that exceeded the C1 surface area requirements has been removed, and states that the site will comply with C1 district signage regulations; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 30, 2001, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from October 30, 2011, to expire on October 30, 2021; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received May 31, 2012'-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on October 30, 2021;

THAT the signage on the site will comply with C1 district regulations;

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

THAT a new certificate of occupancy will be obtained by January 15, 2014;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(Alt. No. 535)

Adopted by the Board of Standards and Appeals, January 15, 2013.

551-37-BZ
APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.
SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of approved variance for the continued operation of an automobile repair shop (*Red's Auto Repair*) which expired on July 15, 2012; Waiver of the Rules. R1-2 zoning district.
PREMISES AFFECTED – 233-02 Northern Boulevard, between 234th and 233rd Street, Block 8166, Lot 20, Borough of Queens.
COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for continued hearing.

173-99-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.
SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Matrix Fitness Club*) which expired on March 6, 2011; Amendment for an increase in floor area at the cellar level; waiver of the Rules. M-1 zoning district.
PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43rd Avenue, Block 782, Lot 1, Borough of Queens.
COMMUNITY BOARD #1Q
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for decision, hearing closed.

18-02-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 8610 Flatlands Realty, LLC, owner.
SUBJECT – Application August 17, 2012 – Extension of Term (§11-411) of an approved variance for the continued operation of an automotive laundry (UG 16B) which expired on August 13, 2012. C2-3/R5D zoning district.
PREMISES AFFECTED – 8610 Flatlands Avenue, southwest corner of intersection of Flatlands Avenue and 87th Street, Block 8023, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #18BK
ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for continued hearing.

141-06-BZ
APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.
SUBJECT – Application August 7, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) permitting the construction of a three-story synagogue (*Congregation Tefiloh Ledovid*) which expired on June 19, 2011; Waiver of the Rules. R5 zoning district.
PREMISES AFFECTED – 2084 60th Street, corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.
COMMUNITY BOARD #12BK
ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

85-12-A
APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communication LLC.
OWNER OF PREMISES – G.A.L. Manufacturing Company
SUBJECT – Application April 6, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-1 zoning district.
PREMISES AFFECTED – 50 East 153rd Street, bounded by Metro North and the Metro North Station; an off ramp to the Major Deegan Expressway, E. 157th Street, E. 153rd Street and the Bronx Terminal Market, Block 2539, Lot 132, Borough of Bronx.
COMMUNITY BOARD #4BX
ACTION OF THE BOARD – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Bronx Borough Commissioner of the Department of Buildings ("DOB"), dated March 7, 2012, denying registration for a sign at the subject site (the "Final Determination"), which reads, in pertinent part:

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and, as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on November 27, 2012, after due notice by publication in *The City Record*, and then to decision on January 15, 2013; and

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

WHEREAS, the subject site is located on East 153rd Street, on the block bounded by Metro North railroad tracks/the Metro North East 153rd Street Station to the west, Exit 5 off-ramp from the Major Deegan Expressway to the northwest, East 157th Street to the northeast, East 153rd Street to the east, and the Bronx Terminal Market to the south, within an M1-1 zoning district; and

WHEREAS, the subject sign (the "Sign") is a south-facing advertising sign measuring 14 feet by 48 feet (672 sq. ft.) posted on a pylon approximately 57'-9" in height; and

WHEREAS, the Sign is located 128 feet from the Major Deegan Expressway and approximately 850 feet from the United States Bulkhead Line running along the Bronx shoreline of the Harlem River (the "Bulkhead Line"); and

WHEREAS, the Sign was installed pursuant to permits issued by DOB on August 10, 2004 under Application Nos. 200867507-01-SG and 200867062-01-AL for an "indirectly illuminated advertising sign"; and

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

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on the fact that (1) the Sign lies within one-half mile of a boundary of the City of New York and is a permitted advertising sign pursuant to ZR § 42-55(d); (2) DOB's failure to accept the Appellant's evidence reflects an arbitrary change in its application of the Zoning Resolution provisions under which DOB originally granted a permit for the Sign; and (3) DOB's issuance of permits for the Sign in 2004, without more, constitutes sufficient proof of legal establishment for DOB to accept the Sign for registration; and

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

REGISTRATION REQUIREMENT

WHEREAS, the Board notes that under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

> all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

> Each sign shall be identified as either "advertising" or "non-advertising." To the extent a sign is a non-conforming sign, it must further be identified as "non-conforming advertising" or "non-conforming non-advertising." A sign identified as "non-conforming advertising" or "non-conforming non-advertising" shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

> Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, a DOB guidance document sets forth the instructions for filing under Rule 49 and asserts that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB –issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and

REGISTRATION PROCESS

WHEREAS, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49 with respect to signs within 900 feet of arterial highways, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) photographs of the Signs; and (3) Permit Nos. 200867507-01-SG, 200867062-01-AL, issued August 10, 2004; (4) an approved application drawing with DOB audit stamp dated October 6, 2004; and (5) letters of completion from DOB, dated May 17 and 23, 2005; and

WHEREAS, on October 3, 2011, DOB issued two Notices of Sign Registration Deficiency, stating that it is unable to accept the Signs for registration due to "[f]ailure to provide proof of legal establishment Permit No. 200867507 is for ½ mile boundary sign;" and

WHEREAS, by letter, dated December 13, 2011 the Appellant submitted a response to DOB, stating that the Sign is located within a half-mile of a boundary of the City of New York and meets the criteria of ZR § 42-55(d), which allows advertising signs along certain designated arterial highways; the Appellant also noted that DOB had audited the file in 2004 and had verified that the permit was properly issued; and

WHEREAS, by letter, dated March 7, 2012, DOB issued the determination which forms the basis of the appeal; and

RELEVANT STATUTORY PROVISIONS

> ZR § 42-55
> Additional Regulations for Signs Near Certain Parks and
> Designated Arterial Highways

M1 M2 M3
In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.
(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:
(1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
(2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.
(b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.
(c) The more restrictive of the following shall apply:
(1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or
(2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.
(d) Within one-half mile of any boundary of the City of New York, permitted signs and advertising signs may be located along any designated arterial highway . . . that crosses a boundary of the City of New York, without regard to the provisions of paragraphs (a), (b) and (c) of this Section, provided any such permitted or advertising sign otherwise conforms to the regulations of this Chapter including, with respect to an advertising sign, a location not less than 500 feet from any other advertising sign, except that, in the case of any such permitted or advertising sign erected prior to August 7, 2000, such sign shall have non-conforming use status pursuant to Sections 52-82 . .

* * *

Building Code § 28-502.4 – Reporting Requirement
An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:
(1)The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more…

* * *

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application
…(d)(5) Each sign shall be identified as either "advertising" or "non-advertising." To the extent a sign is a non-conforming sign, it must further be identified as "non-conforming advertising" or "non-conforming non-advertising." A sign identified as "non-conforming advertising" or "non-conforming non-advertising" shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

* * *

RCNY § 49-43 – Advertising Signs
Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for the purposes of compliance with the Zoning Resolution:
(a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or
(b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Sign is legal pursuant to ZR § 42-55(d); (2) DOB's rejection of the Sign is an arbitrary and capricious departure from its prior

approval; and (3) DOB's permit issuance constitutes sufficient proof of legal establishment; and

A. The Sign is Legal Pursuant to ZR § 42-55(d)

WHEREAS, the Appellant asserts that advertising signs are permitted within 200 feet of an arterial highway pursuant to the following criteria of ZR § 42-55(d); and

(1) The advertising sign must be located within one-half mile from a boundary of the City of New York

WHEREAS, the Appellant cites to the permit application that was approved by DOB, on the basis that the Sign is within a half-mile of the Bulkhead Line, which is a "boundary of the City of New York;" and

WHEREAS, the Appellant notes that the issue is whether ZR § 42-55(d) includes as a boundary of the City of New York the jurisdictional boundary along the Bulkhead Line, separating the City of New York from the navigable waters under federal and/or state jurisdiction; and

WHEREAS, the Appellant asserts that "any" boundary includes the boundary created along the Bulkhead Line and therefore, ZR § 42-55(d) allows the Sign to remain; and

WHEREAS, the Appellant asserts that a plain language reading of ZR § 42-55(d) supports the conclusion that the Bulkhead Line is a "boundary of the City of New York;" and

WHEREAS, the Appellant asserts that the phrase "any boundary of the City of New York" is broad and that a boundary is something that indicates a limit; and

WHEREAS, further, the Appellant states that the Bulkhead Line delineates waters within federal and/or state jurisdiction, from those pertaining to the City; limits the City's jurisdiction; and creates a boundary of the City of New York; and

WHEREAS, the Appellant asserts that since DOB has not disputed that the Bulkhead Line is a boundary line, the Board should conclude that there exists along the East River a boundary of the City of New York for the purposes of ZR § 42-55(d); and

WHEREAS, the Appellant asserts that if it were intended that this provision of the Zoning Resolution allows advertising signs only within a one-half mile of a particular boundary, then the Zoning Resolution should state which boundary; for instance, the Zoning Resolution could have been written to limit advertising signs to one-half mile of a county or state boundary; and

WHEREAS, the Appellant cites to the Court of Appeals' decision in Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 100 (N.Y. 1997) for the point that where the Board's interpretation of the Zoning Resolution conflicts with the plain statutory language, it may not be sustained and unintended consequences of overly broad provisions should be resolved by the legislature; and

WHEREAS, additionally, the Appellant asserts that its reading of "any boundary" at ZR § 42-55(d) would not create an expansive exception to the general prohibition on advertising signs along arterial highways, but applies only to a small subset of highways; and

WHEREAS, specifically, the Appellant notes that the arterial highway at issue must also be a "principal route" or "toll crossing" that prohibits direct vehicular access to abutting land and provides complete separation of conflicting traffic flows (ZR § 42-55(d)(1)), which excludes, for example, the West Side Highway; and

WHEREAS, the Appellant asserts that if the arterial highway in question must also be a through truck route designated by DOT (ZR § 42-55(d)(2)) and it must cross a boundary of the City of New York (ZR § 42-55(d)(3)), the applicability of the provision is limited to a narrow set of routes, which includes the Major Deegan Expressway; and

(2) The advertising sign must be located along a designated arterial highway that meets the criteria of ZR §§ 42-55(d)(1), (d)(2), and (d)(3)

WHEREAS, the Appellant asserts that the Major Deegan Expressway is listed as a designated arterial highway in Appendix H of the Zoning Resolution, a condition which satisfies the second requirement of ZR § 42-55(d); and

WHEREAS, further, the Appellant states that in accordance with requirements of ZR § 42-55(d), the Major Deegan Expressway (1) is a principal route that prohibits direct access to abutting land and provides complete separation of traffic flows, (2) is a through truck route designated by DOT, and (3) crosses a boundary of the City of New York (into Westchester County); and

(3) The advertising sign must be located not less than 500 feet from any other advertising sign

WHEREAS, the Appellant represents that there are not any advertising signs within 500 feet of the Sign and, thus, ZR § 42-55(d)(3) is not in dispute; and

WHEREAS, accordingly, since all the conditions of ZR § 42-55(d) are met, the Appellant asserts that the evidence presented to DOB shows that the Sign is a permitted advertising sign and must be granted

B. DOB May Not Reverse its Prior Determination

WHEREAS, the Appellant asserts that DOB has inexplicably reversed its prior interpretation of the law under which it approved the Sign pursuant to ZR § 42-55(d) in 2004 and a failure to accept the Sign for registration as a conforming advertising sign is an arbitrary and capricious reversal of its prior decision; and

WHEREAS, the Appellant states that following the issuance of the permits, but prior to completion of the work, DOB audited Application No. 200867507-01-SG for compliance with applicable regulations; the audit included review and approval of a drawing dated May 21, 2004 and included: a diagram of the Sign, an area map showing the Sign's location 128 feet from the Major Deegan Expressway and 850 feet from the Harlem River; a note that the "Sign is within 0.5 miles from boundary of the City of New York," and a note that "there is no other sign within 500' from the proposed sign per Section 42-55(d);" and

WHEREAS, the Appellant states that DOB stamped the drawing as part of an audited folder and signed off on

the drawing and application as being accepted; on May 15, 2005 and May 23, 2005, the Bronx Borough Commissioner issued letters of completion for each of the applications; and

WHEREAS, the Appellant represents that the Sign has been in continuous use as an advertising sign since the issuance of the letters of completion through the present time; and

WHEREAS, the Appellant finds that the Final Determination is in direct contravention of DOB's prior approvals, without setting forth any basis or justification for the reversal of position; and

WHEREAS, the Appellant adds that the location of the Sign has not changed since DOB's 2004 approvals and DOB's audit and approval of a drawing that clearly indicates the Bulkhead Line in proximity to the Subject Sign, reflecting DOB's acceptance that such boundary line falls within the meaning of "any boundary of the City of New York" under ZR § 42-55(d); and

WHEREAS, the Appellant asserts that DOB reviewed and approved the file based on a reasonable interpretation of the plain meaning of the Zoning Resolution and it cannot now deny Appellant's registration based on a contrary reading; and

