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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 97, No. 44

October 31, 2012

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### DIRECTORY

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<b>OFFICE -</b>	<b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>
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173-99-BZ          43-60 Ditmars Boulevard, Queens  
96-00-BZ           4 East 77<sup>th</sup> Street, Manhattan  
209-04-BZ          109-09 15<sup>th</sup> Avenue, Queens  
98-06-BZ/284-06-A 1045 Beach 9<sup>th</sup> Street, Queens  
143-07-BZ          6404 Strickland Avenue, Brooklyn  
197-08-BZ          341-349 Troy Avenue, aka 1515 Carroll Street, Brooklyn  
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103-12-A            74-76 Adelphi Street, Brooklyn  
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**Affecting Calendar Numbers:**

93-11-BZ            1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Brooklyn  
104-11-BZ          1936 East 26<sup>th</sup> Street, Brooklyn  
192-11-BZ          2977 Hylan Boulevard, Staten Island  
66-12-BZ           223-237 Nicholas Avenue, aka 305 West 121<sup>st</sup> Street, Manhattan  
86-12-BZ            158 West 83<sup>rd</sup> Street, Manhattan  
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73-12-BZ            41-19 Bell Boulevard, Queens  
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**Affecting Calendar Numbers:**

301-85-BZ           58 East 86<sup>th</sup> Street, Manhattan  
2-12-BZ            95-36 115<sup>th</sup> Street, Queens

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# DOCKETS

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New Case Filed Up to October 23, 2012  
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**297-12-A**

28-18/20 Astoria Boulevard, south side of Astoria Boulevard, approx. 53.87' west of 29th Street., Block 596, Lot(s) 45, Borough of **Queens, Community Board: 1**. An application filed seeking a determination that the owner of the premises has acquired a common law vested right to complete construction commenced under the prior R6 zoning district. R6-A ( C1-1) ZD R6-A(C1-1) district.

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**298-12-BZ**

726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street, and East 4th Street., Block 545, Lot(s) 15, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university uses. M1-5B zoning district. M1-5B district.

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**299-12-BZ**

40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot(s) 1, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to waive the required FAR, height and setback, and rear yard requirements to facilitate the construction of a twelve-story office building with the first and second stories devoted to retail uses. M1-5 district.

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**300-12-BZ**

36 West 93rd Street, between Central Park West and Columbus Avenue, Block 1206, Lot(s) 20, Borough of **Manhattan, Community Board: 7**. Variance (72-21) to permit an enlargement of an existing school building contrary to lot coverage, permitted obstruction in rear yard equivalent, rear yard equivalent, and sky exposure plane. R7-2 district.

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**301-12-BZ**

213-11/19 35th Avenue, northwest corner of 35th Avenue and Bell Boulevard, Block 6112, Lot(s) 47, Borough of **Queens, Community Board: 11**. Special permit (73-36) to allow for a 25 foot extension of an existing commercial use into a residential zoning district, and to allow the enlargement of a legal non-complying building. C2-2(R4)and R2A district.

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**302-12-BZ**

32 West 18th Street, West 18th Street between Fifth and Sixth Avenues., Block 819, Lot(s) 1401, Borough of **Manhattan, Community Board: 5**. Special permit (73-36) to permit a proposed physical culture establishment to be located at the ground floor of the building at the premises. C6-4A district.

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

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# CALENDAR

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NOVEMBER 20, 2012, 10:00 A.M.

APPEALS CALENDAR

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, November 20, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**1005-66-BZ**

APPLICANT – Moshe M. Friedman, P.E. for Chelsea Town LLC c/o Hoffman Management, owner.

SUBJECT – Application September 4, 2012 – Extension of Term of a variance previously granted pursuant to Section 60(1b) of the Multiple Dwelling Law which permitted transient parking of unused and surplus tenant spaces, limited to twenty-two (22) cars, within the accessory garage which expired on May 2, 2012; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 320 West 30<sup>th</sup> Street, south side of West 30<sup>th</sup> Street, 202' west of 8<sup>th</sup> Avenue. Block 753, Lot 51, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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**982-83-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application August 17, 2012 – Extension of Time to Obtain a Certificate of Occupancy of a previously granted Variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192<sup>nd</sup> Street, Block 5513, Lot 27, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**85-91-BZ**

APPLICANT – Carl A. Sulfaro, Esq. for Lada Limited Liability Company, owner; Bayside Veterinary Center, lessee.

SUBJECT – Application August 20, 2012 – Extension of Term (§11-411) of a previously approved variance for the operation of a veterinarian's office and accessory dog kennels with a caretaker's apartment on the subject premises which expired on July 21, 2012 and to amend the resolution so as to permit a change to the hours of operation and accessory signage. R3-1 zoning district.

PREMISES AFFECTED – 204-18 46<sup>th</sup> Avenue, south side of 46<sup>th</sup> Avenue 142.91' east of 204<sup>th</sup> Street. Block 7304, Lot 17, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**102-12-A**

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Michael Mason, lessee.

SUBJECT – Application April 12, 2012 – Proposed reconstruction and enlargement of a single family home not fronting on a mapped street contrary to General City law Section 36 and the proposed upgrade of the private disposal system is contrary to the DOB policy. R4 Zoning district.

PREMISES AFFECTED – 489 Sea Breeze Walk, east side of Sea Breeze Walk, north of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**140-12-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Foster Road Development LLC, owner.

SUBJECT – Application April 30, 2012 – Appeal from decision of Borough Commissioner denying permission for proposed construction of a two family dwelling partially within the bed of a mapped street. R3A zoning district.

PREMISES AFFECTED – 69 Parkwood Avenue, east side of Parkwood Avenue, 200'south of intersection of Parkwood and Uncas Avenues. Block 6896, Lot 120(tent), Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**142-12-A**

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

SUBJECT – Application May 3, 2012 – Amendment of a previously approved waiver of Section 35 of the General City Law ("GCL") which permitted the construction of a two family dwelling in the bed of a mapped street. The amendment seeks to construct a community facility within the bed of 24<sup>th</sup> Avenue, the mapped street. R3-2 Zoning District.

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

**COMMUNITY BOARD #3Q**

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**247-12-A**

APPLICANT – Deidre Duffy, P.E. for Breezy Point Cooperative, Inc., owner; Timothy and Barbara Johnson, lessee.

SUBJECT – Application August 10, 2012 – Proposed construction of a single family home that does not front on a legally mapped street, contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 659 Highland Place, east side of Highland Place, 222.5' north of 12<sup>th</sup> Avenue. Block 16350, Lot 300. Borough of Queens.

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# CALENDAR

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## COMMUNITY BOARD #14Q

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### 248-12-A

APPLICANT – Deidre Duffy, P.E., for Breezy Point Cooperative, Inc., owner; Gerard McGlynn, lessee.

SUBJECT – Application August 10, 2012 – Proposed building is not fronting a mapped street, contrary to § 36 General City Law and in the bed of a mapped street, contrary to Art. §35 of the General City Law. Private disposal system in the bed of a mapped street contrary to Department of Buildings' policy. R4 zoning district.

PREMISES AFFECTED – 45 Tioga Walk, east side of Tioga Walk, 68' south of West End Avenue. Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

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**NOVEMBER 20, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, November 20, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## ZONING CALENDAR

### 159-12-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph L. Musso, owner.

SUBJECT – Application May 22, 2012 – Variance (§72-21) to allow for the enlargement of a Use Group 4 medical office building contrary to rear yard requirements, ZR §24-36. R3-2 zoning district.

PREMISES AFFECTED – 94-07 156<sup>th</sup> Avenue, between Cross Bay Boulevard and Killarney Street, Block 11588, Lot 67, 69, Borough of Queens.

## COMMUNITY BOARD #10Q

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### 210-12-BZ

APPLICANT – Herrick, Feinstein LLP, for 44 West 28<sup>th</sup> Street Penn Plaza Properties, LLC, owner; CrossFit NYC, lessee.

SUBJECT – Application July 23, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*CrossFit*) to be located on second story of existing 16-story building. C6-4X and M1-6 zoning district.

PREMISES AFFECTED – 44 West 28<sup>th</sup> Street, between Broadway and Avenue of the Americas, Block 829, Lot 68, Borough of Manhattan.

## COMMUNITY BOARD #5M

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### 233-12-BZ

APPLICANT – Richard G. Leland, Esq./Fried Frank Harris Shriver & Jacob, for Porsche Realty, LLC, owner; Van Wagner Communications, lessee.

SUBJECT – Application July 19, 2012 – Variance (§72-21) to legalize an advertising sign in a residential zone, contrary to §22-00. R3X zoning district.

PREMISES AFFECTED – 246-12 South Conduit Avenue, bounded by 139<sup>th</sup> Avenue, 246<sup>th</sup> Street and South Conduit Avenue, Block 13622, Lot 7, Borough of Queens.

## COMMUNITY BOARD #13Q

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### 235-12-BZ

APPLICANT – Slater & Beckerman, LLP, for NBR LLC, owner.

SUBJECT – Application July 30, 2012 – Special Permit (§73-242) to permit a one-story building to be used as four(4) Use Group 6 eating and drinking establishments, contrary to use regulations. C3 zoning district.

PREMISES AFFECTED – 2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north. Block 8839, Lots 33, 38, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

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### 249-12-BZ

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 ZR §23-141(a) for floor area and open space; ZR §23-461(a) for side yards and ZR §23-47 less than the required rear yard. R-2 zoning district.

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

## COMMUNITY BOARD #14BK

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 23, 2012  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**724-56-BZ**

APPLICANT – Michael A. Cosentino for Anthony Nicovic, owner.

SUBJECT – Application June 19, 2012 – Extension of Term (§11-411) of an approved variance which permitted automotive repair (UG 16B), which expires on November 19, 2012. C2-2/R3X & R3-2 zoning district.

PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, Francis Lewis Boulevard from 42<sup>nd</sup> Road to Northern Boulevard. Block 5373. Lot 26, Borough of Queens.

**COMMUNITY BOARD #11Q**

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for decision, hearing closed.

**5-96-BZ**

APPLICANT – Sheldon Lobel, P.C., for St. Johns Place LLC, owner; Park Right Corporation, lessee.

SUBJECT – Application August 2, 2012 – Extension of Time to obtain a Certificate of Occupancy of an approved variance which permitted the operation a one-story public parking garage for no more than 150 cars (UG 8) which expired on February 2, 2011; Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 564-592 St. John's Place, south side of St. John's Place, 334' west of Classon Avenue. Block 1178, Lot 26. Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

**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 43<sup>rd</sup> Avenue, Block 782, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for adjourned hearing.

**96-00-BZ**

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for 4 East 77<sup>th</sup> Street Company, owner.

SUBJECT – Application July 23, 2012 – Extension of Term (§11-411) of an approved variance which permitted an art gallery on a portion of the second floor in an existing five-story building which expired on August 8, 2010; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules. R8B/R10 zoning district.

PREMISES AFFECTED – 4 East 77<sup>th</sup> Street, south side of East 77<sup>th</sup> Street, between Fifth and Madison Avenues, Block 1391, Lot 69, Borough of Manhattan.

**COMMUNITY BOARD #2M**

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

**209-04-BZ**

APPLICANT – Eric Palatnik, P.C., for Waterfront Resort, Inc., owner.

SUBJECT – Application August 14, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use. M2-1 zoning district, which expired on July 19, 2012.

PREMISES AFFECTED – 109-09 15<sup>th</sup> Avenue, corner lot of 15<sup>th</sup> Avenue and 110<sup>th</sup> Street. Block 4044, Lot 60. Borough of Queens.

**COMMUNITY BOARD #7Q**

THE VOTE TO CLOSE HEARING –

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

# MINUTES

Negative:.....0  
**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.  
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## 98-06-BZ/284-06-A

APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.

SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.

### COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for decision, hearing closed.  
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## 143-07-BZ

APPLICANT – Fredrick A. Becker, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application July 16, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a three-story and cellar synagogue, which expired on July 22, 2012. R2 zoning district.

PREMISES AFFECTED – 6404 Strickland Avenue, northeast corner of Strickland Avenue and East 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.  
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## 197-08-BZ

APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.

PREMISES AFFECTED – 341-349 Troy Avenue aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #9BK

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 10 A.M., for continued hearing.  
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## APPEALS CALENDAR

### 232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4<sup>th</sup> Avenue Loft Corporation, owner.

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 zoning district.

