
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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DIRECTORY

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DOCKET

New Case Filed Up to November 15, 2012

303-12-BZ

1106-1108 Utica Avenue, Utica Avenue between Beverly Road and Clarendon Road., Block 4760, Lot(s) 15, Borough of **Brooklyn, Community Board: 17**. Variance (72-21) to permit the development of a sub-cellar, cellar and three story Church, with accessory religious based educational and social facilities, contrary to rear yard setback, sky exposure plane (slope), and wall height. C8-1 district.

304-12-A

42-32 147th Street, west side, south of the intersection of Sanford Avenue and 147th Street, Block 5374, Lot(s) 59, Borough of **Queens, Community Board: 7**. Proposed seven-story residential development located within the mapped but unbuilt portion of Ash Avenue, pursuant to Section 35 of the General City Law. R6A district.

305-12-A

5 Point Crescent, west of the intersection of Point Crescent and Boulevard, Block 4416, Lot(s) 12, Borough of **Queens, Community Board: 7**. Proposed renovation of a single family dwelling located in the bed of a mapped street is contrary to General City Law§35. R1-2 district.

306-12-BZ

2955 Veterans Road West, Cross Streets Tyrellan Avenue and W Shore Expressway, Block 7511, Lot(s) 1, Borough of **Staten Island, Community Board: 3**. Special permit (73-36) to allow the proposed physical culture establishment in an M1-1 zoning district. M1-1/SRD district.

307-12-A

25 Olive Walk, east side of Olive Walk, 140' north of Breezy Point Boulevard, Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Reconstruction and enlargement of existing single family dwelling not fronting a mapped street is contrary to Article 3, section 36 of the General City law. The proposed upgrade of the existing non-conforming private disposal system located partially in the bed of the service road is contrary to building department policy. R4 district.

308-12-A

39-27 29th Street, east side of 29th Street, between 39th and 40th Avenues, Block 399, Lot(s) 9, Borough of **Queens, Community Board: 1**. #Deleted M1-2/R5D district.

309-12-BZY

232 Skillman Street, west side of Skillman Street between Willoughby Avenue and Dekalb Avenue., Block 1927, Lot(s) 60, Borough of **Brooklyn, Community Board: 3**. R6B district.

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

CALENDAR

NOVEMBER 27, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 27, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

743-59-BZ

APPLICANT – Peter Hirshman for VM 30 Park, LLC, owner.

SUBJECT – Application June 14, 2012 – Extension of Term of a previously approved variance, granted pursuant to Section 7e of the 1916 zoning resolution and Section 60 (1d) of the Multiple Dwelling Law, which permitted attended transient parking limited to twenty (20) unused or surplus spaces, which expired on June 14, 2011; Waiver of the Rules. R10 & R9x zoning district.

PREMISES AFFECTED – 30 Park Avenue, southwest corner of East 36th Street and Park Avenue. Block 865, Lot 40. Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

85-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communication LLC.

OWNER OF PREMISES - G.A.L. Manufacturing Company
SUBJECT – Application April 6, 2012 –Appeal from determination of Bronx Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-1 Zoning District

PREMISES AFFECTED – 50 East 153rd Street, bounded by Metro North and the Metro North Station; an off ramp to the Major Deegan Expressway, E. 157th Street, E. 153rd Street and the Bronx Terminal Market, Block 2539, Lot 132, Borough of Bronx.

COMMUNITY BOARD #4BX

90-12-A

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

OWNER OF PREMISES – Robal Arlington Corporation.
SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district.

PREMISES AFFECTED – 111 Varick Street, between

Broome and Dominick Street, Block 578, Lot 71, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

NOVEMBER 27, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 27, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

106-12-BZ

APPLICANT – Eric Palatnik, P.C., for Edgar Soto, owner; Autozone, Inc., lessee.

SUBJECT – Application April 17, 2012 – Special Permit (§73-50) to permit the development of a new one-story Use Group 6 retail store contrary to rear yard §33-292. C8-3 zoning district.

PREMISES AFFECTED – 2102 Jerome Avenue between East Burnside Avenue and East 181st Street, Block 3179, Lot 20, Borough of Bronx.

COMMUNITY BOARD #5BX

156-12-BZ

APPLICANT – Sheldon Lobel, for Prospect Equities Operation, LLC, owner.

SUBJECT – Application May 17, 2012 – Variance (§72-21) to permit construction of a mixed-use affordable housing building with ground floor commercial use contrary to §23-851 (minimum inner court dimensions). C1-4/R7A zoning district.

PREMISES AFFECTED – 816 Washington Avenue, southwest corner of Washington Avenue and St. John's Place, Block 1176, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #8BK

195-12-BZ

APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance, permitting the construction of a two story office building (UG6) with parking spaces for four cars in a residence use district, which expired on May 13, 2000. Waiver of the Rules of Practice and Procedure. R4 zoning district.

PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291.

CALENDAR

Borough of Queens.

COMMUNITY BOARD #10Q

260-12-BZ

APPLICANT – John M. Marmora, Esq., c/o K & L Gates LLP, for McDonald's Corporation, owner.

SUBJECT – Application – Special Permit (§73-243) to permit an accessory drive-through facility to an eating and drinking establishment (*McDonald's*) within the portion of the lot located in a C1-3/R5D zoning district contrary to §§32-15 & 32-32 as well as a Special Permit (§73-52) to extend the commercial use by 25' into the R3A portion of the lot contrary to § 22-10.

PREMISES AFFECTED – 114-01 Sutphin Boulevard, north side of Sutphin Boulevard between Linden Boulevard and 114th Road, Block 12184, Lot 7, Borough of Queens.

COMMUNITY BOARD #12Q

276-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 833 Flatbush, LLC c/o Jem Realty, owner; Blink 833 Flatbush Avenue Inc., lessee.