WHEREAS, the Appellant states that as a matter of public policy, property owners must be able to rely on DOB's actions interpreting the Zoning Resolution; and

C. DOB's Permit Issuance

WHEREAS, the Appellant asserts that DOB's issuance of permits for the Sign, without more, constitutes sufficient proof of legal establishment for DOB to accept the Sign for registration; and

WHEREAS, specifically, the Appellant states that in 2004, DOB issued permits for the Sign, which were upheld following an audit; and

WHEREAS, the Appellant asserts that DOB had the opportunity to evaluate the legality of the Sign at that time and, absent a rejection, the Appellant reasonably relied on DOB's determination, built the Sign and has continued to make substantial investments in the Sign including investments in repairs and maintenance along with the marketing costs involved in placing advertisements; and

WHEREAS, the Appellant states that for eight years, it has continued to invest in the Sign in reliance on DOB's previous determination that the Sign was legal under applicable laws; and

WHEREAS, the Appellant notes that the laws have not changed since 2004 when DOB determined that the Sign was legal; and

WHEREAS, the Appellant asserts that as a matter of public policy, DOB cannot now be allowed to change its position on the legality of the Sign to the detriment of Appellant's business; and

WHEREAS, accordingly, the Appellant asserts that the permits are sufficient proof of legal establishment for the Sign to be registered; and

WHEREAS, further, the Appellant cites to Rule 49 for the provision that no requirement for the submission of documentation to substantiate the legality of a "conforming" sign is required and that the request for substantiating information is overreaching the enforcement authority granted to DOB under Local Law 31 and Rule 49; and

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

DOB'S POSITION

WHEREAS, DOB states that it rejected the Sign Registration Application because (1) the Appellant has failed to establish that the Sign is within one-half mile of the boundary of the City of New York and (2) the permit was issued in error; and

WHEREAS, DOB asserts that since the Sign is not within one-half mile of the City boundary, ZR § 42-55(d) is not applicable, and review of the three ZR § 42-55(d) criteria is not warranted; and

WHEREAS, DOB contends that the permit was issued in error and it cannot be estopped from correcting its error; and

WHEREAS, DOB notes that it has not yet revoked the permit, but it has determined that the Sign is not lawful because, contrary to Appellant's argument, it is not located within one-half mile of the boundary of the City of New York City; and

A. The United States Bulkhead Line is Not a Boundary of the City of New York

WHEREAS, specifically, DOB states that contrary to the Appellant's assertion, the Bulkhead Line along the Harlem River, as shown on Zoning Resolution Map 6a, is not a City boundary; and

WHEREAS, DOB finds that while the Harlem River does create a boundary between the boroughs of Manhattan and the Bronx, it does not create a City boundary; and

WHEREAS, DOB states that the boundaries of the City are found in the Administrative Code ("AC") and per AC § 2–201, the City contains "all that territory within the boroughs;" and

WHEREAS, further, DOB asserts that AC § 2-202, is titled "Division into boroughs and boundaries thereof" and the border of the Bronx is specifically described as the area "bounded on the west by the borough of Manhattan and county of New York….;" and

WHEREAS, DOB states that the AC delineates the Bulkhead Line as a borough boundary and thus a City boundary at some locations (in the Long Island Sound for example), but this is not the case for the Bulkhead Line near the site; and

WHEREAS, DOB concludes that at the subject site, the borough of Manhattan is the western boundary of the borough of the Bronx and since the City includes all that is "contained within the boroughs" and the borough of the Bronx abuts the borough of Manhattan, there is no gap between Manhattan and the Bronx where a City boundary could possibly exist; and

WHEREAS, DOB states that therefore, the Bulkhead Line is not a City boundary at this location, and the Sign is not located within one-half mile of a boundary of the City of New York; and

B. The Purpose of the Bulkhead Line

WHEREAS, DOB asserts that the Bulkhead Line merely represents the farthest offshore line to which a structure may be constructed without interfering with navigation in the Harlem River; and

WHEREAS, DOB cites to People v. Delaware & Hudson Co., 107 N.E. 506, 507 [1914], in which the Court of Appeals declared that "[t]he bulkhead line…determines the point beyond which wharves, docks, and piers cannot be lawfully erected, and it fixes the boundaries to be devoted to navigable channel;" and

WHEREAS, further DOB cites to the Department of City Planning's (DCP) Zoning Handbook which states that the "bulkhead line is a line shown on zoning maps which divides the upland and seaward portions of waterfront zoning lots" and the "pierhead line is a line shown on the zoning maps which defines the outermost seaward boundary of the area regulated by the ZR;" and

WHEREAS, accordingly, DOB concludes that unless specifically designated as a City boundary in the Code, the Bulkhead Line solely affects the interplay between waterfront property rights and the rights to navigable water; the intent of the Bulkhead Line is to balance such property owners' rights to water areas with the right of the general population's right to use such body of water for commercial or recreational purposes; and

WHEREAS, DOB adds that acceptance of the Bulkhead Line between Manhattan and the Bronx as a City boundary would lead to absurd results; and

WHEREAS, for example, DOB states that such an interpretation would permit advertising signs along the entire portion of the Major Deegan Expressway bounded by the Harlem River; and

WHEREAS, DOB asserts that an expansive interpretation which would allow for dozens more signs within 200 feet of this arterial is contrary to the intent of the Zoning Resolution provision, which was to "aid New York City outdoor advertisers in maintaining a competitive equality with advertisers that operate immediately outside of the City's boarders [sic]." Clear Channel v. City of New York, 608 F.Supp.2d 477, 491 (2010); and

WHEREAS, DOB concludes that the subject site not only fails to meet the criteria set forth at ZR § 42-55(d), it also fails to serve the purposes and intent of that section; and

WHEREAS, further, DOB states that there are several bridges that connect Manhattan and the Bronx by crossing the Harlem River and are identified as part of the local street network and that following Appellant's arguments, these bridges would exit and reenter the City along their courses, which is contrary to DOT's description of local streets (which cannot traverse City boundaries); and

WHEREAS, finally, DOB states that if the Harlem River bridges cross City boundaries as the Appellant's logic suggests, the middle spans of these bridges, from bulkhead line to bulkhead line, would be considered locations outside the boundaries of the City of New York, but not located in any other municipality; and

WHEREAS, thus, DOB contends, the middle span of such bridges would not be maintained because they would be outside the jurisdiction of the DOT, which only has jurisdiction over bridges and roadways within the City and such portions of the bridge would be outside the jurisdiction of the New York City Police and Fire Departments responding to an accident on that portion of the bridge; and

CONCLUSION

WHEREAS, the Board notes that the only interpretation that the Appellant and DOB debate is whether the Bulkhead Line is a boundary of the City of New York to satisfy ZR § 42-55(d); and

WHEREAS, the Board agrees with DOB that the Bulkhead Line is not a boundary of the City of New York as contemplated by ZR § 42-55(d) and thus the ZR § 42-55(d) exception does not apply to the Sign; and

WHEREAS, the Board agrees with DOB that the Administrative Code, at Section 2-201, et seq, clearly describes the boundaries of the City of New York as that which contains the territory of all the boroughs without exception and that the boundaries of the City are the outermost borders; and

WHEREAS, accordingly, the Board finds that a boundary of the City of New York means the boundary surrounding the entire City; a boundary of the City of New York can be distinguished from a boundary within the City of New York such as a borough, community district, or bulkhead or pierhead line; and

WHEREAS, the Board notes that there is a hierarchy of boundary lines related to the City, which includes zoning district boundary lines, boundary lines between boroughs and Community Board districts, boundary lines for legislative districting, and, ultimately boundary lines that separate the City from other counties/municipalities/states that are outside the City's jurisdiction; and

WHEREAS, the Board notes that the hierarchy of boundary lines allows different lines to serve different, sometimes overlapping, purposes, but that all boundaries are not relevant in all situations; and

WHEREAS, the Board finds that the Appellant's reading of "any boundary of the City of New York" is overly broad in including boundaries within the City, which are not boundaries of the City; and

WHEREAS, the Board notes that the Zoning Resolution only applies to the City of New York and its application is clearly limited by the boundary around the perimeter of the City, "the boundary of the City of New York"; and

WHEREAS, the Board notes that as per ZR § 11-16 (Pierhead Lines, Bulkhead Lines and Marginal Streets), the bulkhead lines on the zoning maps are the lines adopted by the United States Army Corps of Engineers and that such lines primarily relate to regulating waterfront uses; the

Board finds that the Bulkhead Line has no relevance to ZR § 42-55(d), except where a bulkhead line and the boundary of the City of New York are coincident; and

WHEREAS, the Board does not find that the Bulkhead Line in the Harlem River, 850 feet from the subject site has any bearing on the regulation of the Sign, particularly in light of the fact that, as DOB asserts, the purpose of the exception for signs within a half-mile of a boundary of the City of New York was to improve the market for signs within and near to City boundaries as compared to those just across the boundary into other jurisdictions outside of the City; no such concern was articulated for benefitting signs near to bulkhead lines, pierhead lines, or other kinds of boundaries within the City; and

WHEREAS, the Board finds that just because the Bulkhead Line is a boundary (as are zoning district boundary lines, legislative district lines, etc.) it does not mean that it is a boundary of the City of New York as contemplated by ZR § 42-55(d); and

WHEREAS, the Board finds that the plain meaning of "boundary of the City of New York" is clear, and that ZR § 42-55(d) contemplates those connected lines which form the perimeter of the City rather than the expansive list of boundaries within the City; the use of "any boundary" recognizes that the boundaries of the City of New York take multiple forms on land and in the water; and

WHEREAS, as to DOB's 2004 approval of the Sign, the Board notes that DOB concedes that it was erroneous and agrees that DOB has the authority to correct its error; and

WHEREAS, the Board distinguishes DOB's action to correct its error in the subject case from the facts in BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue) in that in the subject case there is a clear meaning of "boundary of the City of New York," which was misapplied to the Bulkhead Line; and

WHEREAS, the Board finds that it is clear that DOB's auditor did not have the authority to deem the Bulkhead Line a boundary of the City of New York for satisfaction of ZR § 42-55(d); and

WHEREAS, the Board notes that, in contrast, in the 12th Avenue case, it determined that DOB had not established that a Borough Commissioner's reconsideration, based on an evaluation of the sufficiency of evidence within the context of a somewhat subjective analysis, had been in error; and

WHEREAS, the Board finds that DOB does not have the duty to explain, in the subject case, why the error was made in 2004 and why it accepted the Bulkhead Line as a boundary of the City of New York; the Board recognizes that, regardless of how the error occurred, DOB was clearly wrong in 2004 and has the authority to correct its error now; and

WHEREAS, the Board considers that the Appellant's survey associated with the 2004 audit may be the source of the error as it identified the Bulkhead Line as a boundary of the City, a mistake which DOB did not realize in 2004; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing the 2004 permits, but it does note that the Appellant has enjoyed the benefit of the Sign pursuant to erroneously-issued permits since that time; and

WHEREAS, accordingly, the Board finds that DOB appropriately applied ZR § 42-55 to the Sign, which does not conform with zoning regulations; and

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

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 7, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, January 15, 2013.

90-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communication LLC.

OWNER OF PREMISES – Robal Arlington Corporation.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-6 zoning district.

PREMISES AFFECTED – 111 Varick Street, between Broome and Dominick Street, Block 578, Lot 71, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION –

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

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit. As evidence related to the sign points to its having been of various sizes, orientations, and even removed, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on November 27, 2012, after due notice by publication in *The City Record*, and then to decision on January 15, 2013; and

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

WHEREAS, the subject site is located at the northwest corner of Varick Street and Broome Street, within an M1-6 zoning district; and

WHEREAS, the site is occupied by a six-story parking garage (the "Building") with a 58'-0" high by 78'-3" wide sign located on the south wall of the Building (the "Sign"); and

WHEREAS, the Sign faces Broome Street and is located approximately 57'-0" from the northern boundary of the Holland Tunnel approaches, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

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

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

REGISTRATION REQUIREMENT

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

WHEREAS, the Appellant states that under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

> all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

> Each sign shall be identified as either "advertising" or "non-advertising." To the extent a sign is a non-conforming sign, it must further be identified as "non-conforming advertising" or "non-conforming non-advertising." A sign identified as "non-conforming advertising" or "non-conforming non-advertising" shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the Appellant asserts that the acceptable forms of evidence set forth at Rule 49 are, in pertinent, part as follows:

> Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

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

REGISTRATION PROCESS

WHEREAS, the Appellant states that on April 4, 2011, pursuant to the requirements of Article 502 and Rule 49, it submitted a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) photographs of the Sign; and (3) 1953 plans associated with BSA Cal. No. 796-53-A which showed an "advertising wall sign" taking up the second through sixth floors of the south wall of the building; and

WHEREAS, on September 12, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that it is unable to accept the Sign for registration due to "Failure to provide proof of legal establishment;" and

WHEREAS, by letter, dated November 30, 2011, the Appellant submitted a response to DOB, referencing the previously-submitted evidence that the Sign has existed as an advertising sign since the 1920's, and providing three additional photographs in support of the establishment of the Sign; and

WHEREAS, by letter dated January 30, 2012, the Appellant submitted to DOB an affidavit from Donald Robinson, an employee of various outdoor advertising companies from 1959 until 1989, stating that there was an advertising wall sign on the Building from 1963 through 1989; and

WHEREAS, by letter, dated March 12, 2012, DOB issued the determination which forms the basis of the appeal, stating that "the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

> ZR § 12-10 *Definitions*
>
> Sign
>
> A "sign" is any writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or
>
> pennant), or any other figure of similar character, that:
>
> (a) Is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a #building or other structure#;
> (b) Is used to announce, direct attention to, or advertise; and
> (c) Is visible from outside a #building#. A #sign# shall include writing, representation or other

figures of similar character, within a #building#, only when illuminated and located in a window…

* * *

Sign, advertising

An "advertising sign" is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#.