PREMISES AFFECTED – 59 Fourth Avenue, 9<sup>th</sup> Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

### COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.  
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### 103-12-A

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

THE VOTE TO CLOSE HEARING –

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

# MINUTES

Commissioner Montanez.....5  
Negative:.....0  
**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 10 A.M., for decision, hearing closed.

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## 114-12-A

APPLICANT – Leavitt, Kerson & Duane by Paul E. Kerson for Astoria Landing Inc., owner.

SUBJECT – Application April 24, 2012 – Appeal challenging Department of Buildings’ determination that an existing sign is not a legal non-conforming advertising sign. R5B zoning district.

PREMISES AFFECTED – 24-59 32<sup>nd</sup> Street, 32<sup>nd</sup> Street at Grand Central Parkway Service Road, Block 837, Lot 95, 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 December 4, 2012, at 10 A.M., for decision, hearing closed.

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## 136-12-A

APPLICANT – Fried Frank, LLP for Van Wagner Communications, lessee.

OWNER OF PREMISES – Point 27 LLC.

SUBJECT – Application April 26, 2012 – Appeal from Department of Buildings’ determination that an existing sign is not a legal non-conforming advertising sign. R4 zoning district.

PREMISES AFFECTED – 37-27 Hunter’s Point between Greenpoint Avenue and 38<sup>th</sup> Street, Block 234, Lot 31, Borough of Queens.

### COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, OCTOBER 23, 2012 1:30 P.M.

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

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## ZONING CALENDAR

### 93-11-BZ

#### CEQR #11-BSA-112K

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-19) to allow the conversion of the third and fourth floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*). M1-1 zoning district

PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, 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, the decision of the Brooklyn Borough Commissioner, dated June 21, 2011, acting on Department of Buildings Application No. 320035984, reads in pertinent part:

Conversion of Existing Building for use as a school (Use Group 3) is contrary to:

ZR 42-10 Use Group as school use (UG 3) is not permitted in a M1-1 zone.

And requires a special permit from the Board of Standards and Appeals as per ZR § 73-19; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-1 zoning district, the proposed use of a portion of an existing three-story and mezzanine building by a Use Group 3 school, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 3, 2012, after due notice by publication in the *City Record*, with continued hearings on June 19, 2012, July 17, 2012 and August 21, 2012, and then to decision on October 23, 2012; and

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

WHEREAS, Community Board 11, Brooklyn, recommended disapproval of the original iteration of this

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# MINUTES

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application, citing concerns with additional traffic and congestion at this location; and

WHEREAS, New York City Council Members Sara M. Gonzalez and David G. Greenfield recommend approval of this application; and

WHEREAS, certain members of the community provided testimony in opposition to this application; and

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

WHEREAS, the application is brought on behalf of Yeshiva Ore Mordechai (the "Yeshiva"), a not-for-profit school; and

WHEREAS, the site is located on a through lot with frontage on 62<sup>nd</sup> Street and 63<sup>rd</sup> Street, between 15<sup>th</sup> Avenue and 16<sup>th</sup> Avenue, within an M1-1 zoning district; and

WHEREAS, the site has a lot area of 12,202 sq. ft.; and

WHEREAS, the site is currently occupied by an existing three-story and mezzanine building with a furniture store (Use Group 6) on the 62<sup>nd</sup> Street side of the first floor and a warehouse on the 63<sup>rd</sup> Street side of the first floor, storage at the mezzanine level, and with the second and third floors remaining vacant; and

WHEREAS, the applicant proposes to convert the entire second and third floors, and portions of the first floor and mezzanine to a Use Group 3 school with a floor area of 28,871 sq. ft. (2.37 FAR); the first floor and mezzanine on the 62<sup>nd</sup> Street side of the building will continue to be occupied by a furniture store (Use Group 6) and storage, respectively, resulting in a total floor area for the building of 35,113 sq. ft. (2.88 FAR); and

WHEREAS, the proposed Yeshiva will have the following uses: (1) an office, lobby, indoor play area/lunch room, and school bus parking, at the first floor (limited to the 63<sup>rd</sup> Street side of the building); (2) storage for the Yeshiva at the mezzanine level (limited to the 63<sup>rd</sup> Street side of the building); (3) offices, classrooms, a nursery, a resource room, and a lounge at the second floor; (4) offices, classrooms, a resource room, and a cafeteria at the third floor; and (5) an outdoor play area on the roof; and

WHEREAS, the applicant originally proposed for the Yeshiva to occupy only the second and third floors, while maintaining retail and warehouse uses at the entire first floor and mezzanine level, with an entrance for the Yeshiva via a stairway along 62<sup>nd</sup> Street; and

WHEREAS, in response to concerns raised by the Board and certain members of the community, the applicant revised its proposal to have the Yeshiva occupy the first floor and mezzanine on the 63<sup>rd</sup> Street side of the building, remove the warehouse use from the building, relocate the entrance to the Yeshiva to the 63<sup>rd</sup> Street side of the building, provide separation between the Yeshiva and the furniture store use, and reduce the floor space occupied at the mezzanine level; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to

demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that the proposed building will serve an estimated 368 students from pre-K through 11<sup>th</sup> grade; and

WHEREAS, the applicant states that the School's program requires a building with at least 20,000 sq. ft. of available space; and

WHEREAS, the applicant further states that due to the School's requirements and because the majority of the students are anticipated to live in the Borough Park community, it conducted a search for a suitable location for the School in that area; and

WHEREAS, the applicant states that the Yeshiva is currently renting space in different locations in Borough Park, as it has been unable to locate a building that was large enough to accommodate the entire student enrollment; and

WHEREAS, the applicant further states that it is necessary to locate the Yeshiva in a single building because having multiple locations is impractical and inefficient, as well as disruptive to the continuity and consistency that the children require for their optimal growth and education; and

WHEREAS, the applicant represents that it conducted a search which specifically evaluated the feasibility of five different Brooklyn buildings in nearby zoning districts where schools are permitted as-of-right: 4219 15<sup>th</sup> Avenue, 5815 20<sup>th</sup> Avenue, 4515 New Utrecht Avenue, 1774 58<sup>th</sup> Street, and 1507 42<sup>nd</sup> Street; and

WHEREAS, the applicant states that, for various reasons, it was unable to obtain any of the other five buildings it evaluated for the development of a school; and

WHEREAS, specifically, the applicant states that the buildings at 5815 20<sup>th</sup> Avenue, 1774 58<sup>th</sup> Street, and 1507 42<sup>nd</sup> Street were not feasible due to their limited size, which would have prevented the school from locating the pre-school, elementary, middle, and high school students in a single building in accordance with the Yeshiva's needs; and

WHEREAS, the applicant further states that 4219 15<sup>th</sup> Avenue was not feasible because it was occupied by an existing tenant, and 4515 New Utrecht Avenue was a much larger site than the Yeshiva required and was determined to be financially infeasible; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located within 400 feet

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of an R5 zoning district to the southwest of the site, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant submitted a noise assessment report based on the results of noise monitoring carried out at the site, which states that the noise levels outside the proposed site fall within marginally acceptable limits for school use; and

WHEREAS, the noise assessment report submitted by the applicant further states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-1 zoning district can be provided through the installation of an alternate means of ventilation so that the Yeshiva can operate with a closed window condition; accordingly, the applicant states that it will provide central air/heating, which would allow the windows to remain closed in all weather conditions; and

WHEREAS, at hearing, the Board raised concerns about the ability to separate the Yeshiva from the effects of the furniture store use that is located in the subject building, particularly given that the furniture store has a loading dock on 63<sup>rd</sup> Street, along the frontage for the proposed Yeshiva; and

WHEREAS, in response, the applicant states that the proposed Yeshiva and the furniture store use will be completely separated, as the furniture store will be located on the first floor of the 62<sup>nd</sup> Street side of the building, with accessory storage for the furniture store located at the mezzanine level on the 62<sup>nd</sup> Street side of the building, while the Yeshiva will be located only on the 63<sup>rd</sup> Street side of the building at the first floor and mezzanine level, and will occupy the entire third and fourth floors; and

WHEREAS, the applicant further states that the Yeshiva and the furniture store will be separated by partitions at the first floor and mezzanine levels, that the only uses on the first floor of the Yeshiva will be a lobby, an office, and an indoor play area/lunch room, and that the mezzanine level of the Yeshiva will be used for accessory storage; and

WHEREAS, the applicant notes that the loading dock on 63<sup>rd</sup> Street that is currently used by the furniture store will be used for school bus parking by the Yeshiva, and that all loading for the furniture store use will take place on 62<sup>nd</sup> Street; and

WHEREAS, the Board finds that the conditions surrounding the site and the installation of an alternate means of ventilation will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-1 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to

demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that the majority of students at the Yeshiva will travel to and from school via school buses, while a small number of students will arrive by carpool or will walk to school; and

WHEREAS, the applicant further states that a bus loading area will be provided in front of the building on 63<sup>rd</sup> Street in order to provide a safe and appropriate area for loading and unloading of passengers, without impeding the flow of traffic; and

WHEREAS, the applicant states that the Yeshiva anticipates the total enrollment in pre-K through 11<sup>th</sup> grade to reach a maximum of 368 students during the next five years, with each grade growing to approximately 30 students as adequate classroom space becomes available; and

WHEREAS, the applicant further states that the various grades will be arriving to and departing from the Yeshiva at different times, and therefore there will only be a need to provide up to three buses for each arrival and departure shift; and

WHEREAS, the applicant submitted a table and chart to illustrate the arrival and departure shifts, which reflect that the seventh through 11<sup>th</sup> graders, comprising 150 students, will arrive at 7:30 a.m. and depart at 5:30 p.m. or later, the first through sixth graders, comprising approximately 180 students, will arrive at 9:00 a.m. and depart at 4:30 p.m., and the kindergarteners, comprising approximately 40 students, will arrive at 9:45 a.m. and depart at 3:00 p.m.; and

WHEREAS, the applicant represents that, based on the aforementioned schedule, there will never be more than three school buses arriving at the site during any single arrival or departure shift; and

WHEREAS, the applicant notes that relocating the Yeshiva's entrance to 63<sup>rd</sup> Street also helps accommodate the loading and unloading of students by providing additional frontage space, as the 62<sup>nd</sup> Street frontage measures only 51'-3" while the 63<sup>rd</sup> Street frontage measures 71'-3"; and

WHEREAS, the applicant submitted a traffic study which reflects that there are low traffic volumes on 63<sup>rd</sup> Street and the proposed Yeshiva could operate at the site without significant traffic effects; and

WHEREAS, the applicant notes that the traffic study reflects that there are lower traffic volumes on 63<sup>rd</sup> Street than on 62<sup>nd</sup> Street, where the entrance to the Yeshiva was originally proposed to be located; and

WHEREAS, the applicant also submitted a survey reflecting that there are no commercial curb cuts for loading docks located across from the site on 63<sup>rd</sup> Street, and therefore traffic on the street will not be effected by commercial loading and unloading across from the site; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated August 17, 2011, DOT states that it has no objection to the proposed school, and

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states that it will prepare a school safety map with signs and markings upon the approval and completion of the School; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, as noted above, the applicant originally proposed to locate the entrance to the school along the 62<sup>nd</sup> Street side of the building but revised its proposal to relocate the entrance to the Yeshiva to the 63<sup>rd</sup> Street side of the building in response to concerns raised by the Board and certain members of the community; and

WHEREAS, the applicant notes that there are eight residential properties located directly across from the site on 63<sup>rd</sup> Street and fewer industrial sites than the 62<sup>nd</sup> Street side of the building, and therefore the 63<sup>rd</sup> Street side of the building is more consistent with a school use than the 62<sup>nd</sup> Street side of the building; and

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

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

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

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

WHEREAS, the Board 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. 11BSA112K, dated May 31, 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

WHEREAS, DEP reviewed the August 2011 Construction Health and Safety Plan (CHASP); and

WHEREAS, DEP issued a November 14, 2011 letter

requesting additional information in the CHASP and stating that, upon completion of the project, a Remedial Closure Report be submitted to DEP for review and approval; and

WHEREAS, DEP reviewed the applicant's September 2012 stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the applicant's April 2012 noise assessment; and

WHEREAS, DEP determined that, with the use of the proposed central air-conditioning and heating system as an alternate means of ventilation, the proposed project is not anticipated to result in significant noise impacts; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow, within an M1-1 zoning district, the proposed use of a portion of an existing three-story and mezzanine building by a Use Group 3 school, contrary to ZR § 42-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 7, 2012" - (12) sheets and *on further condition*:

THAT all loading and unloading for the non-school use on the site will take place on 62<sup>nd</sup> Street;

THAT the non-school portion of the subject building must comply with all M1 district performance regulations;

THAT the applicant will submit to DEP for review and approval a revised CHASP which incorporates comments from DEP's December 14 2011 letter;

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

THAT the applicant will employ central air-conditioning and heating as an alternate means of ventilation throughout the entire building to maintain a closed window condition at all times;

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 any change in the use, occupancy, or operator of the school requires review and approval by the Board;

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

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

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

Adopted by the Board of Standards and Appeals, October 23, 2012.