SUBJECT – Application September 11, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Blink*) within portions of existing commercial building in a C2-4 zoning district.

PREMISES AFFECTED – 833/45 Flatbush Avenue, aka 2/12 Linden Boulevard, northeast corner of Flatbush Avenue and Linden Boulevard, Block 5086, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

278-12-BZ

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

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

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

COMMUNITY BOARD #5BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING THURSDAY MORNING, NOVEMBER 15, 2012 10:00 A.M.

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

Absent: Vice Chair Collins.

SPECIAL ORDER CALENDAR

134-06-BZ

APPLICANT – Akerman Senterfill, LLP, for 241-15 Northern LLC, owner.

SUBJECT – Application August 13, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) which permitted the construction of a five-story residential building containing 40 dwelling units and 63 accessory parking spaces which expires on September 9, 2012. R1-2 zoning district.

PREMISES AFFECTED – 241-15 Northern Boulevard, Northwest corner of the intersection between Northern Boulevard and Douglaston Parkway. Block 8092, Lot 39, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the construction of a three-story residential building, which expired on September 8, 2012; 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 November 15, 2012 (the October 30, 2012 decision date was postponed due to the storm-related office closure); and

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

WHEREAS, New York City Council Member Daniel J. Halloran, III recommends approval of this application; and

WHEREAS, the subject site is located at the northwest corner of Northern Boulevard and Douglaston Parkway, within an R1-2 zoning district; and

WHEREAS, on September 8, 2008, under the subject calendar number, the Board granted a variance to permit the proposed construction of a three-story residential building with 24 dwelling units and 34 accessory parking spaces (with

three additional reservoir spaces), contrary to the underlying zoning district regulations for use, floor area ratio, open space, front yard, rear yard, height and setback, and number of dwelling units; and

WHEREAS, substantial construction was to be completed by September 8, 2012, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant represents that the owner has now obtained the necessary financing to begin the project; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 8, 2008, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on November 15, 2016; *on condition*:

THAT substantial construction will be completed by November 15, 2016;

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

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

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

(DOB Application No. 402387449)

Adopted by the Board of Standards and Appeals, November 15, 2012.

30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP for Maximum Properties, Inc., owner; Joseph Macchia, lessee.

SUBJECT – Application July 10, 2012 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2004; Waiver of the Rules. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, north west corner of 185th Street. Block 7067, Lot 50, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

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

MINUTES

39-65-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.

SUBJECT – Application March 13, 2012 – Amendment of a previously-approved variance (§72-01) to convert repair bays to an accessory convenience store at a gasoline service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy, which expired on January 11, 2000; and Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

548-69-BZ

APPLICANT – Eric Palatnik, P.C., for BP North America, owner.

SUBJECT – Application March 27, 2012 – Extension of Term for a previously granted variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district

PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107th Street, Block 1694, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

311-71-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.

SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store of an existing automotive service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 1907 Crospey Avenue, northeast corner of 19th Avenue. Block 6439, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

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

95-90-BZ

APPLICANT – Akerman Senterfitt, LLP, for Bell Realty, owner; CVS Pharmacy, lessee.

SUBJECT – Application July 26, 2012 – Extension of Term of an approved variance (§72-21) which permitted retail (UG 6) with accessory parking for 28 vehicles which expired on January 28, 2012. R1-2 zoning district.

PREMISES AFFECTED – 242-24 Northern Boulevard, bounded by Northern Boulevard north of Douglaston Parkway, west and 243rd Street to the east, Block 8179, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

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

271-90-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68th Street, Block 1348, Lot 53, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

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

67-91-BZ

APPLICANT – Sheldon Lobel, P.C., for H.N.F. Realty, LLC, owner; Cumberland Farms, Inc. lessee.

SUBJECT – Application July 27, 2012 – Extension of Term (§11-411) of an approved variance permitting the operation of an automotive service station (UG 16B) with accessory uses which expired on March 17, 2012; Waiver of the Rules. C1-2 zoning district.

PREMISES AFFECTED – 260-09 Nassau Boulevard, north corner of intersection formed by Little Neck Parkway and Nassau Boulevard, Block 8274, Lot 135, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

MINUTES

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

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

68-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application August 24, 2012 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on May 19, 2012; Amendment §11-412) to permit the legalization of certain minor interior partition changes and a request to permit automotive repair services on Sundays; Waiver of the Rules. R5D/C1-2 & R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, northwest corner of Springfield Boulevard and Union Turnpike, Block 7780, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M. for continued hearing.

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 437-51 West 13th Street LLC, owner.

SUBJECT – Application September 12, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a 12-story commercial office and retail building, which will expire on November 24, 2013; waiver of the Rules. M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13th Street, southeast portion of block bounded by West 13th, West 14th and Washington Streets and Tenth Avenue, Block 646, Lot 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

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

APPEALS CALENDAR

194-12-A

APPLICANT – John Sullivan, for Gelu-Durius Musica, owner.

SUBJECT – Application June 15, 2012 – Appeal challenging the Department of Buildings' determination that the proposed nursery school complies with ZR §24-11. R2A Zoning District.

PREMISES AFFECTED – 213-14 Union Turnpike, south side of Union Turnpike at corner of 214th Street, Block 7787, Lot 44, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Queens Borough Commissioner of the Department of Buildings (“DOB”), dated May 15, 2012, to uphold the approval of New Building Permit No. 420321538-01-NB (the “Permit”), for the construction of a community facility building at the subject site (the “Final Determination”); and

WHEREAS, the Final Determination reads, in pertinent part:

The proposed Nursery school (Use Group 3) on a R2A corner lot complies with the lot coverage of 60%.