* * *

Non-conforming, or non-conformity

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

* * *

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

(1) no permitted #sign# shall exceed 500 square feet of #surface area#; and

(2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.

(b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.

(c) The more restrictive of the following shall apply:

(1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or

(2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

* * *

ZR § 52-11 *Continuation of Non-Conforming Uses*

General Provisions

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

* * *

ZR § 52-61 *Discontinuance*

General Provisions

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

* * *

ZR § 52-83

Non-Conforming Advertising Signs

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

(a) The creation of a new non-conformity or an increase in the degree of non-conformity of such sign;

(b) An increase in the surface area of the sign; or

(c) An increase in the degree of illumination of such sign; and

* * *

Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance

with the following provisions:

(1) The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more…

* * *

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

…(d)(5) Each sign shall be identified as either "advertising" or "non-advertising." To the extent a sign is a non-conforming sign, it must further be identified as "non-conforming advertising" or "non-conforming non-advertising." A sign identified as "non-conforming advertising" or "non-conforming non-advertising" shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

* * *

RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming…

* * *

RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for the purposes of compliance with the Zoning Resolution:

(a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or

(b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Sign was established as an advertising sign prior to June 1, 1968, as required under ZR § 42-55, and may therefore be maintained as a legal non-conforming advertising sign pursuant to ZR § 52-11, and (2) the Sign has operated as an advertising sign with no discontinuance of two years or more since its establishment; and

WHEREAS, as to the establishment of the Sign prior to June 1, 1968, at the outset DOB states that it does not contest the Appellant's claim that the Sign existed on May 31, 1968; however, DOB asserts that the use was discontinued and must terminate per ZR § 52-61 because the wall was used to display artwork for a period of approximately ten years; and

WHEREAS, the Appellant contends that the art installation at the site from approximately 1979 to 1989 (the "Art Installation") constituted an "advertising sign" within the meaning of ZR § 12-10, and therefore the use of the Sign as an advertising sign was continuous during that time period; and

WHEREAS, the Appellant notes that ZR § 12-10 defines the term "sign" as follows:

> any writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or pennant), or any other figure of similar character, that: (a) is a structure or any part thereof, or is attached to , painted on, or in any other manner represented on a #building or other structure#; (b) is used to announce, direct attention to, or advertise; and (c) is visible from outside a #building#; and

WHEREAS, the Appellant argues that the Art Installation met the ZR § 12-10 definition of a "sign," in that (1) it was a pictorial representation (including illustration or decoration), (2) it was attached to the Building; (3) it was used to direct attention to and advertise the artist Terry Fugate-Wilcox and his works; and (4) it was visible from outside the Building; and

WHEREAS, as to the requirement that a "sign" be "used to announce, direct attention to, or advertise," the Appellant asserts that as with any other type of business an artist must develop his or her brand in order to be successful in the marketplace, and that the Art Installation served to direct attention to the artist and his work by attracting attention to the Art Installation itself; and

WHEREAS, the Appellant argues that many other types of advertisements are similarly abstract and do not explicitly direct viewers to a particular location; the Appellant points to the example of advertisements for the chain-store Target, which often contain representation of the retailer's logo, building awareness of the brand but not necessarily displaying any particular products or directing viewers to any particular store; and

WHEREAS, the Appellant notes that ZR § 12-10 further defines an "advertising sign" as "a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a use located on the #zoning lot#"; and

WHEREAS, the Appellant argues that the Art Installation "direct[ed] attention to a business, profession, commodity, service or entertainment" by directing attention to the artist and his work, which can be construed as a "business" (the business of creating artwork), a "profession" (being an artist), a "service" (providing commissioned works) or "entertainment" (the viewing and enjoyment of artwork); and

WHEREAS, the Appellant asserts that the fact that the artist was not paid for posting the Art Installation and that the work included his signature reflects that the Art Installation was posted as an opportunity to promote his brand and his work; and

WHEREAS, the Appellant contends that many other types of advertisements, such as the Target bullseye logo, are abstract representations that direct attention to a brand and do not explicitly direct viewers to a particular product or location; and

WHEREAS, the Appellant argues that the Art Installation also met the criteria that the business, profession, commodity, service or entertainment be "conducted, sold, or offered elsewhere than upon the same #zoning lot#" in that the work of the artist was not performed on the zoning lot and his other works were offered and sold elsewhere as well; and

WHEREAS, the Appellant argues that, based on the Board's decision in BSA Cal. Nos. 88-12-A and 89-12-A, it is not the intent but the effect of a sign that is relevant in reviewing the applicability of the Zoning Resolution, and the effect of posting the Art Installation in a high traffic area on a wall that had been used for advertising signs for more than 50 years was that the artist and his work received publicity because the Art Installation directed attention to the artist and his work; and

WHEREAS, the Appellant contends that the context and circumstances applicable to the Sign make it clear that the Art Installation was simultaneously used for artistic and advertising purposes; and

WHEREAS, specifically, the Appellant asserts that the Sign has a long history of use as an advertising sign from as early as the 1920's, the Art Installation was affixed in the exact same position and location as advertising signs that had been posted on the Building for six decades prior, and that it met all of the elements of the definition of a "sign," and based on this context the Art Installation may properly be construed as an advertising sign for the purposes of establishing a history of continuous use under the Zoning Resolution; and

WHEREAS, the Appellant acknowledges that not every public art installation qualifies as an advertising sign, but where an art installation is displayed in a space typically and historically used for advertising, is signed and identified with the name of the artist and takes the shape of an advertising billboard, context dictates that it should be considered an advertising sign; and

WHEREAS, the Appellant notes that DOB has previously issued Technical Policy and Procedure Notice ("TPPN") # 8/96 to establish DOB's policy that abstract architectural features of buildings are subject to sign regulations, and argues that DOB cannot consider certain abstract representations to be signs while denying other abstract representations constitute signs; and

DOB'S POSITION

WHEREAS, DOB states that it does not contest the Appellant's claim that the Sign existed prior to June 1, 1968; however, DOB asserts that during the time the building wall was used to display the Art Installation, the non-conforming advertising sign use was discontinued, and therefore the use must terminate pursuant to ZR § 52-61; and

WHEREAS, DOB states that pursuant to ZR § 12-10, a non-conforming "sign" must continue to be used to "announce, direct attention to or advertise," and a non-conforming "advertising sign" must continue to be used as a sign that "directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot"; and

WHEREAS, DOB notes that the Wikipedia website states that the artist, Terry Fugate-Wilcox, was commissioned to create the Art Installation, identified as the "Holland Tunnel Wall," as an art piece; and

WHEREAS, DOB states that the webpage describes the artwork as a 60'-0" by 80'-0" billboard covered in layers of different colors of paint that would be revealed in patterns as the work weathered, and notes that the Art Installation was dismantled and the plywood panels were reclaimed by the artist as individual works of art; and

WHEREAS, DOB further states that a New York Times article dated August 7, 1981 titled "Outdoor-Sculpture Safari Around New York," describes the Art Installation as "sheets of plywood painted yellow" covering the façade; and

WHEREAS, DOB asserts that painted plywood, whether visible in solid colors or eroded into patterns, does not announce, direct attention to or advertise a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot, and therefore, does not constitute a "sign" or "advertising sign" pursuant to the ZR § 12-10 definitions of those terms; and

WHEREAS, DOB further asserts that the Art Installation is a creative expression that attracts attention to itself rather than directing attention to a use or product off the site, and therefore it lacks the message element of the ZR § 12-10 definition of "sign"; and

WHEREAS, DOB argues that murals similar to the Art Installation are displayed throughout the City and none are subject to the sign regulations of the Zoning Resolution; and

WHEREAS, DOB contends that, contrary to the Appellant's argument, the Art Installation cannot be compared with the Target bullseye logo because (1) the purpose of the Art Installation is to be art while the purpose of the logo is to promote Target products, (2) the Target bullseye design is a registered trademark of Target Brands, Inc., and is the distinctive symbol used to distinguish products from those of another manufacturer, and (3) there is no indication that the Art Installation was installed to reference the product of the artist, his studio, the source of the work, or the availability of his artwork for purchase; and

WHEREAS, as to the Appellant's argument that TPPN

8/96 supports the notion that abstract representations are signs and therefore the Art Installation should be recognized as a Sign, DOB asserts that TPPN # 8/96 incorrectly allowed the display of a corporate logo to be exempt from sign regulations if it could be treated as a "distinctive architectural feature", and it was rescinded on July 14, 1998 by TPPN # 6/98; and

WHEREAS, accordingly, DOB concludes that during the approximately ten years that the Art Installation was displayed, the non-conforming advertising sign use was discontinued and must be terminated pursuant to ZR § 52-61; therefore the sign registration application was properly denied because the sign is not entitled to non-conforming use status per ZR § 42-55; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the non-conforming advertising sign use was discontinued during the approximately ten years that the Art Installation was displayed on the Building, and therefore the use must be terminated pursuant to ZR § 52-61; and

WHEREAS, the Board finds that the Art Installation, which consisted of sheets of plywood painted in layers of solid colors, did not meet the ZR § 12-10 definition of a "sign" or an "advertising sign" because it did not announce, direct attention to, or advertise a business, profession, commodity, service, or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot; and

WHEREAS, the Board agrees with DOB that the Art Installation is a creative expression that attracts attention to itself rather than directing attention to a use or product off the site, and therefore it lacks the message element of the ZR § 12-10 definition of "sign"; and

WHEREAS, the Board finds that in order to satisfy the ZR § 12-10 definition of "sign" or "advertising sign," the sign must announce, direct attention to, or advertise something outside of the sign itself, and that interpreting the definition otherwise would lead to absurd results, as any object that is visible could be argued to direct attention to itself by the mere act of being seen; and

WHEREAS, the Board disagrees with the Appellant that the Art Installation is comparable to other types of abstract advertisements that do not explicitly direct viewers to a particular location, in that the Art Installation is not an advertisement and does not provide any information that would direct attention to products or uses found off the site; and

WHEREAS, the Board agrees with distinctions made by DOB between the Art Installation and the Target bullseye logo; and

WHEREAS, the Board disagrees with the Appellant that, merely because the artist was not paid for creating the Art Installation and because his signature was on the work, the purpose of the Art Installation was to promote the artist's business and his other work; rather, the Board finds the primary purpose of the Art Installation to be one of creative expression and aesthetic appreciation; and

WHEREAS, the Board finds the fact that the Art Installation is similar to many other murals displayed throughout the City, which DOB noted are not subject to the sign regulations of the Zoning Resolution, to be further evidence that an artist's signature is not sufficient to transform a piece of art into an advertising sign, since it is standard practice for artists to sign their work; and

WHEREAS, the Board disagrees with the Appellant's contention that context dictates that the Art Installation be construed as an advertising sign, and does not find the fact that the Art Installation was displayed in a space that was previously used for advertising or that it takes the shape of an advertising billboard to be relevant to the Board's determination; and

WHEREAS, the Board finds the Appellant's reliance on BSA Cal. Nos. 88-12-A and 89-12-A, for the proposition that the relevant consideration is not the intent of the sign but the effect of the sign, to be misplaced; and

WHEREAS, specifically, the Board notes that BSA Cal. Nos. 88-12-A and 89-12-A concerned an analysis of the meaning of "within view" in the context of whether the signs at issue were within view of an arterial highway pursuant to ZR § 42-55, and the Board's discussion of intent was limited to a determination that the intended audience of the signs was not relevant in determining whether the signs were "within view" of the arterial highway; the Board did not make a broad determination that the intent of a sign is never a relevant consideration; and

WHEREAS, notwithstanding the above, the Board finds that regardless of whether it reviews the Art Installation based on its intent or effect, it does not meet the ZR § 12-10 definition of an advertising sign; and

WHEREAS, therefore, the Board finds that the non-conforming advertising sign use was discontinued for more than two years and must be terminated pursuant to ZR § 52-61, and as such, DOB properly rejected the Appellant's registration of the Sign.

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

Adopted by the Board of Standards and Appeals, January 15, 2013.

142-12-A

APPLICANT – Sheldon Lobel, P.C., for 108-59 Ditmas Boulevard, owner.