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**104-11-BZ**

**CEQR #12-BSA-004K**

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 17, 2012, acting on Department of Buildings Application No. 300825775, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the required 65%.
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the maximum required 35%.
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the 30'-0".
5. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard are less than the required minimum 5'-0".
6. Proposed plans are contrary to ZR 23-631(b) in that the perimeter wall height exceeds 21'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed legalization of an enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side

yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on February 7, 2012 after due notice by publication in *The City Record*, with continued hearings on April 3, 2012, May 8, 2012, June 19, 2012, August, 7, 2012, and September 25, 2012, and then to decision on October 23, 2012; and

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

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

WHEREAS, the subject site is located on the west side of East 26<sup>th</sup> Street between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 3,186 sq. ft. (0.80 FAR); and

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

WHEREAS, the subject home initially had a floor area of approximately 1,124 sq. ft. (0.28 FAR), and was subsequently enlarged to its current floor area of 3,186 sq. ft. (0.80 FAR), which the applicant now seeks to legalize; the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to legalize the current home's open space of 57 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to legalize the current home's lot coverage of 43 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed legalization will maintain the previously-existing non-complying side yard with a width of 4'-6" along the northern lot line and a width of 8'-3" along the southern lot line (two side yards with minimum widths of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the proposed legalization 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 proposes to legalize the current home's perimeter wall height of 22'-7" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, the Board notes that the special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-2 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, the applicant initially submitted a survey indicating that the adjacent home located at 1934 East 26<sup>th</sup> Street had a perimeter wall height of 25'-1 ¾"; and

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WHEREAS, at hearing, the Board questioned whether the applicant could rely on the perimeter wall height of the adjacent home, as the 25'-1 3/4" height indicated on the survey was contrary to the approval granted by the Board to 1934 East 26<sup>th</sup> Street under BSA Cal. No. 295-08-BZ; and

WHEREAS, in response, the applicant represents that the perimeter wall height of the adjacent home in the original survey was measured incorrectly, and that the adjacent home was actually constructed with a perimeter wall height of 22'-7" as approved by the Board under BSA Cal. No. 295-08-BZ; and

WHEREAS, the applicant submitted an updated survey which reflects that the perimeter wall height of the adjacent home at 1934 East 26<sup>th</sup> Street is 22'-7"; and

WHEREAS, therefore, the applicant represents that the perimeter wall of the proposed home matches the existing non-complying perimeter wall height of the adjacent home and falls within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that the proposed home may match the pre-existing perimeter wall height of the adjacent home, which exceeds 21'-0"; and

WHEREAS, at hearing, the Board directed the applicant to document which portions of the original home have been retained; and

WHEREAS, in response, the applicant submitted revised plans indicating that portions of the cellar and first floor walls and floors have been retained; and

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

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the legalization of an enlargement to a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed

with this application and marked "Received June 6, 2012"- (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,186 sq. ft. (0.80 FAR); a minimum open space of 57 percent; a maximum lot coverage of 43 percent; a side yard with a minimum width of 4'-6" along the northern lot line; a side yard with a minimum width of 8'-3" along the southern lot line; a rear yard with a minimum depth of 20'-0"; and a maximum perimeter wall height of 22'-7", as illustrated on the BSA-approved plans;

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

THAT the approved plans 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 192-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alex Veksler, owner.

SUBJECT – Application December 21, 2011 – Variance (§72-21) to allow for the development of a Use Group 3 child care center, contrary to minimum lot width/area (§23-35), and required parking (§25-624). R2/LDGMA zoning district.

PREMISES AFFECTED – 2977 Hylan Boulevard between Isabella Avenue and Guyon Avenue, Block 4301, Lot 36 & 39, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 66-12-BZ

### CEQR #12-BSA-098M

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Nicholas Parking Corp./Owner of Lot 30, owner; Ladera, LLC, Owner of Lot 35, lessee.

SUBJECT – Application March 20, 2012 – Variance (§72-21) to permit a new mixed-use building containing a FRESH Program food store, a preschool and 164 residential units, contrary to use (§22-10), lot coverage (§24-11) and parking (§25-23) regulations. R7A, R8A/C2-4 zoning districts.

PREMISES AFFECTED – 223-237 Nicholas Avenue, aka 305 W. 121<sup>st</sup> Street and W. 122<sup>nd</sup> Street, Block 1948, Lot 30, 35, Borough of Manhattan.

### COMMUNITY BOARD #10M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 23, 2012, acting on Department of Buildings Application No. 120562284, reads, in pertinent part:

1. ZR 22-00 The proposed commercial use in an R7A residential zoning district is contrary to ZR 22-00.
2. ZR 23-145 The proposed lot coverage, for a corner lot portion of a zoning lot, exceeds the maximum allowed by ZR 23-145.
3. ZR 25-23 The proposed (0) accessory residential parking spaces is less than that required by ZR 25-23.; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R7A zoning district and partially within an R8A (C2-4) zoning district, the proposed construction of a 13-story mixed-use residential/ commercial/ community facility building that does not comply with use and parking regulations and exceeds the permitted lot coverage, contrary to ZR §§ 22-00, 23-145, and 25-23; and

WHEREAS, a public hearing was held on this application on August 14, 2012 after due notice by publication in *The City Record*, with a continued hearing on September 25, 2012, and then to decision on October 23, 2012; and

WHEREAS, Community Board 10, Manhattan, recommends disapproval of this application, citing a concern that affordable housing was not included; and

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

WHEREAS, Lots 30 and 35 (the “Project Site”) on the block bounded by St. Nicholas Avenue, West 22<sup>nd</sup> Street,

West 121<sup>st</sup> Street, and Manhattan Avenue are part of a larger zoning lot that will also include Lots 24, 25, 26, 29, and 40 (a/k/a condominium lots 1001-1006) collectively (the “Zoning Lot”); and

WHEREAS, the subject application concerns proposed construction only on the Project Site; and

WHEREAS, the Project Site’s lot area is 20,606 sq. ft., which occupies most of the western block front of St. Nicholas Avenue between West 121<sup>st</sup> Street and West 122<sup>nd</sup> Street and is currently occupied by a two-story garage (Lot 30) and a gas station (Lot 35); and

WHEREAS, the applicant is also seeking an approval from the City Planning Commission for a floor area bonus associated with the FRESH Program, pursuant to ZR § 63-211, and an authorization for the proposed height, pursuant to ZR § 63-22; and

WHEREAS, the applicant proposes to construct a 13-story, 169,192 sq. ft. mixed-use building with the following uses: (1) a FRESH food store with a floor area of 16,710 sq. ft. on the first floor and 11,340 sq. ft. of floor space in the cellar; (2) a preschool with a floor area of 15,551 sq. ft. of community facility floor area on the second floor, with a first floor entrance and lobby on West 121<sup>st</sup> Street; and (3) 164 residential units with a total floor area of 136,931 sq. ft. (including the 15,936 sq. ft. of FRESH bonus floor area) and a first floor lobby on West 122<sup>nd</sup> Street; and

WHEREAS, the variance is required because the applicant seeks to (1) occupy 970 sq. ft. of commercial use (above and below grade) within the R7A portion of the site; (2) distribute the lot coverage without regard to corner or interior lot portions; and (3) reduce the number of required accessory parking spaces; and

WHEREAS, the applicant states that the proposed building will comply with all relevant floor area regulations, across the zoning lot (which includes the Project Site and the additional lots) and will comply with street wall location, maximum street wall height, and minimum setback requirements; and

WHEREAS, however, the applicant asserts that because of the unique shape of the Project Site, two small triangular portions of it totaling 744 sq. ft. of lot area and 907 sq. ft. of FRESH food store floor space (744 sq. ft. on the first floor and 163 sq. ft. in the cellar) are located in the R7A zoning district, contrary to use regulations; and

WHEREAS, additionally, the applicant notes that it does not comply with lot coverage regulations in that each corner lot, through lot, or interior lot portion of a zoning lot must separately and individually comply with the maximum lot coverage requirement for such portion; specifically, under ZR § 77-24, for zoning lots divided by zoning district boundaries, the maximum permitted lot coverage for each corner lot, through lot or interior lot portion of the zoning lot must be calculated separately for each zoning district within which each portion is located; and

WHEREAS, the applicant notes that although the proposal reflects 965 sq. ft. less total lot coverage (24,042 sq. ft.) than the total maximum lot coverage permitted (25,007 sq.

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ft.) and the West 121<sup>st</sup> Street and St. Nicholas Avenue corner lot portions and the St. Nicholas Avenue and West 121<sup>st</sup> Street interior lot portions have less than the permitted maximum lot coverage, the West 122<sup>nd</sup> Street and St. Nicholas Avenue corner lot portion exceeds the permitted maximum by 689 sq. ft.; and

WHEREAS, as to parking, one parking space is required for 50 percent of the dwelling units in the R7A portion of the site and for 40 percent of the dwelling units in the R8A portion of the site; because the proposal reflects 164 dwelling units (eight in the R7A portion of the site and 144 in the R8A(C2-4) portion of the site), a total of 66 parking spaces is required (four for the R7A dwelling units and 62 for the R8A (C2-4) dwelling units); and

WHEREAS, the applicant proposes to provide 30 of the 66 required parking spaces off-site at 2280 Frederick Douglas Boulevard, one block north and across the street from the Project Site, which is also owned by the applicant; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in compliance with underlying district regulations: (1) the irregular shape of the Project Site; (2) the split zoning of the Project Site and the Zoning Lot; (3) the proximity of the Eighth Avenue subway to the Project Site's St. Nicholas Avenue street line, (4) the high water table; and (5) the existence of hazardous materials due to the historic use of the site by automotive uses; and

WHEREAS, as to the irregular shape, the applicant states that (1) St. Nicholas Avenue runs at an approximately 45 degree angle through the otherwise rectilinear street grid and (2) the Project Site wraps around Lot 29 at the corner of St. Nicholas Avenue and West 121<sup>st</sup> Street; and

WHEREAS, the applicant states that the site is a highly irregular polygon, with multiple different interior angles, including 45, 90, 135, and 270 degrees and with only two of its eight sides having the same dimension; and

WHEREAS, the applicant asserts that the highly irregular shape makes it impossible to design a symmetrical or rectilinear building that is more efficient and economical to construct; and

WHEREAS, further, the applicant states that because the Project Site is located between two cross streets and the block has a depth of 201.84 feet, it is divided into multiple corner and interior lot portions, including two corner lot portions and two interior lot portions and all of the different lot portions are also of irregular shape; and

WHEREAS, the applicant asserts that the irregular shape creates a practical difficulty in complying with lot coverage and use regulations; and

WHEREAS, as to the split zoning lot, the applicant asserts that the portion of the Project Site and Zoning Lot that is within 100 feet of St. Nicholas Avenue is zoned R8A with a C2-4 overlay and the remainder is zoned R7A; therefore, while most of the Project Site is located within the R8A (C2-4) zoning district (18,761 sq. ft.), a portion (1,935 sq. ft.) is located in the R7A zoning district; and

WHEREAS, the applicant notes that the zoning district

boundary line runs diagonally through the site; and

WHEREAS, as to the proximity to the subway, the applicant states that the MTA's Eighth Avenue subway line runs along St. Nicholas Avenue in front of the Project Site, at a distance from the site ranging from five feet (at the West 121<sup>st</sup> Street end of the site) to 31 feet (at the West 122<sup>nd</sup> Street end of the site); and