As per ZR 11-25, all regulations applicable to a district designation shall be applicable to such district designation appended with a suffix, except as otherwise set forth in express provisions of the Zoning Resolution.

Therefore, the ‘R2’ district regulation in ZR 24-11 will be applicable to the ‘R2A’ district; 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 November 15, 2012 (the October 30, 2012 decision date was postponed due to the storm-related office closure); and

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

WHEREAS, the subject site is located on the north side of Union Turnpike between 213th Street and 214th Street, within an R2A zoning district; and

WHEREAS, the subject appeal concerns whether the subject community facility building complies with the provisions of the underlying R2A zoning district; and

WHEREAS, this appeal is brought on behalf of the owner of 80-03 214th Street (the “Appellant”); and

WHEREAS, DOB has been represented by counsel throughout this appeal; and

MINUTES

PROCEDURAL HISTORY

WHEREAS, on March 29, 2012, DOB issued the Permit to construct the subject community facility building (Use Group 3) on a corner lot within an R2A zoning district; and

WHEREAS, subsequently, the Appellant filed a zoning challenge with DOB claiming that the proposed building does not comply with the lot coverage requirements for residential buildings in R2A zoning districts under ZR § 23-141, and that the floor area of the building was miscalculated because the plans show a basement and the square footage of the basement was not included in the floor area calculation; and

WHEREAS, on April 20, 2012, the DOB Queens Borough Commissioner issued a “ZRD2: Zoning Challenge with Response” stating that the proposed community facility building complies with the 60 percent lot coverage requirement for community facility buildings under ZR § 24-111, and that the lowest level of the building meets the ZR § 12-10 definition of cellar, and is therefore not counted as part of the zoning floor area; and

WHEREAS, subsequently, the Appellant appealed the April 20, 2012 determination and claimed that ZR §§ 24-111 and 24-011 apply only to R2 zoning districts and not to R2A zoning districts; and

WHEREAS, in response, on May 15, 2012, DOB issued the Final Determination; on June 15, 2012 the Appellant filed the subject appeal at the Board; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 11-25 District Designations Appended with Suffixes

All regulations applicable to a district designation shall be applicable to such district designation appended with a suffix, except as otherwise set forth in express provisions of this Resolution. If a section lists an R4 District, therefore, the provisions of that section shall also apply to R4-1, R4A and R4B Districts, unless separate provisions for the districts with suffixes are listed within such section. Wherever a section lists only a district with a suffix, the provisions applicable to such district are different from the provisions that district without a suffix. If a section lists only a C4-6A District, therefore, the provisions of that section are not applicable to a C4-6 District.

ZR § 12-10 Definitions

Basement

A “basement”, except where a #base plane# is used to determine #building# height, is a #story# (or portion of a #story#) partly below #curb level#, with at least one-half of its height (measured from floor to ceiling) above #curb level#...

* * *

Cellar

A “cellar”, except where a #base plane# is used to determine #building# height, is a space wholly or partly below #curb level#, with more than one-half its height (measured from floor to ceiling) below #curb level#...; and

ZR § 25-634 Curb Cut Regulations for Community Facilities

...A minimum distance of 18 feet from any other curb cut on the same or adjacent #zoning lots# shall be maintained, except where the Commissioner of Buildings determines that, due to the location of curb cuts constructed prior to November 28, 2007, on adjacent #zoning lots#, there is no way to locate the curb cut 18 feet from such adjacent existing curb cuts; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Permit should be revoked for the following reasons: (1) the proposed community facility building does not comply with the R2A zoning district regulations; (2) the subject building exceeds the maximum permitted floor area because the lowest level of the building qualifies as a basement rather than a cellar; and (3) the proposed curb cut does not comply with the Zoning Resolution because it is located too close to the adjacent curb cut; and

WHEREAS, the Appellant contends that the proposed community facility building does not comply with the underlying R2A zoning district regulations with regard to floor area, lot coverage, perimeter wall height, and front yard depth; and

WHEREAS, specifically, the Appellant argues that the Article II, Chapter 4 bulk regulations for community facilities in residence districts do not apply to the subject community facility building because it is located in an R2A zoning district, not an R2 zoning district, and therefore, the proposed community facility must comply with the Article II, Chapter 3 bulk regulations which govern residential buildings in residential districts; and

WHEREAS, as to the floor area, the Appellant contends that the floor area of the proposed community facility building exceeds the permitted floor area ratio (“FAR”) of 0.5 in the subject R2A zoning district because the lowest level of the building is not a cellar, but rather a basement which must be included in the calculation of floor area; and

WHEREAS, the Appellant further contends that even if the space is a cellar, it should be counted as floor area since there will be classrooms located in the cellar; and

WHEREAS, finally, the Appellant argues that the proposed curb cut for the subject site is located too close to an adjacent curb cut; and

WHEREAS, specifically, the Appellant claims that the proposed curb cut must be 16’-0” away from the adjacent curb cut, and because the proposed curb cut is located less than 16’-0” from the adjacent existing curb cut it is non-compliant; and

MINUTES

DOB'S POSITION

WHEREAS, DOB contends that the proposed community facility building is compliant with the underlying R2A zoning district regulations, and therefore the Permit was properly issued; and

WHEREAS, DOB asserts that, pursuant to ZR § 11-25, all regulations applicable to R2 zoning districts are also applicable to R2A zoning districts, unless the Zoning Resolution expressly provides otherwise; and

WHEREAS, DOB states that in the instant case the Article II, Chapter 4 bulk regulations for community facility buildings in residential districts cite to R2 zoning districts; therefore, since these bulk regulations do not expressly state otherwise, the Article II, Chapter 4 bulk regulations are applicable to the subject community facility building in an R2A zoning district; and