SUBJECT – Application May 3, 2012 – Amendment of a previously approved (BSA Cal No. 187-99-A) waiver of the General City Law Section 35 which permitted the construction of a two family dwelling in the bed of a mapped street (24th Avenue). The amendment seeks to construct a community facility building. R3-2 zoning district.

PREMISES AFFECTED – 24-02 89th Street, between Astoria Boulevard and 23rd Avenue, Block 1100, Lot 101, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on

condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 21, 2012 acting on Department of Buildings Application No.420356741, reads:

> The proposed development at the premises is located partially within the bed of a mapped street, which is contrary to General City Law § 35. Refer to BSA for approval; and

WHEREAS, this is an application under General City Law ("GCL") § 35, to permit the construction of a two-story community facility building within the bed of 24th Avenue, a mapped but unbuilt street; and

WHEREAS, the proposed building will contain a house of worship and school uses; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, with a continued hearing on December 12, 2012, and then to decision on January 15, 2013; and

WHEREAS, the subject site is located on the west side of 89th Street approximately 522 feet north of the intersection of 89th Street and Astoria Boulevard, within an R3-2 zoning district; and

WHEREAS, on May 2, 2000, under BSA Cal. No. 187-99-BZ, the Board granted a waiver under GCL § 35 to permit the construction of a two-family home at the site, within the bed of 24th Avenue; the applicant states that the approved home was never constructed; and

WHEREAS, the applicant notes that in 2008 the City Planning Commission ("CPC") and City Council approved an application seeking to eliminate, discontinue, and close a portion of 24th avenue located between 88th Street and 90th Place from the City Map (ULURP Application No. C060466MMQ), and that this application includes the portion of 24th Avenue that is mapped across the site; and

WHEREAS, the applicant states that despite the CPC and City Council approval, the post-ULURP steps necessary to effectuate the change to the City Map have not been completed, and therefore the applicant desires to continue with the instant GCL § 35 application to allow construction of the proposed community facility building to commence prior to finalizing the City Map change; and

WHEREAS, by letter dated October 2, 2012, the Fire Department states that it has no objections to the subject proposal; and

WHEREAS, by letter dated June 27, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated December 13, 2012, the Department of Transportation ("DOT") states that the improvement of 24th Avenue, which would involve the taking of a portion of the applicant's property, is not presently included in DOT's Capital Improvement Program, however, according to City records it appears that the lot was acquired from the City subject to a "Dollar Condemnation" recapture clause for the portion of the property lying in the street bed; and

WHEREAS, therefore, because the City has no plans to improve or widen the referenced street, the applicant requests that the Board approve the subject application to permit construction in the bed of the mapped but unbuilt street pursuant to GCL § 35; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 21, 2012, acting on Department of Buildings Application No. 420356741, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received January 14, 2013" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

THAT the building be fully sprinklered as noted in the BSA approved plan; and

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

Adopted by the Board of Standards and Appeals January 15, 2013.

45-03-A thru 62-03-A & 64-03-A
APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.
SUBJECT – Application October 3, 2011 – Proposed construction of a single-family dwelling which is not fronting on a legally mapped street and is located within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R3-1 zoning district.
PREMISES AFFECTED – Hall Avenue, north side of Hall Avenue, 542.56' west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lot 60, 80, Borough of Staten Island.

COMMUNITY BOARD #2SI
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

144-12-A
APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.
SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f).
PREMISES AFFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for adjourned hearing.

145-12-A
APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.
SUBJECT – Application May 3, 2012 – Appeal challenging the determination of the Department of Buildings requiring the owner to obtain approval from the Landmarks Preservation Commission, prior to reinstatement and amendments of the permits. R8B zoning district.
PREMISES A.FFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for deferred decision.

208-12-A
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 647-649 Washington Avenue, LLC, owner.
SUBJECT – Application July 2, 2012 – Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.
PREMISES AFFECTED – 17 McGee Lane, north side of McGee Lane, east of Harbor Road and West of Union Avenue, Block 01226, Lot 123, Borough of Staten Island.
COMMUNITY BOARD #1SI
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

216-12-A thru 232-12-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 647-649 Washington Avenue, LLC, owner.
SUBJECT – Application July 2, 2012 – Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.
PREMISES AFFECTED – 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47 and 49 McGee Lane, north side of McGee Lane, east of Harbor Road and West of Union Avenue, Block 01226, Lots 122, 121, 120, 119, 118, 117, 116, 115, 114, 113, 112, 111, 110, 109, 108, 107 and 106, Borough of Staten Island.
COMMUNITY BOARD #1SI
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 15, 2013
1:30 P.M.

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

ZONING CALENDAR

113-11-BZ
APPLICANT – Slater & Beckerman, LLP, for St. Patrick's Home for the Aged and Infirm, owners.
SUBJECT – Application August 10, 2011 – Variance (§72-21) to permit a proposed enlargement of a Use Group 3 nursing home (*St. Patricks Home for the Aged and Infirm*) contrary to rear yard equivalent requirements (§24-382). R7-1 zoning district.
PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, Borough of Bronx.
COMMUNITY BOARD #8BX
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated July 11, 2011, acting on Department of Buildings Application No. 220069146, reads in pertinent part:

> ZR 24-382. Proposed rear yard equivalent or lack of one is contrary to the stated section of the code; and

WHEREAS, this is an application under ZR § 72-21, to permit the enlargement of an existing nursing home (Use Group 3), which does not comply with the required rear yard equivalent, contrary to ZR § 24-382; and

WHEREAS, a public hearing was held on this application on July 17, 2012, after due notice by publication in the *City Record*, with a continued hearing on December 11, 2012, and then to decision on January 15, 2013; and

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

WHEREAS, this application is brought on behalf of St. Patrick's Home for the Aged and Infirm ("St. Patrick's"), a not-for-profit institution; and

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

WHEREAS, the adjacent property owner to the south, represented by counsel, provided testimony at the hearing requesting (1) lighting be provided around the landscaping for security purposes, and (2) certain aesthetic improvements to the facade; and

WHEREAS, the site is an irregularly-shaped corner through lot located on the south side of Van Cortlandt Park South, the east side of Saxon Avenue, and the west side of Dickinson Avenue, within an R7-1 zoning district; and

WHEREAS, the site has 289 feet of frontage along Van Cortlandt Park South, 155 feet of frontage along Saxon Avenue, and 236 feet of frontage along Dickinson Avenue, and has a total lot area of 54,708 sq. ft.; and

WHEREAS, the site is currently occupied by two buildings: an eight-story Use Group 3 nursing home containing approximately 118,547 sq. ft. of floor area (the "Nursing Home"), and a seven story Use Group 3 convent containing approximately 14,472 sq. ft. of floor area; and

WHEREAS, the site is also occupied by a 38-space accessory parking lot for the Nursing Home; and

WHEREAS, the applicant states that the Nursing Home contains 264 beds, areas for physical and occupational therapy, a wellness center, recreation area, a chapel, gift shop, and a resident coffee shop; and

WHEREAS, the applicant proposes to construct a four-story structure in the area currently occupied by the accessory parking lot, which will include 104 self-parking spaces on three-levels, as well as space for storage, a recreation room, and an outdoor terrace (the "Proposed Facility"); and

WHEREAS, the Proposed Facility will have approximately 20,845 sq. ft. of floor area (0.3 FAR), increasing the total floor area on the site from 133,019 sq. ft. (2.5 FAR) to 153,864 sq. ft. (2.8 FAR) (the maximum permitted floor area for the site is 188,196 sq. ft. (3.44 FAR), and will provide a non-compliant 30'-0" rear yard equivalent; and

WHEREAS, the applicant states that the Proposed Facility will have direct connections to the Nursing Home and will have the following uses: (1) parking for 32 cars and storage space for St. Patrick's records and housekeeping on level one, which will align with the Nursing Home's basement level; (2) parking for 35 cars and no access to the Nursing Home on level two; (3) parking for 37 cars and storage for the Nursing Home on level three, which will align with the ground floor lobby level of the Nursing Home; and (4) a recreation room and an open space terrace on level four, which will align with the second floor of the Nursing Home; and

WHEREAS, the applicant states that construction of the Proposed Facility will also require a special permit from the City Planning Commission ("CPC") pursuant to ZR § 74-90, to permit the enlargement of an existing nursing home located within Community District 8 in the Bronx; the applicant notes that it has simultaneously filed the required application with CPC; and

WHEREAS, because the Proposed Facility does not comply with the rear yard equivalent requirement in the underlying R7-1 zoning district, the applicant requests the subject variance; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the programmatic needs of St. Patrick's; (2) the irregular shape of the lot; (3) the existence and configuration of the existing buildings on the lot; and (4) the inability of a complying facility to satisfy New York State Department of Health ("DOH") regulations; and

WHEREAS, the applicant states that the following are the programmatic needs of St. Patrick's which require the requested waiver: (1) locating the Proposed Facility on the same site as the Nursing Home; (2) improving the effectiveness of St. Patrick's employee recruitment and retention programs by creating a safe, secure, and convenient parking area; (3) providing a parking area for the family and visitors of the residents; (4) relocating the existing Physical Therapy Department ("PTD") into a larger area and providing additional space for the Occupational Therapy Department ("OTD"); (5) enhancing resident activities programs and creating the opportunity to broaden and upgrade the scope of other resident services; and (6) providing sufficient storage space for the Nursing Home; and

WHEREAS, as to the location of the Proposed Facility, the applicant states that St. Patrick's existing facilities have been located entirely on the site since 1931, and in order for St. Patrick's to satisfy its need of delivering quality resident services, improving the effectiveness of its employee recruitment and retention programs, as well as improving St. Patrick's competiveness as a destination of choice for individuals seeking skilled and rehabilitative care, the Proposed Facility must be located on the site; and

WHEREAS, as to the need to improve the employee recruitment and retention programs, the applicant states that St. Patrick's employs approximately 375 full- and part-time individuals, and that the existing 38-space accessory parking lot and the extremely limited supply of off-street parking in the surrounding neighborhood is insufficient to handle St. Patrick's current demand for employee parking; and

WHEREAS, the applicant represents that one of the defining factors in the recruitment and retention of high quality nursing home staff is the availability of safe and secure on-site parking or, in the alternative, safe, secure and easily accessible off-street parking, and the lack of adequate parking on the site has negatively impacted the success of its employee recruitment and retention programs; and

WHEREAS, the applicant states that St. Patrick's is not easily accessible from public transportation, as the closest subway station to the site is over a half-mile away, and although there is a nearby bus stop, certain employee shifts end and begin late at night and early in the morning; therefore, without adequate on-site parking, employees must wait for the bus during late night and early hours in this fairly remote area of the Bronx, potentially creating a dangerous condition; and

WHEREAS, in response to the Board's question whether stackers and attended parking could be provided to reduce the amount of space required to satisfy St. Patrick's parking needs, the applicant states that St. Patrick's employees work on three shifts (a day shift, night shift, and overnight shift) and during these shifts all the employees arrive and depart at approximately the same time, such that the use of stackers would disrupt the traffic flow and create congestion during the change of shifts and forcing employees to wait lengthy durations while their vehicle is being parked or removed from the Proposed Facility, which could further impact St. Patrick's employee recruitment and retention efforts; and

WHEREAS, the applicant represents that many of St. Patrick's approximately 260 residents receive visitors daily and the lack of on-site parking is frustrating and inconvenient to the visitors, a majority of whom do not live in the five boroughs of New York City, such that public transportation is not an option; and

WHEREAS, as to the need to relocate the PTD into a larger area and provide additional space for the OTD, the applicant states that doing so is necessary to deliver a wider range of modern, more sophisticated sub-acute physical therapy services and to provide additional space for the delivery of enhanced occupational therapy services allowing the Nursing Home the opportunity to more favorably address the ongoing needs of its residents; and

WHEREAS, specifically, the applicant states that the construction of the Proposed Facility, including the recreation room and open air terrace, will permit St. Patrick's to reallocate program space within the Nursing Home, and the PTD and OTD will be redesigned resulting in the delivery of improved services to the residents; and

WHEREAS, the applicant states that currently the PTD shares space with the OTD and the existing space is crowded and has limited maneuverability as well as storage areas for wheelchairs and other ambulation equipment; therefore the redesign and relocation of group activities to the new proposed rooftop terrace and recreation room will free up space for physical therapy activities and make the space accessible to residents utilizing wheelchairs; and

WHEREAS, the applicant further states that the relocation of the PTD will further enhance the usable space of the OTD and permit the improved delivery of occupational therapy services, and the enhanced scope of physical therapy and occupational therapy services will allow St. Patrick's to maintain a competitive operating profile necessary to ensure its ongoing operational viability and improve the general effectiveness of St. Patrick's on-site training and instruction programs; and