WHEREAS, further, the applicant notes that a 24-inch sewer is located between the site and the subway, getting as close as 12 inches to the site; and

WHEREAS, the applicant asserts that due to these conditions, construction requires a permit from the MTA, which includes engineering review and approval by the MTA and adherence to strict vibration limits and continuous monitoring; and

WHEREAS, the applicant represents that certain standard construction methods such as pile-driving are not permitted due to the vibrations they create and that the construction will require additional sheeting and shoring as part of the foundation system, which incur construction premiums; and

WHEREAS, as to the uniqueness of the condition, the applicant states that while there are other sites in the area that front on the subway line, it is not found generally; specifically, of the more than 100 properties on the three blocks between West 121<sup>st</sup> Street and West 122<sup>nd</sup> Street from Morningside Avenue to Adam Clayton Powell Boulevard, the Project Site is one of only ten that front on the subway; and

WHEREAS, further, the applicant submitted a map, which reflects that within the extended area bounded by Morningside Avenue/Manhattan Avenue and Adam Clayton Powell Boulevard between Central Park North and St. Nicholas Park/West 128<sup>th</sup> Street, there are a total of 1,127 individual properties, of which a total of 103 (9.1 percent) front on the subway that runs beneath Frederick Douglas Boulevard and St. Nicholas Avenue; and

WHEREAS, the applicant asserts that even among the 103 properties fronting on the subway, the Project Site is unique in that a portion of the site is only five feet from the subway tunnel due to the fact that the subway turns the corner at 121<sup>st</sup> Street, from St. Nicholas Avenue to Frederick Douglas Boulevard; and

WHEREAS, additionally, the applicant states that the Project Site is within 4.5 feet of a subsurface fan chamber at the middle of the St. Nicholas Avenue frontage; and

WHEREAS, the applicant asserts that it is the only one of more than 100 properties in the vicinity that is in such close proximity to the subway tunnel; and

WHEREAS, in contrast, the applicant submitted maps reflecting that many of the sites adjacent to the subway line are between 70 and 100 feet from the tunnel; and

WHEREAS, the applicant states that all other sites within the extended survey area, that are as close to the subway tunnel as the subject site, are occupied by buildings built before the subway tunnel was constructed in 1932; and

WHEREAS, the applicant asserts that the construction premiums associated with the irregular shape and the

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proximity to the subway tunnel necessitate that the cellar be used for an income-generating purpose, rather than for the required accessory parking; and

WHEREAS, the applicant represents that the food store requires a second floor for storage and other uses in order to be functional; and

WHEREAS, as to the water table, the applicant states that water is encountered at a depth of approximately 18 feet and, thus, the depth of the cellar is proposed at 15 feet, so as to avoid the high costs of dewatering; and

WHEREAS, accordingly, the applicant asserts that it would be too costly to construct a sub-cellar so that both the FRESH market and the required parking could be provided below grade; and

WHEREAS, as to hazardous materials and soil contamination, the applicant states that the historic use of the Project Site has been for a garage and a gas station use and that there are underground and aboveground gas storage tanks still in place; and

WHEREAS, the applicant states that there have been several subsurface investigations which have documented the existence of 15 gasoline storage tanks on the gas station site (Lot 35) and potentially three underground storage tanks on the garage site (Lot 30), which have led to contamination with primarily petroleum-based contaminants; and

WHEREAS, due to the evidence of contamination, the applicant filed an application with the New York State Department of Environmental Conservation for inclusion in the New York State Brownfield Cleanup Program; and

WHEREAS, under the Brownfield Cleanup Agreement, the applicant will prepare a Remedial Investigation Report, Remedial Action Work Plan, a Construction Health and Safety Plan and a Community Air Monitoring Program; and

WHEREAS, the applicant has identified premium construction costs associated with the remediation of the site; and

WHEREAS, the Board inquired into whether the applicant would be eligible for a Brownfield Redevelopment Tax Credit and the applicant replied that it would be eligible for \$2,331,000 of discretionary, after-tax credits; 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 strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) a complying development consisting of the proposed uses with the proposed amount of floor area and height, but with a smaller FRESH food store that does not extend into the R7A zoning district and which accommodates the required parking in the cellar, but only 144 dwelling units; (2) a lesser variance building with all required parking spaces and less floor area for the FRESH food store and, thus no need for the use waiver, but maintaining the proposed non-complying lot coverage, and providing 162 dwelling units; and (3) the proposed building, with the FRESH food store at the first

floor and cellar level, no parking onsite, and 164 dwelling units; and

WHEREAS, the study concluded that neither the complying development nor the lesser variance scenario would result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, the Board directed the applicant to explain the effect of the Brownfield tax credits, and the applicant stated that even with the tax credits, the proposal did not realize a reasonable rate of return for a completely as-of-right proposal; and

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

WHEREAS, the applicant states that only 744 sq. ft. of above grade FRESH food store space is within the R7A zoning district and thus contrary to use regulations, and that the remainder of the uses on the 20,606 sq. ft. lot area of the Project Site conform with use regulations; and

WHEREAS, further, the applicant states that St. Nicholas Avenue is a major thoroughfare, which was zoned for local retail use by the Department of City Planning's 2003 rezoning so as to encourage the development of additional commercial uses on this portion of the avenue; and

WHEREAS, as to the lot coverage, the applicant asserts that the waiver will allow for 689 sq. ft. of excess lot coverage in the West 122<sup>nd</sup> Street and St. Nicholas Avenue corner of the site to be offset by an equal amount of open space in the West 121<sup>st</sup> Street and St. Nicholas Avenue corner of the site; and

WHEREAS, the applicant notes that if taken as a whole, the lot coverage across the site complies with total lot coverage regulations and, in fact will have 965 sq. ft. more of open space than required; and

WHEREAS, further, the applicant notes that the lot coverage and open space requirement is not applicable to the ground floor, which will be occupied by a commercial use, which is a permitted obstruction; and

WHEREAS, as to parking, the applicant studied the factors including the forecasted age and demographics of the future residents of the building, the location and type of building, and the proximity to mass transit and determined that a mostly non-family building close to multiple mass transit options results in a parking demand of as low as 16 percent and at most 18 percent, which is substantially less than the 40 to 50 percent requirements of ZR § 23-145; and

WHEREAS, the applicant asserts that even at 18 percent parking demand, only 30 spaces would be required; and

WHEREAS, the applicant proposes to satisfy its most conservative assessment of demand through 30 parking spaces off-site at 2280 Frederick Douglas Boulevard, one block north and across the street from the Project Site, which is also owned by the applicant; and

WHEREAS, the applicant notes that in addition to the proposed 30 parking spaces, within a half-mile radius of the Project Site, there are 15 off-street parking facilities having a total of 1,590 parking spaces, which would produce an average of 196 available spaces; and

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WHEREAS, additionally, the applicant notes that the area is well-served by public transportation, including the A, C, B, and D lines, which run along St. Nicholas Avenue and Frederick Douglas Boulevard; and the 1, 2, and 3 lines, which run along Broadway and Lenox Avenue, each just three blocks from St. Nicholas Avenue; several bus lines through the north-south and east-west; as well as bicycle lanes; 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 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 Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) 12BSA098M, dated March 5, 2012; and

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

WHEREAS, lots 30 and 35 were assigned an “E” designation for hazardous materials as part of the Frederick Douglas Boulevard zoning changes adopted in 2003, and the lots were assigned E-120 under CEQR number 03DCP026M; and

WHEREAS, the “E” designation requires an environmental review by the New York City Office of Environmental Remediation (“OER”), which must be satisfied before DOB will issue building permits for the property; and

WHEREAS, the subject site was also accepted into the New York State Brownfield Cleanup Program (“NYSBCP”) on February 9, 2011 and a Brownfield Cleanup Agreement (“BCA”) was executed by the New York State Department of Environmental Conservation (“DEC”) on March 17, 2011; and

WHEREAS, under the BCA, the applicant is required to submit a Remedial Investigation Report (“RIR”) and Remedial Action Work Plan (“RAWP”) to DEC, the New York State Department of Health (“DOH”) and OER for review and approval; and

WHEREAS, the DEC is currently reviewing the RAWP;

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 the required findings under ZR § 72-21, to permit, on a site partially within an R7A zoning district and partially within an R8A (C2-4) zoning district, the proposed construction of a 13-story mixed-use residential/commercial/community facility building that does not comply with use and parking regulations and exceeds the permitted lot coverage, contrary to ZR §§ 22-00, 23-145, and 25-23; and *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 “October 15, 2012”– twenty (20) sheets; and *on further condition*:

THAT a minimum of 30 accessory residential parking spaces be provided and maintained at 2280 Frederick Douglas Boulevard;

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

THAT prior to DOB’s issuance of any building permit, OER must issue a Notice to Proceed pursuant to the site’s “E” designation and the NYS Brownfield Cleanup Agreement;

THAT prior to DOB’s issuance of a Certificate of Occupancy, OER must issue a Certificate of Completion and a Notice of Satisfaction;

THAT the parameters of the proposed building include the following: a maximum of 164 dwelling units; a residential floor area of 136,931 sq. ft. a commercial floor area of 16,710 sq. ft.; a community facility floor area of 15,551 sq. ft.; and a total floor area of 169,192 sq. ft., as reflected on the BSA-approved plans;

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

THAT the Board has not waived floor area or height regulations and notes that (1) the proposed floor area relies on certification by the City Planning Commission to allow a bonus of 15,936 sq. ft. associated with the FRESH Program, pursuant to ZR § 63-211 and (2) the height relies on an authorization by the City Planning Commission to allow the proposed height associated with the FRESH Program, pursuant to ZR § 63-22; in the absence of such actions, the applicant must revise its plan and comply with underlying floor area and height regulations;

THAT this approval is limited to the relief granted by

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the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 86-12-BZ

### CEQR #12-BSA-114M

APPLICANT – Jeremiah H. Candreva, Esq., Troutman Sanders LLP, for Parkwood Realty Associates, LLC c/o Park It Management Co., owner.

SUBJECT – Application April 9, 2012 – Special Permit (§73-63) to allow for the residential enlargement of an existing commercial building above the maximum permitted floor area (by 1,366 square feet). C2-5/R8B zoning district.

PREMISES AFFECTED – 158 West 83<sup>rd</sup> Street, western boundary of the site is 150’ east of Amsterdam Avenue on West 83<sup>rd</sup> Street, Block 1213, Lot 58, Borough of Manhattan.

### COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 3, 2012, acting on Department of Buildings Application No. 104813613, reads in pertinent part:

The property located at 158 West 83<sup>rd</sup> Street (Block 1213, Lot 58) in Manhattan is subject to an existing variance pursuant to 536-37-BZ. The proposed alteration and enlargement is therefore subject to BSA approval. Consequently, seek and obtain the approval of the BSA pursuant to Section 73-63 of the zoning resolution; and

WHEREAS, this is an application under ZR §§ 73-63 and 73-03 to permit the enlargement of an existing two-story non-residential building containing PCE use, within an R8B (C2-5) zoning district, which creates a non-compliance with regard to floor area contrary to ZR § 23-142; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in *The City Record*, and then to decision on October 23, 2012; and

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

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of West 83<sup>rd</sup> Street, between Amsterdam Avenue and Columbus Avenue, with a lot area of 6,606 sq. ft. and is within an R8B (C2-5) zoning district; and

WHEREAS, the site is occupied by a two-story building with a height of approximately 28.25 feet, a floor area of 12,702 sq. ft., and an FAR of 1.92; and

WHEREAS, the building was constructed pursuant to a Board variance in 1960, under BSA Cal. No. 536-37-BZ, to allow the construction of a second floor extension at full lot coverage, which extended the commercial use into the residential portion of the lot, exceeded the permitted lot coverage, did not provide the required rear yard, and extended the commercial use into the second floor; and

WHEREAS, the applicant states that since the site is now zoned R8B (C2-5), the restriction on the commercial use is no longer applicable as such use conforms to current zoning district regulations; and

WHEREAS, as to the encroachment of the second floor, the applicant states that it remains as approved under the variance and, thus the failure to provide a rear yard with a depth of 20’-0” at the second floor is a legal non-complying condition; and

WHEREAS, the applicant proposes to provide a setback of 15 feet along the front lot line above a fifth story and to provide a rear setback with a depth of 41.74 feet above the second story; and