WHEREAS, DOB further states that it reviewed the zoning calculations for the proposed community facility building pursuant to the proper Article II, Chapter 4 bulk regulations submitted on the required ZD1 Zoning Diagram, and DOB has determined that the proposed building complies with the applicable bulk regulations; and

WHEREAS, as to the floor area calculation, DOB notes that ZR § 12-10 defines a cellar, in part, as “a space wholly or partly below curb level, with more than one-half its height (measured from floor to ceiling) below curb level...” and it defines a basement, in part, as “a story (or portion of a story) partly below curb level, with at least one-half of its height above curb level”; and

WHEREAS, DOB states that it has reviewed the plans submitted for the proposed community facility building and has confirmed that the cellar space meets the ZR § 12-10 definition of cellar because more than one-half of its height is below curb level; and

WHEREAS, DOB notes that the ZR § 12-10 definition of floor area states that basement space is included in the calculation of floor area, but that “the floor area of a building shall not include: (1) cellar space, except where such space is used for dwelling purposes...”; and

WHEREAS, DOB therefore asserts that since the cellar space is not being used for dwelling purposes, but is rather being used for community facility nursery school purposes, the cellar is not included in the floor area calculation; and

WHEREAS, as to the location of the curb cut, DOB states that ZR § 25-634 regulates the distance between curb cuts for community facilities in residential districts and states that curb cuts must be located at least 18 feet from any other curb cuts except where DOB determines that “due to the location of curb cuts constructed prior to November 28, 2007, on adjacent zoning lots, there is no way to locate the curb cut 18 feet from such adjacent existing curb cuts”; and

WHEREAS, DOB states that the proposed curb cut is located on 214th Street in front of the side lot ribbon and adjacent to an existing curb cut, which was installed prior to November 28, 2007; and

WHEREAS, DOB further states that it has determined

that, due to the location of the adjacent curb cut, there is no way to locate the proposed curb cut 18 feet away and that the location of the proposed curb cut is the best location for public safety since it is not located on Union Turnpike, an arterial road with a center divider; and

WHEREAS, therefore, DOB contends that the proposed location of the curb cut at the subject site complies with the Zoning Resolution; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the proposed community facility building in an R2A zoning district is governed by the Article II, Chapter 4 bulk regulations applicable to community facility uses in residential districts, and that the proposed building complies with the underlying district regulations; and

WHEREAS, specifically, the Board finds that the text of ZR § 11-25 is clear and unambiguous in that all regulations applicable to R2 zoning districts are also applicable to R2A zoning districts, unless the Zoning Resolution expressly provides otherwise; and

WHEREAS, the Board further finds that since the bulk regulations of Article II, Chapter 4 apply to R2 zoning districts and do not expressly provide otherwise, they also apply to the proposed community facility building in an R2A zoning district; and

WHEREAS, the Board notes that the Appellant has not made any assertion that the proposed community facility building does not comply with the Article II, Chapter 4 bulk regulations, and since the Board has determined that these regulations apply to the proposed building, the Board defers to DOB's determination that the proposed building complies with the underlying zoning district regulations; and

WHEREAS, similarly, the Appellant has provided no evidence in support of its assertion that the lowest level of the building should be classified as a basement rather than a cellar, and the Board agrees with DOB's conclusion that it qualifies as a cellar under ZR § 12-10 because more than one-half of its height is below curb level; and

WHEREAS, the Board further agrees with DOB that because the lowest level of the building qualifies as a cellar and is not being used for dwelling purposes, that space is not included in the calculation of floor area; and

WHEREAS, finally, the Board agrees with DOB that ZR § 25-634 requires that curb cuts for community facilities in residential districts be located at least 18 feet from any other curb cut unless DOB determines that there is no way to locate the curb cut 18 feet from an adjacent existing curb cut; and

WHEREAS, because DOB has determined that there is no way to locate the proposed curb cut 18 feet away from the adjacent pre-existing curb cut, and that the location of the proposed curb cut is the best location for public safety, the Board agrees with DOB that the proposed curb cut at the subject site complies with the underlying zoning district regulations; and

WHEREAS, accordingly, the Board agrees with DOB that there is no basis for the revocation of the Permit.

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Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated May 15, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, November 15, 2012.

89-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district. PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

92-07-A thru 94-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district. PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

95-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district. PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

88-12-A & 89-12-A

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

OWNER OF PREMISES – Name Mutual, LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. C6-4 zoning district.

PREMISES AFFECTED – 462 11th Avenue, between 37th and 38th Streets, Block 709, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

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

95-12-A & 96-12-A

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

OWNER OF PREMISES – Calandra LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising sign. M1-2 zoning district.

PREMISES AFFECTED – 2284 12th Avenue, west side of 12th Avenue between 125th and 131st Streets, Block 2004, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #9M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for decision, hearing closed.

99-12-A & 100-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – 393 Canal Street LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-5B zoning district.

PREMISES AFFECTED – 393 Canal Street, Laight Street and Avenue of the Americas, Block 227, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,

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Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for decision, hearing closed.

101-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq. for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – Mazda Realty Associates.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising sign. M1-5 zoning district.

PREMISES AFFECTED – 13-17 Laight Street, south side of Laight Street between Varick Street and St. John’s Lane, Block 212, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

97-11-BZ

CEQR #12-BSA-001X

APPLICANT – Eric Palatnik, P.C., for Cross Bronx Food Center, Inc., owner.