WHEREAS, as to the need for the proposed recreation room and open air terrace, the applicant states that the size and configuration of the Nursing Home has constrained St. Patrick's ability to optimize the range of care it can offer to its evolving resident population, and the Proposed Facility will include an approximately 10,186 sq. ft. recreation room and an approximately 7,137 sq. ft. open-air terrace for its residents, which will become the focal point of its enhanced resident activities program and create the opportunity to

broaden and upgrade the scope of other resident services; and

WHEREAS, the applicant states that, due to the volume of wheelchairs and other ambulation aids required by St. Patrick's typical resident population, there is a lack of adequate space in St. Patrick's existing building to accommodate a facility-wide event or planned activity and as a consequence, programs or events specifically designed to promote interaction and socialization within and among large resident groups are located in the main entrance creating a confined condition, or must be limited, and in some cases, simply set aside; and

WHEREAS, the applicant represents that the Proposed Facility will satisfy St. Patrick's need of improving its activities department by providing a variety of stimulating activities available to each and every resident on a personal, family or group basis, and the daily life of each of St. Patrick's residents will be enhanced by the availability of secure, accessible space in the recreation room and on the open-air terrace and will improve St. Patrick's outreach programs; and

WHEREAS, as to the Nursing Home's need for storage space, the applicant states that as St. Patrick's has evolved over the years, it has had to lease appropriate off-site space for record storage and the storage of various items of furniture and other seasonal items due to the lack of on-site storage; and

WHEREAS, the applicant represents that under these conditions, whenever a set of stored items has to be retrieved, and ultimately returned, St. Patrick's must employ additional labor, incur fees and address operational coordination, which results in St. Patrick's bypassing opportunities to purchase operating supplies and materials in lower-costing bulk quantities, due to the general lack of storage space; and

WHEREAS, the applicant states that the Proposed Facility will address this problem by providing a secure storage space on two levels, sufficient in size to allow St. Patrick's to retain materials currently stored off-site, and permit it to make cost-saving bulk purchases in the future; and

WHEREAS, the applicant represents that the programmatic needs cannot be accommodated within a complying development based on the unique conditions on the lot, including (1) the irregular shape of the lot and (2) the configuration of the existing building; and (3) the DOH regulations; and

WHEREAS, as to the irregular shape of the lot, the applicant states that the polygonal shape of the site creates a practical difficulty in constructing a compliant facility; and

WHEREAS, the applicant submitted a drawing reflecting that if the site consisted of a regularly-shaped lot the Proposed Facility could be located at the site while providing a compliant rear yard equivalent; and

WHEREAS, the applicant states that because the site is occupied by two existing buildings, the only location that the Proposed Facility can be located is the site of the existing parking lot, and the irregular shape of the lot combined with the configuration of the existing buildings precludes the construction of a complying facility that can satisfy St. Patrick's programmatic needs as well as the applicable DOH regulations; and

WHEREAS, as to the DOH regulations, the applicant states that it has analyzed a compliant design which satisfies its programmatic needs, however, such compliant design is contrary to DOH regulations as referenced in Title 10 of the New York Codes, Rules and Regulations ("NYCRR") § 713-3.4; and

WHEREAS, the applicant states that pursuant to NYCRR § 713-3.4, public resident spaces, such as the proposed recreation room and outdoor space, are not permitted to be accessed via nursing units; and

WHEREAS, the applicant submitted plans of a complying facility, which reflects that in order to accommodate a compliant rear yard equivalent and 96 parking spaces (which is less than the proposed 104 spaces), the facility would need to be increased from four to five levels; and

WHEREAS, the applicant states that the fifth level of the complying facility, which includes the outdoor terrace, would align with the existing third floor of St. Patrick's instead of the second floor, and because the third floor is a nursing unit area, when residents access the proposed recreation room and outdoor space at the fifth level of the complying facility, they would have to utilize a nursing unit area, contrary to New York State's "Standards of Construction for Nursing Homes"; and

WHEREAS, the applicant represents that because the Proposed Facility provides access to the recreation room and outdoor space from the second floor of the Nursing Home, which contains the physical and occupational therapy public spaces and is not a nursing unit area, it complies with NYCRR § 713-3.4; and

WHEREAS, the Board notes that the applicant also asserts that St. Patrick's is an educational institution, and as such is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application, pursuant to Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986); and

WHEREAS, the Board finds that the applicant did not submit sufficient evidence into the record to establish that St. Patrick's is an educational institution as contemplated by the courts, and as such, it cannot rely solely on the programmatic needs of St. Patrick's to support the subject variance application; and

WHEREAS, accordingly, based upon the above, the Board finds that the irregularity of the subject lot, the configuration of the existing buildings on the site, and the need to comply with DOH regulations, when considered in conjunction with the programmatic needs of St. Patrick's, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant states that St. Patrick's has existed on the site since 1931; and

WHEREAS, the applicant notes that Van Cortlandt Park is located directly north of the site across Van Cortlandt Park South, to the south of the site are the Amalgamated Houses (two separate 20-story buildings, providing affordable housing for 1500 moderate-income families), directly to the west of the site is a six-story residential building, with single- and two-family detached buildings to the southwest, and to the east of the site is an open space owned by the New York City Department of Environmental Protection; and

WHEREAS, the applicant notes that the Proposed Facility complies with all use and bulk regulations of the underlying R7-1 zoning district, with the exception of rear yard equivalent; and

WHEREAS, the applicant submitted plans reflecting that it will landscape the area of the Proposed Facility adjacent to Van Cortlandt Park South, providing a soft transition between the Proposed Facility and the sidewalk, and the applicant states that along Saxon Avenue and Van Cortlandt Park South, the existing mature street trees will remain; and

WHEREAS, in response to the concerns raised by the adjacent property owner, the applicant submitted a revised plan reflecting that lighting will be provided for the proposed landscaping; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of St. Patrick's could occur on the existing lot; and

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

WHEREAS, as noted above, the Proposed Facility complies with all regulations of the R7-1 zoning district with the exception of rear yard equivalent; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary; and

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

WHEREAS, the project is classified as a Type I Action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Department of City Planning, as Lead Agency, has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11DCP043X, dated September 28, 2012; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals adopts the CEQR determination of the Department of City Planning and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit the enlargement of an existing nursing home (Use Group 3), which does not comply with the required rear yard equivalent, contrary to ZR § 24-382; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 7, 2013"– (11) sheets; and *on further condition;*

THAT the following shall be the bulk parameters of the building: 20,845 sq. ft. of floor area (0.3 FAR) for a total floor area on the site of 153,864 sq. ft. (2.8 FAR), a minimum rear yard equivalent of 30'-0", a total height of 48'-0", and 104 accessory parking spaces, as indicated on the BSA-approved plans;

THAT prior to the issuance of any DOB permits, the applicant shall obtain a special permit from the City Planning Commission pursuant to ZR § 74-90;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2013.

190-11-BZ
CEQR #12-BSA-051X
APPLICANT – Sheldon Lobel, P.C., for 1197 Bryant Avenue Corp., owner.
SUBJECT – Application December 15, 2011 – Variance (§72-21) to legalize Use Group 6 retail stores, contrary to use regulations (§22-10). R7-1 zoning district.
Community Board #3BX
PREMISES AFFECTED – 1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street. Block 2993, Lot 27, Borough of Bronx.
COMMUNITY BOARD #3BX
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 15, 2011, acting on Department of Buildings Application No. 210044708, reads in pertinent part:

> Proposed use of existing building at the premises for Use Group 6 commercial use is not permitted as-of-right in the R7-1 district pursuant to ZR Section 22-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R7-1 zoning district, the legalization of the use of an existing one-story building for Use Group 6 retail, which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with continued hearings on October 30, 2012, and December 11, 2012, and then to decision on January 15, 2013; and

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

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

WHEREAS, a neighbor provided testimony expressing a concern that businesses at the site attract too many visitors and the number of businesses should be limited; and

WHEREAS, the subject site is located on the northwest corner of Bryant Avenue and Home Street within an R7-1 zoning district; and

WHEREAS, the site has approximately 91 feet of frontage on Bryant Avenue and 25 feet of frontage on Home Street, with a total lot area of 2,328 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story formerly manufacturing building currently occupied by three commercial uses (Use Group 6), with a floor area of 2,328 sq. ft. (1.0 FAR); and

WHEREAS, the building was constructed in 1931 and formerly occupied by a legal non-conforming meat processing plant (Use Group 18); and

WHEREAS, the applicant states that the building was renovated and three retail spaces were created pursuant to an Alteration Type 2 application; during a subsequent review, DOB determined that there had been a discontinuance of the former non-conforming use which precluded the applicant from occupying the building with the proposed use; and

WHEREAS, the applicant now proposes to legalize the use of the subject building to commercial use (Use Group 6); and

WHEREAS, because the commercial use is not permitted in the subject zoning district, the applicant seeks a use variance to permit the proposed Use Group 6 use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the history of use of the site for non-residential use; (2) the obsolescence of the subject building for conforming use; (3) the small, narrow lot configuration that limits the size and layout of any permitted residential development; and (4) the cost of demolishing the existing building and excavating the site; and

WHEREAS, as to the history of use and the existing building, the applicant states that the building was designed for manufacturing uses and operated as a meat processing plant from approximately 1931 until the late 1990s; and

WHEREAS, the applicant states that the building is not suited for residential use and any renovation of the building to accommodate such a use is impractical and cost-prohibitive; and

WHEREAS, the applicant contends that the building is also not well-suited for as-of-right community facility uses due to its small size and narrow floor plan and that the retrofit required for the building to meet the requirements of the 2008 Fire Code for community facility uses further burdens any use of the building for as-of-right use; and

WHEREAS, the applicant submitted a letter from a contractor which estimates the cost for the installation of an interior fire alarm system and automatic wet sprinkler system, both of which are required for community facility use, will be approximately $41,000; and

WHEREAS, as to lot configuration, the applicant states that the lot is small and narrow with a width of 25 feet, a depth of only 91 feet, and a lot area totaling 2,328 sq. ft.; and

WHEREAS, the applicant notes that the R7-1 zoning district lot coverage restrictions combined with the site's narrow lot width results in a floor plate that is only able to accommodate two small residential apartments per floor; and

WHEREAS, the applicant states that the as-of-right building's interior circulation space includes an entrance lobby, stairwell, and common hallways that represent a significant amount of non-rentable floor area given the small size of the building; and

WHEREAS, the applicant asserts that the development potential of the site is also limited by the R7-1 zoning district

parking regulations, which requires parking spaces for 30 percent of all dwelling units; because the site can only accommodate a maximum of two parking spaces on-site, only eight dwelling units can be accommodated; and

WHEREAS, the applicant asserts that the rental values of the building's apartment units are unable to offset the development costs associated with the project; and

WHEREAS, as to premium demolition costs, the applicant asserts that the surrounding built conditions are highly sensitive due to age and construction compounded by the existing building's full lot coverage condition; specifically, its western wall abuts the eastern wall of the two-story frame residential home to the west (1005 Home Street), which is a two-family home originally built as long ago as 1901 with unknown foundation depth and conditions, and its northern wall abuts the garage located on the property to the north along Bryant Avenue (1209 Bryant Avenue); and

WHEREAS, the applicant asserts that the presence of older buildings on the lot line will significantly increase the cost associated with demolishing the existing one-story and cellar building and excavating the entire site to prepare it for as-of-right development while also requiring underpinning and shoring; and

WHEREAS, as to the uniqueness of the conditions, the applicant performed an analysis to determine whether there are other similarly-situated properties that are underbuilt (less than 50 percent of permitted FAR) and have a narrow lot width within a 600-ft. radius of the site; and

WHEREAS, the applicant states that the results of this study show that the site is one of only six similarly situated properties in the study area (narrow, underbuilt and not part of a mass subdivision development) that have been developed since 1930, which amounts to 2.5 percent of all properties within the study area; and

WHEREAS, additionally, the site is one of only two of these similarly situated properties that are occupied by a non-conforming building; and

WHEREAS, the Board is not persuaded by the assertions that the demolition costs, which are reasonably common in New York City, constitute a unique conditions that create practical difficulty or unnecessary hardship; and

WHEREAS, however, based upon the above, the Board finds that the history of the site, and the characteristics of the 1931 building and its use as well as the lot's configuration are unique condition which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS specifically, the Board notes that the building was constructed approximately 80 years ago for a legal Use Group 18 use which would now be non-conforming, and that its conversion to a conforming use either residential or community facility would require significant retrofitting costs that create a hardship; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a conforming scenario of a four-story multi-family residential building; (2) a conversion of the existing building to community facility use; (3) a lesser variance residential scenario with a waiver for parking; and (4) the proposed legalization of the use of the existing building for commercial use; and

WHEREAS, the study concluded that the conforming scenarios would not result in a reasonable return, but that the proposed building would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

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

WHEREAS, the applicant represents that the surrounding area is predominantly occupied by a mix of residential and community facility uses; however, there are six non-conforming commercial uses located within a two-block radius of the site; and

WHEREAS, the applicant states that ZR § 52-332 would allow for the continuation of a non-conforming use at the site, except that the Use Group 18 meat processing use discontinued for a period greater than two years and the rights to the non-conforming use no longer exist, pursuant to ZR § 52-61; and

WHEREAS, the applicant represents that the former meat processing business occupied the building from approximately 1931 until sometime in the late 1990s and that commercial uses have occupied the site since 2007; and

WHEREAS, the applicant asserts that the commercial uses are significantly more compatible with the surrounding area than the meat processing business; and

WHEREAS, the applicant asserts that the use of the existing building for commercial uses will not result in noise levels that will adversely affect the adjacent residential uses in part because the existing building is constructed of 12-in. masonry block and has an interior wall consisting of a stud and drywall assembly, both of which serve to prevent noise transmission; and

WHEREAS, further, the applicant notes that the building's uses include a deli/convenience store and beauty salon, neither of which generates any significant amount of noise and the building does not have any rooftop HVAC units that generate unwanted noise; and

WHEREAS, the applicant proposes the following hours of operation: (1) for the deli/store – 7:00 a.m. to 10:00 p.m., seven days a week and (2) for the beauty salon – 10:00 a.m. to 9:00 p.m., Monday through Saturday and 10:00 a.m. to 5:00 p.m., Sunday; and

WHEREAS, at hearing, a neighbor provided testimony raising concerns about the amount of visitors generated by the uses at the site; and

WHEREAS, in response, the applicant states that due to the small size of the businesses, traffic is not significant and only the deli/store has one small truck delivery per day, while

the beauty salon owner picks up all her own products; and

WHEREAS, the applicant concedes that the shipping business that formerly occupied the site generated considerably more traffic but that that has now vacated the third storefront; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA051X dated May 17, 2011; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a to permit, within an R7-1 zoning district, the legalization of the use of an existing one-story building for Use Group 6 retail, which does not conform to district use regulations, contrary to ZR § 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 7, 2013" – (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a total floor area of 2,328 sq. ft. (1.0 FAR); and a maximum of three commercial businesses, as indicated on the Board-approved plans;

THAT the maximum hours of operation will be 7:00 a.m. to 10:00 p.m.;

THAT signage on the site will comply with C1 district regulations;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2013.