WHEREAS, the building is occupied by a PCE, operated as Crunch Fitness pursuant to a special permit through BSA Cal. No. 244-97-BZ, which will remain; and

WHEREAS, the applicant states that the building has been continuously used for non-residential purposes since its construction; and

WHEREAS, the proposal reflects a four-story enlargement to the existing building, which results in a streetwall height of 60 feet and a total height of 72.33 feet, and an increase in the floor area from 12,702 sq. ft. (1.92 FAR) to 27,792 sq. ft. (4.2 FAR); and

WHEREAS, the subject zoning district permits a maximum residential FAR of 4.0 and a maximum commercial FAR of 2.0; the maximum floor area permitted is 26,424 sq. ft.; and

WHEREAS, the proposed enlargement will increase the floor area to approximately 4.9 percent (1,367 sq. ft.) above the maximum permitted floor area of 26,424 sq. ft.; and

WHEREAS, the applicant states that the increase in floor area allows for improved design for 12 rear-facing one-bedroom apartments; and

WHEREAS, pursuant to ZR § 73-63, the Board may grant a request for alteration and enlargement of a non-residential building constructed prior to December 15, 1961, provided that such enlargement does not exceed ten percent above the maximum allowable floor area ratio for the subject zoning district, or 10,000 sq. ft. in floor area and does not

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create any new non-compliance; and

WHEREAS, the proposed enlargement in excess of what is permitted is 1,367 sq. ft., which is less than the maximum permitted 10,000 sq. ft.; and

WHEREAS, the final FAR of 4.2 proposed by the applicant does not exceed ten percent above the maximum allowable for the subject zoning district; and

WHEREAS, accordingly, the Board notes that the proposed final FAR of 4.2 is permitted under ZR § 73-63; and

WHEREAS, the proposed enlargement will be built within the as-of-right building envelope and will not create any new non-compliance or increase the amount of non-compliance except as described above; and

WHEREAS, in response to the Community Board's concerns, the applicant agrees to ensure that rooftop mechanicals will comply with Noise Code regulations, which is an improvement of the current condition; and

WHEREAS, accordingly the Board has determined that the evidence in the record supports the findings to be made under ZR § 73-63; and

WHEREAS, pursuant to ZR § 73-03, the Board may not grant a request for alteration and enlargement of the site, if such enlargement would either: (1) alter the essential character of the surrounding neighborhood; (2) impair the use or development of adjacent properties; (3) be detrimental to the public welfare; or (4) interfere with any pending public improvement project; and

WHEREAS, based on the above, 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; (3) be detrimental to the public welfare; nor (4) interfere with any pending public improvement project ;and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA114M, dated April 4, 2012; and

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

Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a negative declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes each and every one of the required findings under ZR §§ 73-63 and 73-03 and grants a special permit pursuant, limited to the objections cited, to permit the enlargement of an existing two-story non-residential building containing PCE use, within an R8B (C2-5) zoning district, which creates a non-compliance with regard to floor area contrary to ZR § 23-142; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 29, 2012" – eighteen (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed enlarged building: a total floor area of 27,291 sq. ft., and an FAR of 4.2, as illustrated on the BSA-approved plans;

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

THAT substantial construction shall be completed within four years of the date of this resolution; and

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

Adopted by the Board of Standards and Appeals, October 23, 2012.

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**193-12-BZ  
CEQR #12-BSA-144M**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Vornado Realty Trust, owner; Soul Cycle 384 Lafayette Street, LLC, lessee.

SUBJECT – Application June 14, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Soul Cycle*) within a portion of an existing building. M1-5B zoning district.

PREMISES AFFECTED – 384 Lafayette Street (a/k/a 692 Broadway, 2/20 East 4<sup>th</sup> Street) southwest corner of intersection of Lafayette Street and E. 4<sup>th</sup> Street, Block 531, Lot 7401, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough  
Commissioner, dated June 5, 2012, acting on Department of  
Buildings Application No. 121062722, 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 M1-5B zoning  
district within the NoHo Historic District, the operation of a  
physical culture establishment (PCE) on a portion of the  
cellar level and first floor of a 12-story mixed-use  
commercial/manufacturing/residential building, contrary to  
ZR § 42-10; and

WHEREAS, a public hearing was held on this  
application on September 25, 2012, after due notice by  
publication in *The City Record*, and then to decision on  
October 23, 2012; and

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

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

WHEREAS, the subject site is located on a site with  
frontage on Broadway, East 4<sup>th</sup> Street, and Lafayette Street,  
in an M1-5B zoning district within the NoHo Historic  
District; and

WHEREAS, the site is the subject of a prior PCE  
special permit approval for a Blink Fitness, pursuant to BSA  
Cal. No. 33-10-BZ; and

WHEREAS, the site is occupied by a mixed-use  
commercial/manufacturing/residential building, known as  
the Silk Building; and

WHEREAS, the applicant submitted a Certificate of  
No Effect from the Landmarks Preservation Commission  
(LPC), dated September 17, 2012, approving the proposed  
signage and other modifications under its jurisdiction; and

WHEREAS, the proposed PCE will occupy 3,294 sq. ft.  
of floor area on the first floor and 1,873 sq. ft. of floor space  
in the cellar; and

WHEREAS, the PCE will be operated as SoulCycle;  
and

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

WHEREAS, the applicant proposes the following  
hours of operation: Monday to Saturday, 5:30 a.m. to 11:00  
p.m. and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Board finds that this action will  
neither 1) alter the essential character of the surrounding  
neighborhood; 2) impair the use or development of adjacent

properties; nor 3) be detrimental to the public welfare; and

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

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

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

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

WHEREAS, the project is classified as a Type I action  
pursuant to 6 NYCRR Part 617.12 and 617.4; and

WHEREAS, the Board has conducted an environmental  
review of the proposed action and has documented relevant  
information about the project in the Final Environmental  
Assessment Statement, CEQR No.12BSA144M, dated June  
12, 2012; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and  
Appeals issues a Type I action prepared in accordance with  
Article 8 of the New York State Environmental Conservation  
Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of  
Procedure for City Environmental Quality Review and  
Executive Order No. 91 of 1977, as amended, and makes each  
and every one of the required findings under ZR §§ 73-36 and  
73-03 to permit, on a site within an M1-5B zoning district  
within the NoHo Historic District, the operation of a  
physical culture establishment on a portion of the cellar level  
and first floor of a 12-story mixed-use  
commercial/manufacturing/residential building, contrary to  
ZR § 42-10; *on condition* that all work shall substantially  
conform to drawings filed with this application marked  
“Received June 14, 2012” - Four (4) sheets and *on further  
condition*:

THAT the term of this grant will expire on October 23,  
2022;

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

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

THAT soundproofing will be installed and maintained as reflected on the BSA-approved plans;

THAT all modifications to signage and the façade will be in accordance with the Landmarks Preservation Commission's Certificate of No Effect, dated September 17, 2012;

THAT any modifications will be subject to Landmarks Preservation Commission approval;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 198-12-BZ

### CEQR #12-BSA-146M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for JZS Madison, LLC, owner.

SUBJECT – Application June 22, 2012 – Variance (§72-21) to permit the conversion and enlargement of existing buildings to contain UG 6 retail and UG 2 residential uses, contrary to floor area, lot coverage (§23-145), rear yard (§23-47), rear yard setback (§23-633(b)), height (§§23-691, 99-054(b)), streetwall (§23-692(c), 99-051(a)), inner court (§23-851), window-to-lot-line (§23-861), and commercial use (§32-422) regulations. C5-1(MP), R8B zoning district. PREMISES AFFECTED – 933-943 Madison Avenue, block bounded by Madison and Park Avenues, East 74<sup>th</sup> and East 75<sup>th</sup> Streets, Block 1389, Lot 25, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 23, 2012, acting on Department of Buildings Application No. 121011403, reads, in pertinent part:

1. Lot coverage for interior portion in R8B district exceeds 70%; contrary to ZR 23-145
2. FAR exceeds maximum permitted of 4.0 in R8B portion; contrary to ZR 23-145
3. Proposed rear yard for interior lot portion is less than required 30'-0"; contrary to ZR 23-47
4. Required 10'-0" setback from rear yard line for portion of building that exceeds max base height on interior lot is not provided; contrary to ZR 23-663(b)
5. Proposed height in R8B (LH-1A) portion exceeds 60'-0"; contrary to ZR 23-691;
6. Proposed street wall less than 45'-0" in width facing East 74th Street in C5-1 (MP) portion exceeds height of 80'-0" (width of Madison Avenue); contrary to ZR 23-692(c) and ZR 99-053
7. Proposed inner court (including the area of the non-compliant rear yard) measures less than 1200 sq. ft. and contains a dimension that is less than 30'-0"; contrary to ZR 23-851
8. Proposed legally required window-to-lot line condition is less than 30'-0"; contrary to ZR 23-861
9. Proposed street wall location within 50' of Madison Avenue is contrary to ZR 99-051(a)
10. Required recesses for enlarged portion not provided; contrary to ZR 99-052(a)
11. Height exceeds maximum within Midblock Transition Portion; contrary to ZR 99-054(b)
12. Proposed location of commercial use above residential use is contrary to ZR 32-422; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C5-1 zoning district and the Special Madison Avenue Preservation District (the "Special District") and partially within an R8B(LH-1A) district, and within the Upper East Side Historic District (the "UESHD"), the proposed enlargement of an existing complex of buildings, that does not comply with zoning parameters concerning lot coverage, floor area ratio ("FAR"), rear yard, height and setback, inner courts, minimum distance between legally required windows and the rear lot line, required recesses in the Madison Avenue street wall, and location of commercial use, contrary to ZR §§ 23-145, 23-147, 23-663(b), 23-691, 23-692(c), 99-053, 23-851, 23-861, 99-051(a), 99-052(a), 99-054(b), and 32-422; and

WHEREAS, a public hearing was held on this

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application on September 11, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 16, 2012, and then to decision on October 23, 2012; and

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

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

WHEREAS, the subject zoning lot (Lot 25) consists of former Lots 21, 22, 23, 24, and 25 within Block 1389, which were previously owned by and used in conjunction with the adjoining Whitney Museum of American Art (the "Whitney"); and

WHEREAS, the zoning lot previously included the adjoining Lot 50, which is occupied by the Breuer Building, a five-story building with a height of 97'-8" at 945 Madison Avenue, which serves as the primary museum space for the Whitney; and

WHEREAS, the site is a corner lot located on the northeast corner of the intersection of Madison Avenue and East 74<sup>th</sup> Street, with 100.67 feet of frontage along Madison Avenue, 125 feet of frontage along East 74<sup>th</sup> Street, and a total lot area of 12,621 sq. ft.; and

WHEREAS, the portion of the site that extends 100 feet east of Madison Avenue is located in a C5-1 zoning district and also lies within the Special District; the remainder of the site is located within an R8B(LH-1A) district; and

WHEREAS, the site is currently occupied by the following buildings: (1) a 20'-0" wide, 57'-2" high brownstone at 937 Madison Avenue; (2) a 20'-0" wide, 57'-2" high brownstone at 943 Madison Avenue; (3) a 40'-0" wide, 57'-2" high brownstone at 933-935 Madison Avenue; (4) a 40'-0" wide, 57'-2" high brownstone at 939-941 Madison Avenue; and (5) a combined building at 31-33 East 74<sup>th</sup> Street (which formerly consisted of two separate buildings – a four-story brownstone at 31 East 74<sup>th</sup> Street and a five-story townhouse at 33 East 74<sup>th</sup> Street), with a street wall height of 58'-6" and a total height of 71'-5"; and

WHEREAS, the existing buildings have a total floor area of 50,034 sq. ft. (3.96 FAR); and

WHEREAS, all of the aforementioned buildings, with the exception of the building at 943 Madison Avenue, are considered by the Landmarks Preservation Commission ("LPC") to be contributing buildings to the UESH; and

WHEREAS, the brownstone at 943 Madison Avenue, since it is non-contributing, was approved by LPC to be demolished; and

WHEREAS, on July 25, 2006, under BSA Cal. No. 334-05-BZ, the Board granted a variance (based on a zoning lot that included the Breuer Building) to allow the construction of a nine-story addition to the primary building of the Whitney, that did not comply with zoning parameters concerning street wall, setback, gross area of floors, limiting plane, height above curb level, commercial frontage, and

street trees; and

WHEREAS, the applicant notes that the Whitney subsequently abandoned its plans for the enlargement permitted pursuant to BSA Cal. No. 334-05-BZ; and