SUBJECT – Application July 1, 2011 – Variance (§72-21) to permit the expansion of an auto service station (UG 16B) and enlargement of an accessory convenience store use on a new zoning lot, contrary to use regulations. The existing use was permitted on a smaller zoning lot under a previous variance. R5 zoning district.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, northwest corner of Rosedale Avenue and Cross Bronx Expressway, Block 3894, Lot 28 (28,29), Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Vice Chair Collins1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 14, 2011, acting on Department of Buildings Application No. 220105865, reads in pertinent part:

Proposed enlargement of existing automotive service station, use group 16, with accessory convenience store is contrary to ZR Section 22-00 and previous BSA calendar number 97-97-BZ and therefore must be referred to the NYC BSA; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located in an R5 zoning district, the enlargement of the zoning lot for a gasoline service station (Use Group 16), and certain modifications to the site, which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with continued hearings on August 7, 2012 and September 25, 2012, and then to decision on November 15, 2012 (the October 30, 2012 decision date was postponed due to the storm-related office closure); and

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

WHEREAS, State Senator Ruben Diaz recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Rosedale Avenue and the Cross Bronx Expressway within an R5 zoning district, with 140 feet of frontage along the Cross Bronx Expressway service road and approximately 87 feet of frontage on Rosedale Avenue; and

WHEREAS, the site consists of tax lot 28 - formerly lots

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28 and 29 - with a total lot area of 13,660 sq. ft., formed by two previously separate lots: (1) former Lot 28, an irregularly-shaped lot at the corner of the Cross Bronx Expressway and Rosedale Avenue, with a lot area of 11,160 sq. ft.; and (2) former Lot 29, a narrow lot adjacent to the south of former Lot 28, with a width of approximately 25 feet, a depth of approximately 125 feet, and a lot area of 2,500 sq. ft.; and

WHEREAS, the site is currently occupied by a gasoline service station with a convenience store and accessory parking for ten vehicles (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the former Lot 28 portion of the site since 1997 when, under BSA Cal. No. 97-97-BZ, the Board granted a variance to permit the gasoline service station with convenience store, and parking for three cars for a term of 20 years, to expire on October 7, 2017; and

WHEREAS, the site was also the subject of a 1990 approval, under BSA Cal. No. 391-89-BZ, which allowed for the construction of a one-story retail food market with accessory parking, which was never constructed and Lot 28 remained vacant until the 1997 action; and

WHEREAS, the 1997 approval did not include previous Lot 29, which was added sometime after the 1997 approval and is occupied by eight accessory parking spaces; and

WHEREAS, the applicant seeks to (1) legalize and enlarge the zoning lot which did not include the adjacent property at 1417 Rosedale Avenue (former Lot 29); (2) to permit the enlargement by 364 sq. ft. of the existing accessory convenience store with a floor area of 1,214 sq. ft.; and (3) to make other site modifications; and

WHEREAS, the applicant proposes to relocate the trash enclosure, tank vents, and light to accommodate the proposed enlargement to the convenience store; and

WHEREAS, because an increase in the degree of the existing non-conforming use, including the use of accessory parking on the adjacent lot, is not permitted in the R5 zoning district, the applicant seeks a variance for the site; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the history of use of the site; (2) the narrow size and configuration of former Lot 29; and (3) the location of the site on a major thoroughfare surrounded by several overbuilt multiple dwelling buildings; and

WHEREAS, the applicant notes that the gasoline service station has been located on the site for approximately 15 years and the site was first the subject of a variance in 1990, which originally permitted a 4,994 sq. ft. retail food market to be constructed at the site; and

WHEREAS, the prior variances granted by the Board found that there were unique conditions on the site which created practical difficulties and unnecessary hardship in developing the site as a conforming use; and

WHEREAS, the applicant states that it now seeks to enlarge the existing building by 364 sq. ft. and to legalize the enlargement of the zoning lot by incorporating former Lot 29, and that otherwise the conditions on the site have not changed

since the Board's prior grants; and

WHEREAS, the applicant notes that former Lot 29 was acquired in 2001 from the City as a vacant lot, and that the City demolished the home formerly on the site; and

WHEREAS, the applicant submitted a referee's affidavit and deed in support of its representations that it purchased Lot 29 through a foreclosure sale; and

WHEREAS, the applicant notes that the former Lot 29 has a width of 25.27 feet and a depth of 122.25 feet and that it is between the original Lot 28 and the side yard of an adjacent apartment building, which runs nearly the depth of the lot and is within just a few feet of the shared lot line; and

WHEREAS, as to the location on the Cross Bronx Expressway, the applicant states that there is direct access to the site from the Cross Bronx Expressway service road; there is no visual or sound buffering between the site and the expressway and, thus, the view of the major thoroughfare and the associated noise constrains the site for residential use, particularly low density; and

WHEREAS, the applicant asserts that the location of Lot 29 between the legal gasoline service station and the apartment building close to the lot line contributes to an unmarketable condition which ultimately resulted in the former home on the site being abandoned and the City foreclosing on the property and demolishing the home; and

WHEREAS, as to uniqueness, the applicant asserts that Lot 29 is the only vacant lot in the vicinity on a block occupied exclusively by multiple dwelling buildings and commercial uses; further, it has a long, narrow shape, close proximity to over-built apartment buildings, and is within 60 feet of the Cross Bronx Expressway service road; and

WHEREAS, the applicant submitted an analysis of the 16 vacant lots within an 800-ft. radius of the site and distinguished all of them for reasons including that several of the vacant lots are located in the adjacent R6 zoning district, which allows for an FAR of 2.43; several are too small or too irregularly-shaped to accommodate any development; several are surrounded only by residential uses; and several are within greater distance from the Cross Bronx Expressway; and

WHEREAS, the applicant states that only one site has been developed in the surrounding 800 feet in the past five years, which is a small triangular lot that commenced construction when the area was still zoned R6, and was the subject of a common law vested rights application, pursuant to BSA Cal. No. 195-07-A; and

WHEREAS, the applicant asserts that most of the residential uses have been in existence prior to the construction of the Cross Bronx Expressway and that there has not been any new residential construction in the study area since portions of it were downzoned from R6 to R5; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios for the