30-12-BZ
CEQR #12-BSA-076Q
APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.
SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an existing one-story supermarket, contrary to §36-11. R6/C2-2 zoning district.
PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.
COMMUNITY BOARD #7Q
ACTION OF THE BOARD – Application Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 24, 2012, acting on Department of Buildings Application No. 420501095, reads in pertinent part:

Board of Standards and Appeals required for rooftop parking in C2-2 as per ZR § 73-49; and

WHEREAS, this is an application under ZR §§ 73-49 and 73-03 to allow rooftop parking above the first floor of an existing one-story commercial building located in a C2-2 (R6) zoning district, contrary to ZR § 36-11; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in the *City Record*, with continued hearings on August 21, 2012, October 23, 2012, and December 11, 2012, and then to decision on January 15, 2013; and

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

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

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

WHEREAS, the Board notes that the applicant has provided a Memorandum of Understanding with the adjacent building at 142-05 Roosevelt Avenue (the "Residential Building") reflecting conditions the parties agreed to as evidence of the Residential Building's conditional support of the proposal; and

WHEREAS, the subject site is located on the northwest corner of Roosevelt Avenue and Avenue B, within a C2-2 (R6) zoning district; and

WHEREAS, the site is occupied by a one-story commercial building occupied by a grocery store and a pharmacy; and

WHEREAS, the applicant proposes accessory rooftop parking for 49 parking spaces for grocery store customers and would relocate the required parking from the current location at the cellar and sub-cellar of the adjacent six-story Residential Building; and

WHEREAS, the applicant represents that 41 parking spaces are the minimum required for the commercial use of the building; and

WHEREAS, in order to meet its needs, the applicant seeks a special permit pursuant to ZR § 73-49, to permit rooftop parking at the site; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building in a C2-2 zoning district if the Board finds that the parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas; and

WHEREAS, the applicant notes that the adjacent uses include the Residential Building, which is six stories and separated from the subject site by an alleyway with a width of 25 feet; the 12-story nursing home at 38-20 Bowne Street (the "Nursing Home"), approximately 34 feet from the site; and several multi-story mixed-use commercial/residential buildings approximately 70 feet from the site; and

WHEREAS, further, the applicant asserts that it proposes conditions which fit into the special permit provision that the Board "may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for setback of roof parking areas from lot lines or for shielding floodlights;" and

WHEREAS, the applicant states that the availability of additional off-street parking for grocery store customers will be advantageous to the community; and

WHEREAS, the applicant performed a noise study and a traffic study to support its claim that (1) any potential sound from cars on the roof will not be noticeable to surrounding residents due to the fact that the site is within a flight path to LaGuardia Airport and (2) there will be no significant adverse impacts related to street conditions, transportation, roadway conditions, or parking; and

WHEREAS, the applicant identifies the primary concerns of the Residential Building, the Nursing Home, and the Community Board as being related to (1) security, (2) traffic, (3) hours of operation, (4) lighting, (5) aesthetics, and (6) odors; and

WHEREAS, the applicant states that it has entered into a Memorandum of Understanding with the Residential Building regarding mitigation conditions; and

WHEREAS, the applicant proposes conditions for the parking facility to address: (1) hours of operation; (2) entrance and egress; (3) lighting; (4) noise and light buffering; and (5) odor diffusion; and

WHEREAS, additionally the applicant proposes safety measures through (1) signage; (2) roll down gates; (3) security cameras; and (4) monitoring personnel; and

WHEREAS, the applicant notes that its proposed conditions are intended to safeguard the community and have been negotiated with its neighbors and the Community Board; and

WHEREAS, in support of its assertion that the special permit is appropriate at the subject site and that it meets the required findings, the applicant cites to the Board's prior decision under BSA Cal. No. 319-06-BZ, which also involved rooftop parking adjacent to residential uses; and

WHEREAS, at hearing, the Board raised concerns about the appropriateness of the proposed rooftop parking facility at the subject site with adjacency to a significant number of residential units; and

WHEREAS, specifically, the Board notes that the potential impacts of rooftop parking are different from surface (at-grade) parking lots, and that, as a result, the Zoning Resolution requires the Board's special permit for approval of rooftop accessory parking; and

WHEREAS, in order to approve such special permit, the Board must find that the rooftop parking is located in such a manner that it does not change the essential character of the neighborhood, nor impair future use of the surrounding properties; and

WHEREAS, the Board must also find under ZR § 73-03 (general special permit findings) that the hazards or disadvantages to the community at large of such special permit at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

WHEREAS, based on the record, the Board believes that it cannot make such findings, and several factors regarding this application and the surrounding context render the proposed rooftop parking inappropriate; and

WHEREAS, specifically the factors that contribute to the Board's conclusion include: (1) the location of the rooftop parking facility; (2) the nature and intensity of the use; (3) the nature of and proximity to surrounding uses; (4) limitations related to the proposed safeguards; and (5) Board precedent; and

WHEREAS, as to the first factor, the Board notes that the proposed rooftop parking is located in a C2-2 (R6) zoning

district, immediately adjacent to an R6 district to the north and across the street from an R6 district to the east, and that the area is a predominantly residential neighborhood with local retail; and

WHEREAS, the Board notes that the only open parking facility which is located above grade in the general vicinity of the site is a municipal parking garage, which is located approximately 700'-0" to the west; and

WHEREAS, the Board notes that the municipal parking garage occupies nearly an entire block, is surrounded by streets on three and one-half sides, and is opposite to a mix of uses, including commercial and community facility buildings; and

WHEREAS, further, the Board notes that all other parking facilities in the blocks surrounding the site are surface parking lots, and many of them are accessory to residential and community facility buildings, which typically do not draw a significant number of vehicles and in and out trips; and

WHEREAS, as to the second factor, the Board notes that the proposed rooftop parking would be accessory to an existing grocery store, a use that draws vehicle trips throughout the day, including (according to the applicant's traffic consultant) an estimated 22 vehicles during the morning peak hour, 46 during the midday peak hour, 57 during the evening peak, and 78 during the weekend peak; further, the grocery store is open until 10:30 p.m. and likely attracts increased activity during evening hours when residents of nearby buildings have returned home; and

WHEREAS, as to the third factor, the Board notes that the proposed parking would be unenclosed and located on top of the grocery store, on the equivalent of a second floor; and

WHEREAS, the Board notes that the uses immediately adjacent to the grocery store are the six-story Residential Building to the west and the 12-story Nursing Home to the north, and the uses to the east and south, on the opposite sides of Bowne Street and Roosevelt Avenue, are a church, a seven-story apartment building and a six-story apartment building; and

WHEREAS, further, the Board notes that residential buildings adjacent to and across the street from the grocery store all have rows of windows that would face directly onto the rooftop parking, and the Board believes that the number of residential units that would be impacted by noise, lighting, and security issues related to the proposed rooftop parking is significant; and

WHEREAS, the Board is especially troubled by the proximity of the six-story Residential Building to the west, which has more than 66 windows facing directly onto the grocery store's roof and where use of the roof for parking would diminish the privacy and general quality of life for the residents of these units; and

WHEREAS, as to the fourth factor, the Board notes that the applicant has recommended sound attenuation measures, including a sound barrier wall with a height of 4'-6" along the north and west sides to screen sound and light, signs to patrons to be respectful to adjacent residents, lower lighting to be placed in the middle of the parking area, security cameras, and the closing and securing of the roof parking at 9:00 p.m.; and

WHEREAS, however, the Board concludes that such measures fail to fully address the potential impacts on residential units, specifically, the impact of sound and light on the adjacent residential windows located above the sound barrier, and the general ineffectiveness of signs; and

WHEREAS, the Board also notes that any relocation of rooftop equipment (including mechanicals) away from the adjacent apartment building, as stated in the Memorandum of Understanding, would then have an impact on the residential building to the south; and

WHEREAS, finally, the Board has reviewed its history of special permit approvals in the past decade, and none of the grants presented similar factors, primarily the extent of surrounding residential uses, and the nature of such rooftop parking; and

WHEREAS, the Board has granted nine rooftop parking special permits since 1998, which can all be distinguished from the subject facts; most of the sites were either in manufacturing districts or concerned rooftop parking associated with colleges or hospitals within a campus setting; and

WHEREAS the applicant has argued that the Board's grant under BSA Cal. No. 316-06-BZ is similar, and that the applicant is providing similar measures as in that case (including sound attenuating and screening wall and limiting the hours); and

WHEREAS, the Board disagrees with the applicant that BSA Cal. No. 316-06-BZ is similar to the subject rooftop parking; in that case, the roof top parking was for automotive storage space for an automotive service facility in an M1-1 zoning district with use and access restricted to employees of the service facility and did not anticipate constant activity of cars entering and existing the rooftop parking; and

WHEREAS, further, the Board notes that the site was in a manufacturing district and bordered a few semi-detached homes to the rear, but the other adjacent buildings to the sides were occupied by industrial use; additionally, the homes were a total of ten and the roof parking could not be viewed from the adjacent residential windows and the hours were limited to 7:00 p.m., Monday through Friday and closed on weekends; and

WHEREAS, the Board concludes that unlike any of the other special permits, the impacts associated with the proposed rooftop parking are much more significant and have the potential to affect many more residential units; and

WHEREAS, finally, the Board finds that the applicant has failed to establish that the advantages to the community off set the disadvantages to the surrounding neighborhood; the Board notes that the grocery store already provides required parking to its patrons on the subject zoning lot and, thus, the applicant's assertion that the rooftop parking would be a benefit to its patrons and surrounding community by providing parking and reducing congestion on the streets, is unavailing: and

WHEREAS, the Board finds that the applicant's assertions about the grocery store's benefits to the community

are misplaced as the Board's rejection of the rooftop parking facility is not a rejection of the existing as-of-right grocery store; and

WHEREAS, as to the community's involvement, the Board notes that the Community Board's conditions do not relate to the actual rooftop conditions and that the Board has the authority to determine that the conditions set forth in the Memorandum of Understanding do not mitigate the impacts of the parking facility to the extent that the special permit findings are satisfied; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-49 have not been met; and

WHEREAS, the Board does not find that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the Board has also determined that the evidence in the record fails to support the findings required to be made under ZR § 73-03.

Therefore it is Resolved that the objection of the Borough Commissioner, dated January 24, 2012, acting on Department of Buildings Application No. 420501095, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, January 15, 2013.