WHEREAS, the applicant now proposes to: (1) demolish the existing building at 943 Madison Avenue and replace it with a new five-story element; (2) expand the subcellar level; (3) infill the existing two-story portion of the rear of 933-935 Madison Avenue building, which fronts on East 74<sup>th</sup> Street, to a height of five stories or approximately 56'-0" to match the height of the adjacent 31 East 74<sup>th</sup> Street building; (4) reconfigure the third, fourth, and fifth floors to create residential units on each floor; (5) demolish portions of the rear of the 33 East 74<sup>th</sup> Street building to extend the existing court to the ground level and regularize it at the second floor level; (6) construct a new sixth floor setback 15 feet from Madison Avenue and 15.25 feet from East 74<sup>th</sup> Street; (7) construct a new seventh floor setback 52.46 feet from Madison Avenue and 19.42 feet from East 74<sup>th</sup> Street; (8) construct a new eighth floor setback 52.46 feet from Madison Avenue and 23.59 feet from East 74<sup>th</sup> Street; (9) construct a new mechanical penthouse; and (10) restore the historic facades of the buildings; and

WHEREAS, the applicant states that the proposed building will have a total floor area of 72,214 sq. ft. (5.72 FAR) and a total height of 90'-8" (101'-4" with the mechanical screen wall) (the "Enlarged Building"); and

WHEREAS, the applicant states that the Enlarged Building will consist of retail space at the cellar, first, and second floors of the buildings fronting on Madison Avenue, with 12 residential condominium units throughout the remainder of the building complex; and

WHEREAS, because the Enlarged Building will involve alterations to buildings that are located within, and contribute to, the UESH, the project requires a Certificate of Appropriateness from LPC; and

WHEREAS, the applicant states that the Enlarged Building has numerous non-complying parameters, as detailed below; and

WHEREAS, as to lot coverage, under ZR § 23-145, the maximum permitted lot coverage on an interior lot in an R8B zoning district is 70 percent, and the applicant states that the interior portion of the subject site currently has approximately 100 percent lot coverage and is therefore a pre-existing non-complying condition; and

WHEREAS, the applicant notes that although the lot coverage for the Enlarged Building would be reduced on the first and second floors, it would still be approximately 78 percent; and

WHEREAS, as to FAR, under ZR § 23-145, the maximum permitted floor area within the R8B portion of the site is 10,216 sq. ft. (4.0 FAR), and the applicant proposes a floor area of 12,301 sq. ft. (4.82 FAR) within the R8B portion of the site; and

WHEREAS, the applicant represents that the excess floor area largely results from the need to locate residential use in the cellar of the 33 East 74<sup>th</sup> Street building because

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there is no other feasible use for this cellar space (retail use is not permitted in the R8B district), and since the cellar area (1,999 sq. ft.) will be used for dwelling purposes, it counts as floor area; and

WHEREAS, as to ZR § 23-47, the minimum required rear yard depth for the interior portion of the lot is 30'-0", and the applicant proposes a rear yard for the interior portion of the lot in the R8B district with a minimum depth of 25'-4"; and

WHEREAS, the applicant notes that the existing building does not currently provide a rear yard on the ground floor and has a rear yard of less than 30'-0" on the upper floors, and that the Enlarged Building will reduce this pre-existing non-compliance by providing a 25'-4" rear yard on the first through fifth floors of the existing building and a complying 30'-0" rear yard for the new sixth floor of the 33 East 74<sup>th</sup> Street building; and

WHEREAS, as to ZR § 23-663(b), a minimum setback of 10'-0" from the rear lot line is required in the R8B district for the portion of a building that exceeds 60'-0", and the applicant proposes to continue the non-complying condition in the existing building which exceeds 60'-0", has a non-complying rear yard and does not set back from the required rear yard; further, the enlarged portion of the 33 East 74<sup>th</sup> Street building would be located 30'-0" from the rear lot line and will not provide the required 10'-0" setback; and

WHEREAS, as to ZR § 23-691, the maximum permitted height in the R8B district is 60'-0", and the applicant proposes to construct a one-story addition to the existing non-complying building at 33 East 74<sup>th</sup> Street with a height of 68'-0", thereby increasing the height to 81'-0" and increasing the degree of non-compliance; and

WHEREAS as to ZR § 23-692(c) (the "Sliver Law") and ZR § 99-053, on corner lots the maximum permitted street wall height for a street wall less than 45'-0" in width is 80'-0" (the width of Madison Avenue), and the applicant proposes a street wall facing East 74<sup>th</sup> Street that is approximately 39'-2" in width and that rises to a height of 90'-8"; and

WHEREAS, as to ZR § 23-851, the minimum permitted area for an inner court is 1,200 sq. ft. and the minimum permitted dimension of such court is 30'-0", and the applicant proposes to expand the size of the existing non-complying court on the second floor of the Enlarged Building but maintain its area of approximately 830 sq. ft. and its dimensions of 33'-4" by 25'-4" on the third, fourth and fifth floors; further, although the court in the new floors of the building will have dimensions in excess of 30'-0" by 30'-0", it would not have the required 1,200 sq. ft.; and

WHEREAS, as to ZR § 23-861, the minimum distance between a legally required window and a rear lot line is 30'-0", and the applicant proposes to maintain the existing non-complying rear wall of the 33 East 74<sup>th</sup> Street building with legally required windows located 25'-4" from the rear lot line; and

WHEREAS, as to ZR § 99-051(a), within the UESH, any new construction along the Madison Avenue frontage

and along a side street within 50 feet of its intersection with Madison Avenue must be located on the street line and must rise without setback to a height of at least 97'-8", which is the street wall height of the Breuer Building; and

WHEREAS, the applicant states that in order to comply with the LPC's requirement that all of the contributing buildings be preserved as distinct, functional structures, the Enlarged Building will be set back at least 15'-0" from the Madison Avenue street line and at least 15'-3" from the East 74<sup>th</sup> Street street line; and

WHEREAS, the applicant represents that if the Enlarged Building complied with this street wall requirement, the contributing brownstones would have to be either demolished or reduced to only their facades; and

WHEREAS, as to ZR § 99-052(a), the applicant notes that this section normally requires specified recesses in the Madison Avenue street walls of buildings located within the UESH, in order to create articulation within the mandated street wall envelope; and

WHEREAS, specifically, this section requires that, within the base of the Madison Avenue frontage, above a height of 20 feet or the second story, whichever is less, at least 25 percent of the length of the street wall must be recessed from the street line to a depth of at least five feet; further, above the base, at least 20 percent of the length of the street wall shall be recessed at least five feet; and

WHEREAS, the applicant states that the Enlarged Building does not comply with this provision because the brownstones must be preserved as per LPC, as discussed above, and because such articulation would result in a significant loss of usable space; further, the applicant states that above the Madison Avenue base the Enlarged Building will set back 15'-0" from the Madison Avenue street line and there will be a bay window on the sixth floor, thereby creating a form of building articulation; and

WHEREAS, as to ZR § 99-054(b), the applicant notes that this "Midblock Transition Portion" provision is applicable to the portion of the site located between 70 feet and 100 feet from the Madison Avenue street line, and states that a new development or enlargement shall not penetrate an imaginary plane that begins 70 feet from Madison Avenue at a height of 120 feet above curb level and descends to a height of 77'-8" above curb level at a distance of 100 feet from Madison Avenue; and

WHEREAS, the applicant states that the Enlarged Building does not comply because it sets back 15'-0" from the Madison Avenue street line; thus, the rear portion of the Enlarged Building lies within the Midblock Transition Portion and penetrates the applicable limiting plane; and

WHEREAS, the applicant states that locating the Enlarged Building at the Madison Avenue street line would be inconsistent with LPC's requirement that the enlargement be set back from Madison Avenue so that the contributing rowhouses can be read as distinct structures; and

WHEREAS, finally, as to ZR § 32-422, in C5 districts, Use Group 6 uses may be located only on a story below the lowest story occupied in whole or in part by such dwelling

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units, and the Enlarge Building provides both retail use and residential use on the second floor; and

WHEREAS, the applicant states that the lower floors of the Enlarged Building will operate as two separate buildings, with commercial retail uses on the Madison Avenue frontage and residential use located in the R8B district on the side street, and it would not be practical or permissible to locate commercial retail use in any portion of the 33 East 74<sup>th</sup> Street building, which is partially located in the R8B district; and

WHEREAS, because the proposed building does not comply with all of the bulk and use regulations of the underlying districts, the subject variance is requested; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: (1) the existing built conditions of the site; and (2) the history of development; and (3) the LPC-imposed requirements regarding the development of the site; and

WHEREAS, the applicant states that the need for the requested variance arises from several factors related to the built condition of the zoning lot and the history of development; and

WHEREAS, the applicant notes that the properties were acquired by the Whitney beginning in 1968, and all of them had been acquired by the Whitney by 1980 except for 33 East 74<sup>th</sup> Street, which was acquired in 1994; and

WHEREAS, the applicant states that the subject buildings were acquired with the intention that they would be incorporated into the museum complex, and over the years most of the buildings have been used by the Whitney for administrative functions, with the ground floors and in some cases the second floor leased for retail uses; and

WHEREAS, the applicant represents that as a result of this history of use and development, the existing structures suffer from a number of functional deficiencies that prevent conversion to residential use in their current form, and conversion to a mix of retail and office uses would not be economically feasible; and

WHEREAS, the applicant states that structural changes made to the 31 East 74<sup>th</sup> Street and 33 East 74<sup>th</sup> Street buildings to facilitate the connection with and use by the Whitney pose an additional burden on a potential residential conversion; and

WHEREAS, specifically, the applicant states that the 31 East 74<sup>th</sup> Street building was converted to a circulation core that established a physical connection between the Breuer Building and the 33 East 74<sup>th</sup> Street building; and

WHEREAS, the applicant further states that in the 33 East 74<sup>th</sup> Street building the Whitney constructed a two-story library in the building's rear yard and added an additional floor to the rear, and these changes required extensive alterations to the rear of the 33 East 74<sup>th</sup> Street building; and

WHEREAS, the applicant notes that the site is also located within the UESH, and that LPC has determined

that all but one of the buildings on the site are contributing buildings to the historic district; therefore, any proposal to enlarge the site for residential use would require a Certificate of Appropriateness and would have to preserve major portions of these contributing buildings and create a cohesive ensemble that is appropriate to the surrounding context of the UESH; and

WHEREAS, the applicant represents that in order to cure the non-compliances on the site related to the rear yard, inner court, and window-to-lot-line conditions, substantial alterations would be required to the rear wall of the 33 East 74<sup>th</sup> Street building, and those alterations would not be permitted by LPC because of the existing historic rear façade of that building; and

WHEREAS, the applicant further represents that these historic conditions are also in conflict with the building envelope mandated under the Special District regulations; and

WHEREAS, the applicant notes that the Special District regulations were adopted in 1973, almost 100 years after the subject Madison Avenue rowhouses were built and prior to the designation of the UESH; and

WHEREAS, the applicant states that the prevailing form that the Special District regulations mandate is essentially a tall apartment building, with ground floor retail uses, built to the Madison Avenue street line, with a required street wall of between 110 and 120 feet, or, within a historic district, a street wall that at least matches the height and location of an adjacent building, and a maximum overall height of 210 feet; and

WHEREAS, the applicant represents that any enlargement that complied with the aforementioned street wall requirements would have dominated and obscured the subject rowhouses, and such an enlargement would, therefore, have been inconsistent with LPC's mandate that any enlargement retain and be respectful of the contributing rowhouses as distinct structures; accordingly, constructing the proposed enlargement set back from the rowhouses satisfies the conditions imposed by LPC, but results in non-compliance with the street wall and Midblock Transition Portion requirements of the Special District regulations; and

WHEREAS, the applicant states that all of the requested waivers are directly tied to either the pre-existing condition of the buildings (regarding lot coverage, rear yard, inner court, and legal window regulations), the conflicts between the Special District regulations and the requirements of LPC (regarding streetwall location and recess regulations), the need to develop the buildings as a single complex within the confines of the existing structures and the split lot condition (regarding the supplementary use regulations), or the need to maximize the floor area of the building in a way that would be consistent with the requirements of LPC (regarding the Sliver Law, R8B floor area, R8B/LH-1A height, rear setback, and recess regulations); and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that unnecessary