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entire site: (1) an as-of-right three-story apartment building with an FAR of 1.25; (2) a lesser variance of a mixed-use alternative including a community facility use on the first floor and residential use above; and (3) the proposed use of the entire site for the gasoline service station use; and

WHEREAS, at the Board's direction, the applicant also analyzed (1) an alternate scenario of a two-family residential building with an FAR of 1.24 and a side yard with a width of 8'-0" on the Lot 29 portion of the site, and (2) an alternate scenario of a two-family residential building with an FAR of 1.25 on the Lot 29 portion of the site; both scenarios maintained the gasoline service station use on the remainder of the site; and

WHEREAS, the feasibility study concluded that only the proposed development would realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed variance 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 submitted a 400-ft. radius diagram which reflects that the surrounding area is characterized by a mix of one- and two-family homes, multiple dwelling buildings, and some commercial and automotive uses; and

WHEREAS, the applicant states that the enlargement of the existing zoning lot will serve to improve the circulation of the site and has been functioning well under the enlarged scheme for several years; and

WHEREAS, the applicant notes that the use of the Lot 29 portion of the site is limited to parking; and

WHEREAS, the applicant notes that the buildings which surround the site include a two-story multiple dwelling building directly to the south and a large six-story multiple dwelling building to the west, as well as two other six-story multiple dwelling buildings on the block; and

WHEREAS, the applicant asserts that the multiple dwelling buildings are over-built under current zoning regulations, with FAR's in the range of 4.2, more than three times the district's maximum of 1.25; and

WHEREAS, the applicant notes that the multiple dwelling buildings also have a significant amount of lot coverage; and

WHEREAS, thus, the applicant asserts that the proposed use is compatible with the other uses on the subject block and the corner location along the service road; and

WHEREAS, the owner of the multiple dwelling building adjacent to Lot 29 provided testimony to the Board, citing concerns about the concrete and fencing along the lot line and expressed an interest that there be a buffer between the parking area on Lot 29 and the shared lot line; and

WHEREAS, in response, the applicant agreed to move the fence approximately seven feet from the shared lot line and to allow for a buffer as well as parking for the neighbor within the buffer area; and

WHEREAS, the applicant and the neighbor have informed the Board that they have a private agreement to maintain the buffer area, separate from the terms of the Board's resolution; and

WHEREAS, however, the Board notes that the fence location and neighbor's parking space on Lot 29 are reflected on the Board-approved plans and any change would require the Board's review and approval; and

WHEREAS, as to other site improvements, the applicant agreed to (1) install and maintain a white PVC fence with a height of 6'-0" along the entire length of the buffer area between the parking and the adjacent lot; (2) direct all lighting downward and away from adjacent uses; (3) relocate the trash enclosure to the northern portion of the lot, surrounded by fencing with opaque slats; (4) remove the air station and self-serve car wash; and (5) post signage that states "No Radio Playing or Car Idling;" and

WHEREAS, the applicant also submitted photographs reflecting that the fence has been relocated and repaired as described; and

WHEREAS, the neighbor also provided testimony raising concerns about large truck traffic to the site, due to diesel fuel sales; and

WHEREAS, accordingly, the Board inquired into whether the diesel fuel sales were necessary to the business plan and, ultimately, rejecting the applicant's assertion that they were necessary; and

WHEREAS, the Board notes that the sale of diesel fuel attracts large trucks to the site, which it deems to be incompatible with adjacent uses and, thus, indicated to the applicant that not only is a reasonable return possible without diesel fuel, but also the use of the site is more compatible with surrounding residential use without the truck traffic it attracts; and

WHEREAS, the applicant states that the enlargement of the existing building would be located entirely on the former Lot 28 portion of the site and solely consists of an 364 sq. ft. enlargement to the one-story convenience store, at the northeast corner of the site, closest to the Cross Bronx Expressway and furthest from adjacent residential uses; and

WHEREAS, the applicant represents that the enlargement of the zoning lot will not result in the use of any additional equipment on the site or the creation of any additional noise or other disturbances on the site; and

WHEREAS, at hearing, the Board directed the applicant to provide a scenario which eliminated the diesel sales and the enlargement to the convenience store; and

WHEREAS, upon review of the alternate scenario, the Board concluded that neither the enlargement to the convenience store nor the inclusion of diesel fuel sales is appropriate for the site; and

WHEREAS, based upon the above, the Board finds that this action, with the noted modifications to the original

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proposal, will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

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

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

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

Insert Environmental

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617.12 and 617.4; 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 determination under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site located in an R5 zoning district, the enlargement of the zoning lot for a gasoline service station (Use Group 16), and certain modifications to the site, which does not conform to district use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 17, 2012"- (5) sheets and *on further condition*:

THAT the term of this grant will expire on November 15, 2022;

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

THAT landscaping will be planted and maintained and a fence installed and maintained as reflected on the BSA-approved plans;

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

THAT there will not be an air station or self-serve car wash;

THAT a sign will be posted stating "No Radio Playing or Car Idling;"

THAT signage will be as indicated on the BSA-approved plans;

THAT vents form the underground storage tanks will be located away from the adjacent residential uses in accordance with the BSA-approved plans;

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

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

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

THAT 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, November 15, 2012.