244-12-BZ
CEQR #13-BSA-016M
APPLICANT – Watchel, Masyr & Missry LLP by Ellen Hay for EQR-600 Washington LLC, owner; Gotham Gym 1 LLC, lessee.
SUBJECT – Application August 8, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Gotham Gym*). M1-5 zoning district.
Special Permit (§73-36) to permit a physical culture
PREMISES AFFECTED – 600 Washington Street, west side of Washington Street between Morton and Leroy Streets, Block 602, Lot 10, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 15, 2013, acting on Department of Buildings Application No. 120918436, reads in pertinent part:

> Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 42-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district, the legalization of a physical culture establishment (PCE) on the first floor of a mixed-use commercial/residential building contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 15, 2013; and

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

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

WHEREAS, the subject site is located on the west side of Washington Street between Leroy and Morton Streets within an M1-5 zoning district; and

WHEREAS, the site was the subject of a prior variance pursuant to BSA Cal. No. 287-00-BZ, which allowed for the construction of a six-, seven-, and 14-story mixed-use commercial/ residential building contrary to underlying use regulations; and

WHEREAS, the PCE will occupy approximately 3,925 sq. ft. of floor area on a portion of the first floor; and

WHEREAS, the PCE will be operated as Gotham Gym; and

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

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

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

WHEREAS, the applicant notes that the PCE began operating at the site in February 2011 and that there have not been any complaints about noise; and

WHEREAS, the applicant asserts that the building is constructed of steel and concrete with concrete floors with a thickness of seven inches, and double pane windows, which satisfies the DEP noise abatement levels; and

WHEREAS, the applicant proposes the following hours of operation: Monday through Friday, 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, 6:00 a.m. to 8:00 p.m.; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

WHEREAS, the Board notes that the term of the special permit will be reduced for the period from the PCE's opening in February 2011 to the date of this grant; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.3 and 617.5; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within an M1-5 zoning district, the legalization of a physical culture establishment (PCE) the first floor of a mixed-use commercial/residential building contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 3, 2013" - Four (4) sheets and "Received November 20, 2012" - One (1) sheet and *on further condition*:

THAT the term of this grant will expire on February 1, 2021;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2013.

249-12-BZ
CEQR #13-BSA-017K

APPLICANT – Lewis E. Garfinkel, for Solomon Friedman, owner.

SUBJECT – Application August 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a); side yards (§23-461(a)) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1320 East 27th Street, west side of East 27th Street, 140' south of Avenue M, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 9, 2012, acting on Department of Buildings Application No. 320518828, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150%
3. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0"
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, with a continued hearing on December 4, 2012, and then to decision on January 15, 2013; and

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

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

WHEREAS, certain community members provided written testimony in opposition to the proposal based on general concerns including incompatibility with

neighborhood character; and

WHEREAS, the subject site is located on the west side of East 27th Street, 140 feet south of Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,402 sq. ft. (0.60 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,402 sq. ft. (0.60 FAR) to 4,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 58 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 3'-11" and to provide a side yard along the southern lot line with a width of 9'-9" (two side yards with minimum widths of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

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

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 28, 2012"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,000 sq. ft. (1.0 FAR); a minimum open space ratio of 58 percent; a side yard along the southern lot line with a minimum width of 9'-9" and a side yard along the northern lot line with a width of 3'-11"; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2013.

260-12-BZ
CEQR #13-BSA-026Q
APPLICANT – John M. Marmora, Esq., c/o K & L Gates LLP, for McDonald's Corporation, owner.
SUBJECT – Application August 30, 2012 – Special Permit (§73-243) to permit an accessory drive-through facility to an eating and drinking establishment (McDonald's) within the portion of the lot located in a C1-3/R5D zoning district contrary to §§32-15 & 32-32 as well as a Special Permit (§73-52) to extend the commercial use by 25' into the R3A portion of the lot contrary to § 22-10.
PREMISES AFFECTED – 114-01 Sutphin Boulevard, north side of Sutphin Boulevard between Linden Boulevard and 114th Road, Block 12184, Lot 7, Borough of Queens.
COMMUNITY BOARD #12Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated August 6, 2012, acting on Department of Buildings Application No. 420603644, reads:

> Accessory parking for proposed eating and drinking establishment (Use Group 6A) is not permitted in R3A zoned lot portion; contrary to ZR 22-10.

Proposed eating and drinking establishment with accessory drive-through facility in the C1-3/R5D lot portion requires BSA special permit pursuant to ZR 73-243; contrary to ZR 32-15, and ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-243, 73-52, and 73-03, to permit, on a site partially within a C1-3 (R5D) zoning district and partially within a R3A zoning district, the operation of an accessory drive-through facility on the site in conjunction with an as-of-right eating and drinking establishment (Use Group 6), and the extension of the C1-3 (R5D) zoning district regulations 25 feet into the R3A zoning district, contrary to ZR §§ 22-10, 32-15, and 32-31; and

WHEREAS, a public hearing was held on this application on November 27, 2012, and then to decision on January 15, 2013; and

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

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

WHEREAS, the subject site is located on the southeast corner of Sutphin Boulevard and Linden Boulevard; and

WHEREAS, the site is divided by a zoning district boundary line, with the majority of the site located within a C1-3 (R5D) zoning district, and a narrow strip along the eastern side of the site located within an R3A zoning district; and

WHEREAS, the site has a total lot area of 29,430 sq. ft. and is occupied by a McDonald's restaurant with an accessory drive-thru; and

WHEREAS, the applicant proposes to demolish the existing restaurant and construct a new 3,911 sq. ft. McDonald's restaurant with an accessory tandem drive-thru; and

WHEREAS, a special permit is required for the proposed accessory drive-through facility in the C1-3 (R5D) zoning district, pursuant to ZR § 73-243; and

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

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

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

WHEREAS, in support of this representation, the applicant notes that the existing restaurant has a drive-thru, and therefore the proposed drive-thru does not function as a new facility but rather as a substantial improvement of the existing facility; and

WHEREAS, the applicant represents that the reorientation of the drive-thru will likely improve circulation by relocating the primary access to the Sutphin Boulevard entrance, while under the existing arrangement the primary access for the drive-thru is from Linden Boulevard, which is more residential in character than Sutphin Boulevard; and

WHEREAS, the applicant states that the curb cuts utilized for the drive-thru customers are located 122 feet and 139 feet, respectively, from the intersection of Sutphin Boulevard and Linden Boulevard, which is substantially more than the required 50 feet; and

WHEREAS, the applicant represents that the facility fully complies with the accessory off-street parking regulations for the C1-3 (R5D) zoning district; and

WHEREAS, in support of this representation, the applicant submitted a proposed site plan providing 14 accessory off-street parking spaces, which satisfies the requirement of ten parking spaces pursuant to ZR § 36-21; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle; and

WHEREAS, the applicant states that Sutphin Boulevard contains a mix of uses in the area which stretches from Jamaica Station to Rockaway Boulevard, however, the area surrounding the subject site is characterized by auto-oriented commercial uses; and

WHEREAS, the applicant further states that there are several uses to the north of the site which actually contain curb cuts and parking areas in the front yards (e.g., Family Dollar, Port Royal Restaurant, Western Union, and a nail salon), and a health services facility with an 18-space parking area is located to the south of the site along Sutphin Boulevard; therefore, the applicant represents that the character of the Sutphin Boulevard frontage in the vicinity of the site reflects substantial orientation to the motor vehicle; and

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

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

WHEREAS, the applicant states that a drive-thru facility has been in operation on the site for at least the past four decades, and the proposed new drive-thru facility will substantially improve current conditions; and

WHEREAS, specifically, the applicant states that the new facility will mitigate the possible visual impacts of the drive-thru with a fence, and the design and orientation of the drive-thru menu boards and sound system are state-of-the-art

and intended to reduce the acoustical/noise impacts on surrounding areas; and

WHEREAS, the applicant represents that the decibel levels for the proposed drive-thru, as measured from the nearest house approximately 90 feet from the drive-thru, will be approximately 46 dBA without activating "automatic voice control," which adjusts the outbound volume based on the outdoor ambient noise level, and 22 dBA with automatic voice control active; and

WHEREAS, the applicant further represents that the proposed drive-thru will lessen the impacts on surrounding residences by relocating the primary entrance to the drive-thru from the more residential Linden Boulevard to the more commercial Sutphin Boulevard; and

WHEREAS, the applicant represents that there will be adequate buffering between the drive-thru facility and adjacent residential uses; and

WHEREAS, the applicant states that there will be a fence with a height of six feet and landscaping along the lot lines adjacent to residential uses, which will provide a sufficient buffer to address possible visual impacts associated with the drive-thru facility; and

WHEREAS, the applicant further states that the open areas adjacent to residential uses exceed the minimum open area requirements of ZR § 33-392; and

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

WHEREAS, the applicant also requests a special permit pursuant to ZR § 73-52 to extend the C1-3 (R5D) zoning district regulations 25 feet into the portion of the zoning lot located within an R3A zoning district; and

WHEREAS, the applicant states that the majority of the zoning lot is located within the C1-3 (R5D) zoning district, but that a narrow strip along the eastern side of the zoning lot is within an R3A zoning district; and

WHEREAS, the portion of the site that is within the C1-3 (R5D) zoning district occupies approximately 25,422 sq. ft. (86 percent) of the zoning lot, and the portion of the site that is within the R3A zoning district occupies approximately 4,008 sq. ft. (14 percent) of the zoning lot, and ranges in width from approximately 23'-6" to 25'-2"; and

WHEREAS, the C1-3 (R5D) zoning district permits the proposed accessory drive-thru facility pursuant to ZR § 73-243; the R3A district permits only residential uses; and

WHEREAS, the applicant notes that if the maximum width of the R3A portion of the lot was less than 25 feet, the proposed extension of the C1-3 (R5D) zoning district would be permitted as-of-right pursuant to ZR § 77-11; and

WHEREAS, the applicant represents that by allowing the C1-3 (R5D) use regulations to apply to 25 feet of the total width of the R3A portion of the lot, the proposed accessory drive-thru facility use will be contained entirely within the portion of the lot subject to C1-3 (R5D) regulations; and

WHEREAS, however, an approximately two-inch sliver over a portion of the lot will remain solely within the R3A zoning district, even after the boundary line is moved 25 feet, and may only be used for residential uses; and

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

WHEREAS, as to the threshold single ownership requirement, the applicant submitted deeds establishing that the subject property has existed in single ownership since prior to December 15, 1961; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence showing that the zoning lot was in single ownership prior to December 15, 1961 and continuously from that time onward; and

WHEREAS, as to the threshold 50 percent requirement, 25,422 sq. ft. (86 percent) of the site's total lot area of 29,430 sq. ft. is located within the C1-3 (R5D) zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the finding under ZR § 73-52(a), the applicant represents that it would not be economically feasible to use or develop the R3A portion of the zoning lot for a permitted use; and

WHEREAS, the applicant states that the R3A portion of the lot is a very narrow and relatively small area located between a commercial-zoned tract and Augusta Court, a dead-end street; and

WHEREAS, the applicant represents that when viewed as a potential development parcel, the R3A portion of the site has no utility for residential uses under the R3A district requirements due to its size and shape; and

WHEREAS, specifically, the applicant states that the R3A portion of the site would (1) be deficient with respect to lot width, because the minimum width of the R3A area is approximately 23'-6" (a minimum lot width of 25'-0" is required), (2) constitute a corner lot which requires 10'-0" front yards along Linden Boulevard and August Court, resulting in a developable width of approximately 13 feet, and (3) need to provide at least one off-street parking space in the side or rear yard, which would be impractical given the site constraints; and

WHEREAS, as to the finding under ZR §73-52(b), the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, as noted above, the portion of the Sutphin Boulevard corridor which includes the subject site has an auto-oriented commercial character, and the R3A portion of the site has been utilized as a parking area for the existing

McDonald's restaurant for many years; and

WHEREAS, the applicant represents that the proposed project will substantially improve upon the existing conditions by providing a fence and landscaped area to help screen the restaurant and drive-thru from the residences located across Augusta Court; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243, 73-52, and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA026Q dated August 30, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243, 73-52, and 73-03 to permit, on a site partially within a C1-3 (R5D) zoning district and partially within an R3A zoning district, the operation of an accessory drive-through facility on the site in conjunction with an as-of-right eating and drinking establishment (Use Group 6), and the extension of the C1-3 (R5D) zoning district regulations 25 feet into the R3A zoning district, contrary to ZR §§ 22-10, 32-15, and 32-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 11, 2013"- (7) sheets; and *on further condition*:

THAT the term of this grant will expire on January 15, 2018;

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

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

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

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

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

THAT all signage shall conform to C1 zoning district regulations;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2013.

278-12-BZ
CEQR #13-BSA-033K

APPLICANT – John M. Marmora, Esq. for Robert J. Panzarella, BSB Real Estate Holdings LLC. J & J Real Estate Holdings LLC., owner, McDonald's USA, LLC, lessee.

SUBJECT – Application September 18, 2012 – Special Permit (§73-52) to extend by 25'-0" a commercial use into a residential zoning district to permit the development of a proposed eating and drinking establishment *(McDonald's*) with accessory drive thru. C8-2 and R5 zoning district.