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hardship and practical difficulty exist in developing the site in compliance with the applicable zoning regulations, due to the combination of the existing built conditions, the history of development of the site, and the LPC-imposed requirements regarding the development of the site; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) a complying development consisting of retail uses at the cellar, first, and second floors of the Madison Avenue buildings with office space above, and community facility office use throughout the five-story East 74<sup>th</sup> Street buildings, with a total floor area of 58,188 sq. ft. (4.61 FAR); (2) a lesser variance scenario, which incorporates all of the elements proposed for the Enlarged Building, except for the addition of a sixth floor in the R8B portion of the zoning lot, resulting in the loss of 1,135 sq. ft. residential floor area; and (3) the proposed building, with

retail space at the cellar, first, and second floors of the buildings fronting on Madison Avenue, and 12 residential condominium units throughout the remainder of the eight-story building complex; and

WHEREAS, the study concluded that neither the complying development nor the lesser variance scenario would result in a reasonable return, but that the proposal would realize a reasonable return; and

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

WHEREAS, the applicant states that the surrounding neighborhood contains a mix of residential, retail, and institutional uses, with Madison Avenue in this area predominantly occupied by both large and small residential buildings with ground floors, and frequently the first two floors, devoted to boutiques, galleries, restaurants, and spas; and

WHEREAS, the applicant notes that the size of the buildings in the immediate vicinity of the site are varied, ranging from one and two story carriage houses to high-rise residential buildings; and

WHEREAS, the building directly to the west of the Breuer Building, at 14 East 75<sup>th</sup> Street, is an 11-story building with a height of 166 feet, while the building directly to the north, at 35 East 75<sup>th</sup> Street, is a 16-story building with a height of 192 feet; and

WHEREAS, the building located southwest of the site, at Madison Avenue and East 74<sup>th</sup> Street is a 15-story apartment building with a height of 192 feet, while the 40-story Carlyle Hotel with a height of 394 feet lies one block to the north, at Madison Avenue and East 76<sup>th</sup> Street; and

WHEREAS, further, the easterly end of the block on which the zoning lot is located contains a 14-story and a 19-story residential building; and

WHEREAS, the applicant notes that with the Enlarged Building, the zoning lot would contain only 72,214 sq. ft. (5.72 FAR) of floor area, which is significantly less than the

110,886 sq. ft. of floor area (8.79 FAR) permitted on the zoning lot; and

WHEREAS, as noted above, because the Enlarged Building will involve alterations to buildings that are located within, and contribute to, the UESH, the project requires a Certificate of Appropriateness from LPC; and

WHEREAS, the applicant states that the Enlarged Building will have eight stories and rise to a height of 90'-8" (101'-4" with the mechanical screen wall), and will be comparable in height with a number of surrounding buildings, and will be significantly lower than the maximum height of 210 feet for new development within the Special District; and

WHEREAS, the applicant further states that the infill portion of the Enlarged Building will reinforce the streetwall on East 74<sup>th</sup> Street and the new construction at the sixth, seventh, and eighth floors is set back a respectful distance from the other building elements, and this massing will be consistent with the built context of the surrounding neighborhood because many of the taller buildings within this area are located in the mid-blocks rather than along the major avenues; and

WHEREAS, specifically, the applicant states that within the UESH, which runs along both sides of Madison Avenue from East 61<sup>st</sup> Street to East 77<sup>th</sup> Street, 15 buildings of 13 stories or more are located mid-block, immediately east and west of Madison Avenue; and

WHEREAS, the applicant further states that two large mid-block apartment buildings located near the zoning lot – the 15-story building at 23 East 74<sup>th</sup> Street and the 16-story building at 20 East 76<sup>th</sup> Street – offer a Madison Avenue perspective very similar to the Enlarged Building in that they sit directly behind low-rise commercial buildings that front on Madison Avenue; and

WHEREAS, the applicant represents that the Enlarged Building will produce a sensitive composition of varied but respectful elements, which will allow all of the contributing buildings to be read as separate components, and this composition will be consistent with the irregular Madison Avenue skyline that prevails in the UESH, which has evolved over time into a neighborhood with buildings that vary greatly in age, style, and size; and

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

WHEREAS, the applicant submitted a Certificate of Appropriateness from LPC approving work associated with the proposed enlargement, dated October 2, 2012; and

WHEREAS, the applicant notes that LPC issued the Certificate of Appropriateness in recognition of the fact that the Enlarged Building would be compatible with the built conditions in the UESH, in terms of height and in terms of its relation to the smaller brownstones; and

WHEREAS, the Board agrees that the Certificate of Appropriateness, while not dispositive, is highly relevant evidence in support of the conclusion that the proposed development on the site comports with the essential

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character of the community; and

WHEREAS, finally, the applicant notes that the Environmental Assessment Statement prepared for this application demonstrates that the Enlarged Building will not produce excessive vehicular or pedestrian traffic in the surrounding area or any other negative community impacts; and

WHEREAS, based upon the above, the Board finds that the subject variances, if granted will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

WHEREAS, as to the self-created hardship finding, the applicant states that the practical difficulty and unnecessary hardship that necessitate this application result from the physical constraints of the multiple buildings that constitute the site; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by the applicant or a predecessor in title; and

WHEREAS, as to minimum variance, the Board notes that the applicant investigated both a complying development and a lesser variance scenario for the site, but determined that neither of these alternatives were financially feasible; and

WHEREAS, as noted above, the applicant states that all of the requested waivers are directly tied to either the pre-existing condition of the buildings (regarding lot coverage, rear yard, inner court, and legal window regulations), the conflicts between the Special District regulations and the requirements of LPC (regarding streetwall location and recess regulations), the need to develop the buildings as a single complex within the confines of the existing structures and the split lot condition (regarding the supplementary use regulations), or the need to maximize the floor area of the building in a way that would be consistent with the requirements of LPC (regarding the Sliver Law, R8B floor area, R8B/LH-1A height, rear setback, and recess regulations); and

WHEREAS, the applicant notes that the height of the Enlarged Building falls well below the applicable overall height limit of 210 feet and is also well below the height of a number of nearby buildings, and the Enlarged Building will have a total floor area of 72,214 sq. ft. (5.72 FAR) which is significantly less than the 110,836 sq. ft. of floor area (8.79 FAR) permitted on the site; and

WHEREAS, accordingly, the Board finds that the requested waivers represent the minimum variance necessary to afford relief; and

WHEREAS, accordingly, based upon its review of the record and its site visit, the Board finds that the applicant has provided sufficient evidence in support of each of the findings required for the requested variance; and

WHEREAS, the project is classified as a Type I action pursuant to Sections and 617.12 and 617.4 of 6NYCRR; and

WHEREAS, the Board has conducted an

environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA146M, dated October 12, 2012; and

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

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the applicant's 2012 noise assessment and determined that the proposed project's inclusion of 23 dBA noise attenuation for the ground floor retail space using standard double-glazed windows is not anticipated to result in significant noise impacts; and

WHEREAS, in connection with the CEQR review in 2006 of the then proposed expansion of the Whitney Museum on the subject property, a Restrictive Declaration ("RD") relating to the potential for hazardous materials was recorded against the subject property; and

WHEREAS, the RD stated that if hazardous materials were identified, a Remedial Action Plan and Health and Safety Plan would need to be submitted to DEP for review and approval; and

WHEREAS, the Mayor's Office for Environmental Remediation ("OER") is responsible for administering the RD, and the applicant has been meeting with OER on the proposed project; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C5-1 zoning district and the Special Madison Avenue Preservation District and partially within an R8B(LH-1A) district, and within the UESH, the proposed enlargement of an existing complex of buildings, that does not comply with zoning parameters concerning lot coverage, FAR, rear yard, height and setback, inner courts, minimum distance between legally required windows and the rear lot line, required recesses in the Madison Avenue street wall, and location of commercial use, contrary to ZR

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§§ 23-145, 23-147, 23-663(b), 23-691, 23-692(c), 99-053, 23-851, 23-861, 99-051(a), 99-052(a), 99-054(b), and 32-422 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received August 17, 2012” – seventeen (17) sheets; and *on further condition*:

THAT the building parameters will be as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 202-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1030 Southern Boulevard Realty Associates, owner; Blink Southern Boulevard, Inc., lessee.

SUBJECT – Application June 26, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building and special permit (§73-52) to permit the 25’-0” extension of the physical culture establishment use into a residential zoning district. C4-4/R7-1 zoning district.

PREMISES AFFECTED – 1030 Southern Boulevard, east side of Southern Boulevard, 264’ south of intersection of Westchester Avenue and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

### COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Application withdrawn.

**THE VOTE TO WITHDRAW** –

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

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 147-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.

SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.

PREMISES AFFECTED – 24-47 95<sup>th</sup> Street, east side of 95<sup>th</sup> Street, between 24<sup>th</sup> and 25<sup>th</sup> Avenues, Block 1106, Lot 44, Borough of Queens.

### COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.

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## 185-11-BZ

APPLICANT – Eric Palatnik, P.C., for 2000 Stillwell Avenue, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to permit parking accessory to an adjacent, as-of-right retail development (*Walgreens*), contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 2538 85<sup>th</sup> Street, north intersection of 86<sup>th</sup> Street and Stilwell Avenue. Block 6860, Lot 21. Borough of Brooklyn.

### COMMUNITY BOARD #11BK

**THE VOTE TO CLOSE HEARING** –

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

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 30-12-BZ

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** – Laid over to December 11, 2012, at 1:30 P.M., for continued hearing.

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## 63-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.

PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27<sup>th</sup> Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.

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## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.

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## 72-12-BZ

APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.

SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.

PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.

## COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.

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## 73-12-BZ

APPLICANT – Jeffrey Chester, Esq./GSHLLP, for 41-19 Bell Boulevard LLC, owner; LRHC Bayside N.Y. Inc., lessee.

SUBJECT – Application March 20, 2012 – Application for a special permit to legalize an existing physical culture establishment (*Lucille Roberts*). C2-2 zoning district.

PREMISES AFFECTED – 41-19 Bell Boulevard between 41<sup>st</sup> Avenue and 42<sup>nd</sup> Avenue, Block 6290, Lot 5, Borough of Queens.

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.

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## 82-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.

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

PREMISES AFFECTED – 2011 East 22<sup>nd</sup> Street, between Avenue S and Avenue T, Block 7301, Lot 55, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.

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## 150-12-BZ

APPLICANT – Goldman Harris LLC, for Roseland/Stempel 21st Street, owner; TriCera Revolution, Inc., lessee.

SUBJECT – Application May 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Flywheel Sports*). C6-4A zoning district.

PREMISES AFFECTED – 39 West 21<sup>st</sup> Street, north side of West 21<sup>st</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues. Block 823, Lot 17. Borough of Manhattan.

## COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 1:30 P.M., for continued hearing.

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## 152-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for M.S.P. Realty Development, Inc., owner.

SUBJECT – Application May 9, 2012 – Variance (§72-21) to permit construction of a four-story mixed use commercial and residential building, contrary to side yard (§23-462) requirements. C2-4/R6A zoning district.

PREMISES AFFECTED – 146-61 105<sup>th</sup> Avenue, north side of 105<sup>th</sup> Avenue, 34.65' southwest of intersection of 105<sup>th</sup> Avenue and Sutphin Boulevard, Block 10055, Lot 19, Borough of Queens.

## COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.

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## 165-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sarah Weinberger and Moshe Weinberger, owner.

SUBJECT – Application June 4, 2012 – Special Permit (§73-622) for the enlargement and partial legalization of an existing single family home contrary to floor area and open space (§23-141) and rear yard (§23-47) regulations; R2 zoning district.

PREMISES AFFECTED – 1286 East 23rd Street, west side of East 23rd Street, 60' north of Avenue M. Block 7640, Lot 82. Borough of Brooklyn.

## COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for decision, hearing closed.

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## 189-12-BZ

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

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

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

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## \*CORRECTION

This resolution adopted on October 16, 2012, under Calendar No. 2-12-BZ and printed in Volume 97, Bulletin Nos. 41-42, is hereby corrected to read as follows:

## 2-12-BZ

### CEQR #12-BSA-058Q

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

SUBJECT – Application January 3, 2012 – Variance (§72-21) for the construction of a three-story, two-family dwelling, contrary to side yard requirement (§23-48); less than the required number of parking spaces (§25-21) and location of one parking space within the front yard (§23-44). R5 zoning district.