187-11-BZ

CEQR #12-BSA-048K

APPLICANT – Davidoff Malito & Hutcher, LLP, for Sanford Realty, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Vice Chair Collins1

THE RESOLUTION –

WHEREAS, decision of the Brooklyn Borough Commissioner, dated November 15, 2011, acting on Department of Buildings Application No. 320372725, reads:

Proposed residential building cannot be built in M1-1 zoning district, as per Section 42-00 ZR; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the residential conversion (UG 2) of an existing four-story manufacturing building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in the *City Record*, with continued hearings on June 5, 2012, and July 10, 2012, and then to decision on November 15, 2012 (the October 30, 2012 decision date was postponed due to the storm-related office closure); and

WHEREAS, the building 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 3, Brooklyn, recommends disapproval of this application; and

WHEREAS, the site is located on the west side of Sanford Street between Myrtle Avenue and Park Avenue, within an M1-1 zoning district; and

WHEREAS, the site has 37'-9" of frontage on Sanford Street, a depth of 100 feet, and a lot area of 3,775 sq. ft.; and

WHEREAS, the site is currently occupied by a four-

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story manufacturing building, with a total floor area of 12,836 sq. ft. (3.4 FAR); and

WHEREAS, the building was constructed in approximately 1931 and has been vacant for three years; and

WHEREAS, the applicant proposes to convert the building to residential use with commercial use at a portion of the ground floor, and to make a slight modification to the building envelope to improve the circulation of the building, resulting in a building with a total floor area of 12,566.5 sq. ft. (3.33 FAR); and

WHEREAS, specifically, the applicant proposes to use a 1,376 sq. ft. (0.37 FAR) portion of the first floor for conforming commercial use, and to convert the remaining 11,190.5 sq. ft. (2.96 FAR) of the building to 14 residential units; and

WHEREAS, the applicant originally proposed to convert the subject building to residential and ground floor commercial uses, and to enlarge the existing building by constructing a partial fifth floor at the roof level, resulting in a total floor area of 14,447 sq. ft. (3.83 FAR) and two additional dwelling units (16 total dwelling units); and

WHEREAS, at hearing, the Board raised concerns regarding the proposed enlargement and additional floor area, and directed the applicant to remove the partial fifth floor; and

WHEREAS, in response, the applicant submitted revised plans removing the partial fifth floor enlargement and reflecting the current proposal; and

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

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: the existing building is obsolete for conforming manufacturing use; and

WHEREAS, the applicant represents that the building is obsolete for modern manufacturing due to (1) the small and narrow footprint of the building, (2) wood decking and joists which cannot support loads required for manufacturing, (3) an inoperable elevator and twisted stairwell, (4) the low floor-to-ceiling heights, (5) the lack of a loading berth, and (6) the site's mid-block frontage along a narrow street with low traffic volume; and

WHEREAS, as to the building's small and narrow footprint, the applicant states that the building is unusually narrow at 37'-9" with a floorplate of 3,209 square feet, which renders it unmarketable for conforming occupancy; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a lot study which examined 133 lots within the surrounding M1-1 and M1-2 area and found 28 were occupied with conforming uses and have a street frontage of 38'-0" or less; and

WHEREAS, the lot study submitted by the applicant indicates that of those 28 lots, 25 are distinguishable from the subject property because the lots are either: (1) connected to buildings on adjoining narrow lots; (2) part of a larger

assemblage; (3) configured to allow off-street parking/loading; (4) occupied by a residential use; or (5) located along Nostrand Avenue, a busy thoroughfare; and

WHEREAS, accordingly, the lot study indicates that only three lots of the total 133 lots within the study area were deemed to be comparable to the subject site in terms of their lot width and conforming occupancy; and

WHEREAS, as to the building's load capacity, the applicant represents that the existing floors with wood decking and joists do not have the structural capacity to carry the requisite load capacity for conforming uses; and

WHEREAS, specifically, the applicant states that the 2008 Building Code requires a minimum uniformly distributed live load of 125 p.s.f. and a minimum concentrated live load of 2000 lbs; however, the building's current load capacity measures between 107 and 69 p.s.f. and therefore cannot support a manufacturing warehouse load; and

WHEREAS, the applicant represents that, aside from its low load-bearing capacity, the building's dated floor system consisting of wood decking over wood joists is nearly 50 percent of the building and, aside from any structural stability related work, would require the entire floor and sub-floor to be removed, the affected joists replaced, and the sub-floors and floors reinstalled to achieve a level condition, resulting in significant additional costs associated with the reconstruction of the wood joists and wood decking; and

WHEREAS, as to the inadequate elevator shaft and staircases, the applicant states that the building lacks a functioning elevator and the size of the elevator, at 8'-0" by 8'-0", is not large enough to appropriately market the building for conforming tenancy; and

WHEREAS, the applicant states that the ability to vertically transport products and goods to and from the building's upper levels is further compromised by the existing main stairwell, which would need to be demolished and re-installed because of its uneven and sagging condition; and

WHEREAS, as to the floor-to-ceiling height, the applicant notes that the floor-to-ceiling height varies from 12'-0" to 9'-10" throughout the building; and

WHEREAS, the applicant represents that typical wholesale showroom minimum ceiling heights are 14'-0", and ceiling heights needed for warehousing goods requires a minimum ceiling height of 25'-0" to facilitate the stacking of pallets, and as such, the low ceiling heights of the existing building contribute to the functional obsolescence of the building for conforming manufacturing use; and

WHEREAS, as to the street conditions, the applicant states that Sandford Street, although mapped at a width of 50'-0", is paved for a width of only approximately 30'-0", and off-street parking is permitted on both sides of the street; this coupled with a lack of a loading berth constrains vehicle delivery and access to the site and trailer/truck loading for a conforming use; and

WHEREAS, the applicant states that the building has been vacant for nearly three years, and that the owner has actively attempted to market the space within the building

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for over two years for a conforming use, but has been unsuccessful; and

WHEREAS, based upon the above, the Board finds that the combination of the small and narrow footprint, wood decking and joists which cannot support load required for manufacturing, inoperable elevator and twisted stairwell, low floor to ceiling height, lack of a loading birth, and mid-block frontage along a narrow, low traffic street create unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a feasibility study analyzing: (1) the building used in conformance with M1-1 zoning district regulations; (2) the original proposal with a fifth floor addition; and (3) the proposed four-story residential building with ground floor commercial use; and