PREMISES AFFECTED – 3143 Atlantic Avenue, northwest corner of Atlantic Avenue between Hale Avenue and Norwood Avenue. Block 3960, Lot 58. Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated August 22, 2012, acting on Department of Buildings Application No. 320375287, reads in pertinent part:

Parking spaces and portion of drive-through

facility, both accessory to the proposed eating and drinking establishment (Use Group 6A), are not permitted in R5 zoned lot portion; contrary to ZR § 22-10; and

WHEREAS, this is an application under ZR §§ 73-52 and 73-03, to permit, on a site partially within a C8-2 zoning district and partially within an R5 zoning district, the extension of the C8-2 zoning district regulations 25 feet into the R5 zoning district, to allow for vehicular maneuvering associated with the proposed accessory drive-thru facility located in the C8-2 portion of the site, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on November 27, 2012 after due notice by publication in *The City Record*, and then to decision on January 15, 2013; and

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

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located at the southwest corner of Atlantic Avenue and Norwood Avenue, with approximately 156.82 feet of frontage on Atlantic Avenue, 130.33 feet of frontage on Norwood Avenue, and a total lot area of 22,138 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant one-story building formerly utilized as a KFC restaurant with an accessory drive-thru, which is proposed to be demolished; and

WHEREAS, the applicant proposes to construct a new one-story building with a floor area of 3,534 sq. ft., to be occupied by a McDonald's restaurant with an accessory drive-thru facility and nine parking spaces; and

WHEREAS, the applicant requests a special permit pursuant to ZR § 73-52 to extend the C8-2 zoning district regulations 25 feet into the portion of the zoning lot located within an R5 district; and

WHEREAS, the applicant states that the extension of the C8-2 district would allow for the usage of the R5 portion of the lot for vehicular maneuvering connected with the proposed accessory drive-thru (i.e., the drive-thru lane); and

WHEREAS, the applicant further states that the remainder of the R5 portion of the lot will remain entirely open and landscaped; and

WHEREAS, the applicant notes that the portion of the site that is within the C8-2 zoning district occupies 15,626 sq. ft. (71 percent) of the zoning lot, and the portion of the site that is within the R5 zoning district occupies 6,512 sq. ft. (29 percent) of the zoning lot; and

WHEREAS, the R5 portion fronts on Norwood Avenue and occupies an irregularly-shaped portion of the site, located to the north of the C8-2 portion of the site; and

WHEREAS, the C8-2 district permits the Use Group 6 eating and drinking establishment with accessory drive-thru facility; the R5 district permits only residential or community facility uses; and

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

WHEREAS, as to the threshold single ownership requirement, the applicant submitted deeds and a Sanborn Map establishing that the subject property has existed in single ownership since prior to December 15, 1961; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence showing that the zoning lot was in single ownership prior to December 15, 1961 and continuously from that time onward; and

WHEREAS, as to the threshold 50 percent requirement, 15,626 sq. ft. (71 percent) of the site's total lot area of 22,138 sq. ft. is located within the C8-2 zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the finding under ZR § 73-52(a), the applicant represents that it would not be economically feasible to use or develop the R5 portion of the zoning lot for a permitted use; and

WHEREAS, specifically, the applicant states that the R5 portion of the site is burdened by a trapezoid shape with only 28 feet of frontage along Norwood Avenue, while a minimum lot width of 40 feet is required for a detached home in an R5 district; and

WHEREAS, the applicant further states that there is no potential to create a regular lot by expanding into the C8-2 portion of the site because that zoning district does not permit any residential uses; and

WHEREAS, the applicant provided a drawing illustrating the development potential for a complying building in the R5 portion of the lot with identical dimensions to the adjacent home, which reflects that the home would have to be set back to the very rear portion of the property in order to comply with the side yard requirements, which would result in a non-complying rear yard; and

WHEREAS, the applicant states that in addition to the inability to meet the rear yard requirement, the home would also have to be set back approximately 87 feet from the street, which would result in the front façade of the home nearly aligning with the rear façade of the adjacent home; and

WHEREAS, the applicant represents that the result would be a highly impractical and poorly planned home that would create a major gap in the existing pattern of residential development along Norwood Avenue; and

WHEREAS, as to the finding under ZR §73-52(b), the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, the applicant states that Atlantic Avenue is an auto-oriented corridor with a commercial character; and

WHEREAS, the applicant notes that there are a number of gas stations and fast food restaurants in the immediate vicinity of the site, and that the property has been utilized as a KFC restaurant with a drive-thru facility for many years; thus, the proposed restaurant with accessory drive-thru use would be consistent with the character of the surrounding area; and

WHEREAS, the applicant represents that the extension of the C8-2 district facilitates a substantial buffer area between the restaurant and drive-thru and the surrounding residences which would not otherwise exist; and

WHEREAS, specifically, the applicant states that no structures will be developed within the 25-ft. extension and the only activity that will occur is vehicular circulation related to the drive-thru; and

WHEREAS, the applicant further states that the remainder of the R5 portion of the lot will be left open and landscaped and the design and orientation of the drive-thru menu boards and sound system are state-of-the-art and intended to reduce the acoustical/noise impacts on surrounding areas; and

WHEREAS, the applicant represents that the decibel levels for the proposed drive-thru, as measured from the nearest residential property, will be approximately 50 dBA without activating "automatic voice control," which adjusts the outbound volume based on the outdoor ambient noise level, and 30 dBA with automatic voice control active; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C8-2 zoning district portion of the lot into the R5 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-52 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA033K, dated September 18, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-52 and 73-03, to permit, on a site partially within a C8-2 zoning district and partially within an R5 zoning district, the extension of the C8-2 zoning district regulations 25 feet into the R5 zoning district, to allow for vehicular maneuvering associated with the proposed accessory drive-thru facility located in the C8-2 portion of the site, contrary to ZR § 22-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 19, 2012" – (7) sheets; and *on further condition*:

THAT landscaping and trees will be planted in accordance with the BSA-approved plans;

THAT all lighting will be directed down and away from adjacent residential uses;

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

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

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

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

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

Adopted by the Board of Standards and Appeals,

January 15, 2013.

283-12-BZ
CEQR #13-BSA-038M
APPLICANT – Sheldon Lobel, P.C., for 440 Broadway Realty Associates, LLC, owner.
SUBJECT – Application September 24, 2012 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar of the existing building, contrary to Section 42-14D(2)(b). M1-5B zoning district.
PREMISES AFFECTED – 440 Broadway, between Howard Street and Grand Street, Block 232, Lot 3, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 23, 2012, acting on Department of Buildings Application No. 121324655, reads in pertinent part:

> Proposed retail (Use Group 6) below the floor level of the second story is not permitted; contrary to ZR 42-14(D)(2)(b); and

WHEREAS, this is an application under ZR § 72-21, to permit in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing two-story building to a commercial retail use (UG 6) with accessory retail use in the cellar, contrary to ZR § 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on December 11, 2012, after due notice by publication in the *City Record*, and then to decision on January 15, 2013; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application, with the condition that eating and drinking establishments not be permitted; and

WHEREAS, the subject site is located on the east side of Broadway, between Grand Street and Howard Street, in an M1-5B zoning district within the SoHo-Cast Iron Historic District; and

WHEREAS, the site has 30'-5" feet of frontage on Broadway, a depth of 98'-0", and a lot area of 2,989 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story commercial building with a floor area of 5,771 sq. ft. (1.93 FAR); and

WHEREAS, the applicant proposes to legalize the Use Group 6 retail store on the first floor, with accessory retail use in the cellar; and

WHEREAS, the applicant states that the first floor will operate as the main retail space, the second floor will provide additional retail space, and the cellar will provide additional retail space and an accessory storage area; and

WHEREAS, because Use Group 6 retail is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance to permit the proposed legalization of the first floor and cellar level; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the existing building is obsolete for manufacturing use; and (2) the existing building is significantly underbuilt; and

WHEREAS, as to the obsolescence of the building, the applicant states that it was constructed more than 125 years ago, lacks a loading dock or the space to install a loading dock, and has limited space to install any equipment to accommodate light manufacturing uses due to a line of columns running the length of the building from front to back; and

WHEREAS, the applicant states that the building also has a small floor plate, with only approximately 2,605 sq. ft. of usable floor area at the ground floor, which is not conducive to a conforming manufacturing use; and

WHEREAS, the applicant represents that the small floor plate, along with the presence of columns throughout the building and the absence of a loading dock create inefficiencies in operating the building for a conforming use; and

WHEREAS, further, the applicant states that the building is significantly underbuilt, with only two stories above ground and an FAR of 1.93; and

WHEREAS, the applicant states that the small building presents difficulties to the owner, as there are only two floors to generate income for the site, and the building is dwarfed by much larger buildings in the immediate area, including a nine-story building adjacent to the south of the site; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that there is only one other building on the subject block which is two stories or less, at 454 Broadway; and

WHEREAS, the applicant provided a 1,000-ft. radius study which indicated that of the 267 buildings located within the study area, only 16 maintain an FAR less than 1.93, and only 20 are two stories or less, placing the subject building in the lowest six percent in terms of FAR and the lowest seven percent in terms of building height; and

WHEREAS, the applicant notes that of the other small buildings in each category, only three are occupied with conforming uses on the ground floor and each of these buildings is located well beyond a 400-ft. radius of the site; and

WHEREAS, the applicant represents that while the building may enlarge as-of-right, an enlargement above the existing building would be structurally infeasible; and

WHEREAS, the applicant represents that, even if an enlargement was structurally feasible, it would be unlikely that LPC would approve an enlargement due to the site's location in the SoHo-Cast Iron Historic District; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) conforming use at the first floor and cellar; and (2) the proposed ground floor and cellar retail use; and

WHEREAS, the study concluded that the conforming scenario would not result in a reasonable return, but that the proposal would realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity contain ground floor retail uses, particularly along Broadway; and

WHEREAS, the applicant cites to the Landmark Preservation Commission's ("LPC") 1973 designation report for the SoHo-Cast Iron Historic District, which states that "Broadway was primarily a residential street until the late 1820s and early 1830s…Rapid commercial development soon followed and continued into the early 20th century. Today the street still retains a commercial character;" and

WHEREAS, the applicant states that the commercial character recognized by LPC in 1973 is still prevalent today; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, approving the proposal on November 28, 2012; and

WHEREAS, in response to questions raised by the Board regarding whether the existing facade and signage had been approved by LPC, the applicant also submitted a Notice of Compliance from LPC dated November 28, 2012, stating that the work completed at the site, "including the installation of new storefront infill, has been completed in compliance with Certificate of Appropriateness…"; and

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

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

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, the applicant notes that there is no proposed increase in the bulk of the building; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA038M, dated October 3, 2012; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing two-story building to a commercial retail use (UG 6) with accessory retail use in the cellar, contrary to ZR § 42-14(d)(2)(b); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 11, 2013"–(8) sheets; and *on further condition*:

THAT no eating and drinking establishment will be permitted on the site;

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

DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, January 15, 2013.

16-12-BZ

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

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

COMMUNITY BOARD #4BK

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

43-12-BZ

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Raymond Levin.

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

56-12-BZ

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #4BK

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

57-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mykola Volynsky, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); less than the required rear yard (§23-37). R4 zoning district.

PREMISES AFFECTED – 2670 East 12th Street, between Shore Parkway and Gilmore Court, Block 7455, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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

67-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 1442 First Avenue, LLC, owner.

SUBJECT – Application March 21, 2012 – Variance (§72-21) to allow for the extension of an eating and drinking establishment to the second floor, contrary to use regulations (§32-421). C1-9 zoning district.

PREMISES AFFECTED – 1442 First Avenue, southeast corner of the intersection formed by 1st Avenue and East 75th Street, Block 1469, Lot 46, Borough of Manhattan.

COMMUNITY BOARD #8M

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

75-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.

SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of retail use (UG 6) on the first floor and expand the use into the cellar and sub-cellar, contrary to use regulations (§42-14 (D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

195-12-BZ
APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.
SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.
PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.
COMMUNITY BOARD #10Q
ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for adjourned hearing.

242-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship, contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.
PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, Borough of Brooklyn.
COMMUNITY BOARD #12BK
ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for continued hearing.

257-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Birta Hanono and Elie Hanono, owners.
SUBJECT – Application August 29, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R4 (OP) zoning district.
PREMISES AFFECTED – 2359 East 5th Street, east side of East 5th Street between Avenue W and Angela Drive, Block 7181, Lot 44, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for continued hearing.

275-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Fayge Hirsch and Abraham Hirsch, owners.
SUBJECT – Application September 6, 2012 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141), and side yard (§23-461) regulations. R2 zoning district.
PREMISES AFFECTED – 2122 Avenue N, southwest corner of Avenue N and East 22nd Street, Block 7675, Lot 61, Borough of Brooklyn.
COMMUNITY BOARD #14BK
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for decision, hearing closed.

285-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Pigranel Management Corp., owner; Narita Bodywork, Inc., lessee.
SUBJECT – Application October 3, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Narita Bodyworks*) on the 4th floor of existing building. M1-6 zoning district.
PREMISES AFFECTED – 54 West 39th Street, south side of West 39th Street, between Fifth Avenue and Avenue of the Americas, Block 840, Lot 78, Borough of Manhattan.
COMMUNITY BOARD #5M
ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for continued hearing.

291-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP for 301-303 West 125, LLC, owner; Blink 125th Street Inc., lessee.
SUBJECT – Application October 9, 2012 – Special permit (§73-36) to allow a physical culture establishment (*Blink*) within proposed commercial building. C4-4D zoning district.
PREMISES AFFECTED – 301 West 125th Street, northwest corner of intersection of West 125th Street and Frederick Douglas Boulevard, Block 1952, Lot 29, Borough of Manhattan.
COMMUNITY BOARD #10M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to February 12, 2013, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.