PREMISES AFFECTED – 95-36 115<sup>th</sup> Street, 335.29' south of intersection of 95<sup>th</sup> Avenue and 115<sup>th</sup> Street, Block 9416, Lot 24, Borough of Queens.

### COMMUNITY BOARD #9Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 20, 2012, acting on Department of Buildings Application No. 420283375, reads in pertinent part:

Proposed 3 feet side yards is contrary to ZR 23-48. The required side yards as per said section is 5 feet. Proposed number of parking spaces is contrary to ZR 25-21. The required number of parking spaces as per said section is two (2) and the proposed number of spaces is none (0); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a three-story two-family home that does not comply with the zoning requirements for side yards and parking spaces, contrary to ZR §§ 23-48 and 25-21; and

WHEREAS, a public hearing was held on this application on August 7, 2012 after due notice by publication in *The City Record*, with a continued hearing on September 11, 2012, and then to decision on October 16, 2012; and

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

WHEREAS, Community Board 9, Queens, recommends disapproval of this application, citing concerns that the proposed home would compromise the light and air of adjacent homes, and that the hardship is self-created; and

WHEREAS, New York City Council Member Ruben Wills recommends disapproval of this application, citing concerns with its effect on the character of the neighborhood;

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and

WHEREAS, the site is located on the west side of 115<sup>th</sup> Street between 95<sup>th</sup> Avenue and 101<sup>st</sup> Avenue, within an R5 zoning district; and

WHEREAS, the site has a width of approximately 20 feet, a depth of 92 feet, and a total lot area of 1,842 sq. ft.; and

WHEREAS, the site is currently occupied by a single-story storage structure; and

WHEREAS, the applicant proposes to demolish the existing structure and construct a three-story two-family home; and

WHEREAS, the proposed home will have the following complying parameters: a floor area of 2,184 sq. ft. (1.19 FAR); a lot coverage of 39.5 percent; a front yard with a depth of 10'-0"; a rear yard with a depth of 30'-0"; a wall height of 28'-7"; and a total height of 31'-7"; and

WHEREAS, however, the applicant proposes two side yards with a width of 3'-0" each (two side yards with a minimum width of 5'-0" each are required); and no parking spaces (two parking spaces are the minimum required); and

WHEREAS, the applicant originally proposed to construct a three-story two-family home with a wall height of 29'-10", a total height of 33'-5", and which provided one parking space located in the front yard, resulting in an additional non-compliance with the location of a parking space in the front yard; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to reduce the height of the home in order to make it more compatible with the heights of surrounding homes, and removed the parking space from the front yard, thereby removing the non-compliance related to the location of the parking space; and

WHEREAS, the applicant notes that the subject lot is undersized as defined by ZR § 23-32; and

WHEREAS, the applicant represents that it satisfies the requirements of ZR § 23-33, which permits the construction of a two-family home on an undersized lot provided that the lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit; and

WHEREAS, in support of this assertion, the applicant submitted deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the three adjoining lots; and

WHEREAS, the applicant states that side yard and parking relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject lot; and

WHEREAS, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site

requires side yards with widths of 5'-0" each and that the building would have a maximum exterior width of 10'-0" and constrained floor plates if side yard regulations were complied with fully; and

WHEREAS, the applicant states that the narrowness of the lot also precludes locating parking spaces within a side yard without creating a home with a severely constrained width; and

WHEREAS, accordingly, the applicant represents that the side yard and parking waivers are necessary to create a building with a sufficient width; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted land use maps of the surrounding area which reflects that there are only three vacant interior residential lots in the surrounding area, two of which have widths significantly larger than the subject site (with widths of 30 feet and 41 feet, respectively); and

WHEREAS, the applicant states that there is only one other vacant lot in the surrounding area with a width of only 20 feet, and that lot is occupied by a partially constructed structure that is an apparent enlargement or alteration to the adjacent home to the south; and

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

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the surrounding area is characterized by residential uses; and

WHEREAS, the applicant states that neither of the adjacent homes comply with applicable side yard regulations, as they each have minimal side yards; and

WHEREAS, the applicant submitted a parking study which shows that the number of street parking spaces available in the vicinity of the site ranges from an average of 40 at 1:00 p.m. to an average of 22 at 6:00 p.m.; and

WHEREAS, the applicant states that the availability of street parking demonstrates that the lack of parking at the proposed home will not impact the surrounding area; and

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

WHEREAS, as to the Community Board's concern that the applicant's hardship was created by the purchase of the subject lot, which requires the requested variance to build a habitable home, the Board notes that ZR § 72-21(d) specifically provides that the purchase of a zoning lot subject to the restriction sought to be varied is not a self-created hardship; and

WHEREAS, accordingly, the Board finds that the

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hardship herein was not created by the owner or a predecessor in title, but is rather a result of the lot's pre-existing narrow width; and

WHEREAS, as noted above, the applicant originally proposed to construct a three-story two-family home with a wall height of 29'-10", a total height of 33'-5", and which provided one parking space located in the front yard, resulting in an additional non-compliance with the location of a parking space in the front yard; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to reduce the height of the home and remove the parking space from the front yard, thereby making the home more compatible with the surrounding neighborhood and removing the non-compliance related to the location of the parking space; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R5 zoning district, construction of a three-story two-family home that does not comply with the zoning requirements for side yards and parking spaces, contrary to ZR §§ 23-48 and 25-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 30, 2012"-(10) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a floor area of 2,184 sq. ft. (1.19 FAR); a front yard with a depth of 10'-0"; a side yard with a width of 3'-0" along the northern lot line; a side yard with a width of 3'-0" along the southern lot line; a rear yard with a depth of 30'-0"; a wall height of 28'-7"; a total height of 31'-7"; and no parking spaces, as per the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals,

October 16, 2012.

**\*The resolution has been revised to correct the number of Approved Plans which read "Received August 30, 2012"-(30) sheets now reads "Received August 30, 2012"-(10) sheets. Corrected in Bulletin No. 44, Vol. 97, dated October 31, 2012.**

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## \*CORRECTION

This resolution adopted on October 16, 2012, under Calendar No. 305-85-BZ and printed in Volume 97, Bulletin Nos. 41-43, is hereby corrected to read as follows:

### 301-85-BZ

APPLICANT – Francis R. Angelino, Esq. for 58 East 86<sup>th</sup> Street, LLC, owner.

SUBJECT – Application May 8, 2012 – Amendment of a variance (§72-21) which permitted limited retail use in the ground floor and cellar retail within a five story and penthouse residential building. The amendment seeks to expand the uses conditioned by the Board to include other retail (UG 6) uses. R10 (PI) zoning district.

PREMISES AFFECTED – 58 East 86<sup>th</sup> Street, south side, 113' East of Madison Avenue and Park Avenues. Block 1497, Lot 49. Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance to permit certain retail uses (Use Group 6) at the first floor of a six-story (including penthouse) building within a residential zoning district; and

WHEREAS, a public hearing was held on this application on July 24, 2012 after due notice by publication in the *City Record*, with a continued hearing on August 21, 2012, and then to decision on October 16, 2012; and

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

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

WHEREAS, representatives of Carnegie Hill Neighbors and certain members of the community provided testimony in opposition to this application (hereinafter, the “Opposition”), raising the primary concern that the proposed expansion of the permissible Use Group 6 uses at the site would be detrimental to the surrounding neighborhood character; and

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

WHEREAS, the site is located on the south side of East 86<sup>th</sup> Street between Madison Avenue and Park Avenue, in an R10 zoning district within the Special Park Improvement District; and

WHEREAS, the site is occupied by a six-story (including penthouse) mixed-use building with ground floor

retail use and with residential use above; and

WHEREAS, on February 11, 1986, under the subject calendar number, the Board granted a variance to permit the ground floor of the subject building to be occupied by certain retail uses (Use Group 6) limited to the following: a beauty parlor, art gallery, or clothing store; and

WHEREAS, subsequently, the grant has been amended and the term extended on various occasions; and

WHEREAS, most recently, on August 22, 2006, Board granted a 15-year extension of term, to expire on February 11, 2021; and

WHEREAS, the applicant now requests an amendment to permit: (1) the expansion of the uses permitted to occupy the ground floor to include a bank, drug store, optician, a sporting goods store, and a bicycle sales, rental or repair shop; and (2) an expansion of the permitted days of operation from Monday through Saturday to seven days per week; and

WHEREAS, the applicant states that the ground floor of the subject building was leased to a beauty parlor on September 1, 1986, and that this business has occupied the site continuously since that time; and

WHEREAS, the applicant submitted a letter from the owner of the building stating that the current tenant (the beauty parlor) may choose not to renew its lease, in which case the limitation of the permitted Use Group 6 uses to beauty parlor, art gallery, and clothing store would be detrimental to renting the space; and

WHEREAS, the applicant further states that the ground floor of the subject building has been occupied by a commercial use since before the enactment of the 1916 Zoning Resolution, and that the building is located only 13 feet east of a C5-1 zoning district; and

WHEREAS, the applicant represents that the requested additional Use Group 6 uses were selected based on consultations with real estate brokers concerning other possible retail uses that would be similarly compatible with the neighborhood as the existing beauty parlor has been; and

WHEREAS, as to the request to expand the permitted days of operation from six to seven, the applicant states that the ground floor retail space is currently permitted to operate Monday through Saturday, from 8:00 a.m. to 9:00 p.m., and that it now seeks to also operate on Sundays, from 11:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant submitted a table reflecting all of the commercial uses on East 86<sup>th</sup> Street between Fifth Avenue and Lexington Avenue and their days and hours of operation, which reflects that most stores are open from approximately 11:00 a.m. to 6:00 p.m. on Sundays; accordingly, the proposed hours of operation would be consistent with other commercial stores in the area; and

WHEREAS, the Opposition contends that the proposed expansion of the permitted Use Group 6 uses at the site would have a negative impact on the surrounding neighborhood character; and

WHEREAS, specifically, the Opposition argues that the mid-block portion of the subject block is distinctly residential in character and that the subject site is the only commercial

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presence on the subject block within the R10 district; and

WHEREAS, the Opposition states that, while it does not object to the request to permit Sunday hours at the site or to expand the permitted uses on the site to include an optician, the impact of increased commercial traffic, increased lighting, or increased utilization of display windows that could result from the other uses proposed by the applicant would have a detrimental impact on the residential character of the area; and

WHEREAS, in response to the concerns raised by the Opposition, the applicant revised its proposal to remove the requested bicycle sales, rental, or repair shop from the requested uses on the site; and

WHEREAS, the Opposition expressed additional concerns that a bank use at the site would present after-hours security issues on the block, and a drug store use could result in "mission creep" whereby drug stores expand their sales to convenience items and food, including prepared take-out items such as sandwiches; and

WHEREAS, the Board finds that, given the security concerns raised by the Opposition, the retail uses permitted on the ground floor should not be expanded to include the proposed bank use, which the applicant indicates would include ATM use on the interior of the bank accessible by cardholders after hours; and

WHEREAS, however, the Board finds that the optician, sporting goods store, and drug store uses proposed by the applicant would not negatively impact the surrounding area, particularly given the multitude of commercial uses in the vicinity of the site and the small footprint of the subject building which limits the types of drug stores and sporting goods stores that can make use of the site; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, dated February 11, 1986, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received May 8, 2012'-(3) sheets; and *on further condition*:

THAT the term of this grant will expire on February 11, 2021;

THAT the uses on the first floor will be limited to beauty parlor, art gallery, clothing store, drug store, optician, and sporting goods store (not including bicycle sales, rental, or repair);

THAT the hours of operation will be limited to: Monday through Saturday, from 8:00 a.m. to 9:00 p.m.; and Sunday, from 11:00 a.m. to 6:00 p.m.;

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

THAT the above conditions will be listed on the certificate of occupancy;

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

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

(Alt. 121027405)

Adopted by the Board of Standards and Appeals, October 16, 2012.

**\*The resolution has been revised to correct the hours of operation which read: ... "9:00 a.m. to 8:00 p.m.".... now reads: ... "8:00 a.m. to 9:00 p.m.".... Corrected in Bulletin No. 44, Vol. 97, dated October 31, 2012.**