WHEREAS, the applicant's feasibility study reflects that the building occupied by a conforming use does not provide a reasonable return but that the proposed building does result in a reasonable return; and

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

WHEREAS, the applicant represents that the proposed residential use 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 notes that although zoned M1-1, the site is two blocks west of an R6 zoning district, and two blocks east of an MX-4 (M1-2/R6A) district, which both permit residential uses as-of-right; and

WHEREAS, the applicant represents that the surrounding area is characterized by a mix of residential uses and commercial uses; and

WHEREAS, the land use map submitted by the applicant shows residential uses immediately to the north and west of the site, and across Sandford Street; and

WHEREAS, the applicant represents that the conforming uses in the surrounding area are mostly non-intrusive, one-story garages and undeveloped property; and

WHEREAS, based upon the above, the Board finds that the proposed residential conversion of the subject building will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted above, the applicant initially proposed to construct a partial fifth story enlargement to the existing building, which would have resulted in a floor area of 14,447 sq. ft. (3.83 FAR) and two additional dwelling units (16 total dwelling units); and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to remove the fifth story enlargement; and

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

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

WHEREAS, the project is classified as 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") 12BSA048K, dated April 30, 2011; and

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

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

WHEREAS, DEP reviewed and accepted the October 2012 Remedial Action Plan and Construction Health and Safety Plan; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, the residential conversion (UG 2) of an existing four-story manufacturing building, which is contrary to ZR § 42-00, *on condition* that

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any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 22, 2012"- eight (8) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a total floor area of 12,566.5 (3.33 FAR); a residential floor area of 11,190.5 (2.96 FAR); a commercial floor area of 1,376 sq. ft. (0.37 FAR); a total height of 48'-0"; and 12 residential units, as illustrated on the BSA-approved plans;

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

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) 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, November 15, 2012.

190-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 1197 Bryant Avenue Corp., owner.

SUBJECT – Application December 15, 2011 – Variance (§72-21) to legalize Use Group 6 retail stores, contrary to use regulations (§22-10). R7-1 zoning district.

PREMISES AFFECTED – 1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street. Block 2993, Lot 27, Borough of Bronx.

COMMUNITY BOARD #3BX

ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for continued hearing.

9-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 29, 2013, at 1:30 P.M., for continued hearing.

12-12-BZ & 110-12-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.

Variance to §§26(7) and 30 of the Multiple Dwelling Law (pursuant to §310) to facilitate the new building, contrary to court regulations. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to January 8, 2013, at 1:30 P.M., for deferred decision.

55-12-BZ

APPLICANT – Eric Palatnik, P.C., for Kollel L'Horoah, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based, non-profit school (*Kollel L'Horoah*), contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to January 8, 2013, at 1:30 P.M., for continued hearing.

67-12-BZ

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

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

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

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to January 15, 2013, at 1:30 P.M., for continued hearing.

104-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Jacob, owner.

SUBJECT – Application April 12, 2012 – Re-instatement (§11-411) of a previously approved variance which expired on May 20, 2000 which permitted accessory retail parking on the R5 portion of a zoning lot; Extension of Time to obtain a Certificate of Occupancy which expired on April

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11, 1994; Waiver of the Rules. C2-4/R6A and R5 zoning district.

PREMISES AFFECTED – 178-21 & 179-19 Hillside Avenue, northside of Hillside Avenue between 178th Street and Midland Parkway, Block 9937, Lot 60, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

112-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Raymond B. and Colleen Olsen, owners.

SUBJECT – Application April 23, 2012 – Special Permit (§73-621) for the enlargement of an existing one-family dwelling, contrary to open space regulations (§23-141). R2 zoning district.

PREMISES AFFECTED – 244 Demorest Avenue, southwest corner of intersection of Demorest Avenue and Leonard Avenue, Block 444, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

137-12-BZ

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Haug Properties, LLC, owner; HSS Properties Corporation, lessee.

SUBJECT – Application April 27, 2012 – Variance (§72-21) to allow for an ambulatory diagnostic and treatment health care facility (*Hospital for Special Surgery*), contrary to rear yard equivalent, use, height and setback, floor area, and parking spaces (§§42-12, 43-122, 43-23, 43-28, 43-44, and 13-133) regulations. M1-4/M3-2 zoning districts.

PREMISES AFFECTED – 515-523 East 73rd Street, Block 1485, Lot 11, 14, 40, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for deferred decision.

154-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Caroline Teitelbaum and Joshua Teitelbaum, owners.

SUBJECT – Application May 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461(a)) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1202 East 22nd Street, west side of East 22nd Street between Avenue K and Avenue L, Block 7621, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

163-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospitals Center, owner; New York University, lessee.

SUBJECT – Application May 31, 2012 – Variance (§72-21) to permit the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center, contrary to rear yard equivalent, height, lot coverage, and tower coverage (§§24-382, 24-522, 24-11, 24-54) regulations. R8 zoning district.

PREMISES AFFECTED – 435 East 30th Street, East 34th Street, Franklin D. Roosevelt (FDR) Drive Service Road, East 30th Street and First Avenue, Block 962, Lot 80, 108, 1001-1107, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for deferred decision.

209-12-BZ

APPLICANT – The Law Offices of Stuart Klein, for 910 Manhattan Avenue Realty Corp., owner.

SUBJECT – Application July 6, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-3A zoning district.

PREMISES AFFECTED – 910 Manhattan Avenue, north east corner of Greenpoint and Manhattan Avenues, Block 2559, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing

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closed.

241-12-BZ

APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new mixed residential and retail building, contrary to use regulations (§42-10 and 42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.