
BULLETIN

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DOCKETS

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317-12-A

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318-12-BZ

45 Crosby Street, East side of Crosby Street, 137.25' north of intersection with Broome Street., Block 482, Lot(s) 3, Borough of **Manhattan, Community Board: 2**. Special permit (73-36) to permit a physical culture establishment within a portion of an existing building. M1-5B district.

319-12-A

41-05 69th Street, 41 Avenue and 69th Street, Block 1309, Lot(s) 29, Borough of **Queens, Community Board: 4**. Common law vested rights to renew building permits issued before the effective date of a zoning change from R6 to R5D district.

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

CALENDAR

JANUARY 8, 2013, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 8, 2013, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

410-68-BZ

APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of (UG16B) automotive service station (Citgo) with accessory uses, which expired on November 26, 2008; Extension of Time to Obtain a Certificate of Occupancy which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.

AFFECTED PREMISES – 85-05 Astoria Boulevard, east corner of 85th Street. Block 1097, Lot 1. Borough of Queens.

COMMUNITY BOARD #3Q

136-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Fulton View Realty, LLC, lessee.

SUBJECT – Application August 24, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Water Street and Front Street, Block 35, Lot 7, 8 & 9, Borough of Brooklyn.

COMMUNITY BOARD #2BK

208-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt, owner.

SUBJECT – Application October 25, 2012 – This application is filed to request an Extension of Time to Complete Construction of a previously granted Special Permit (73-622) to permit the enlargement of an existing single family residence which expired on October 28, 2012. R-2 zoning district.

PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22nd Street, Block 7639, Lot 1 & 3(tent.1), Borough of Brooklyn.

COMMUNITY BOARD #14BK

255-84-BZ

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner.

SUBJECT – Application May 23, 2012 – The proposed enlargement of the Community Center (Administration Security Building) partially in the bed of the mapped Rockaway Point Blvd. is contrary to Article 35 of the General City Law.

AFFECTED PREMISES – 95 Reid Avenue, East side Reid Avenue at Rockaway Point Boulevard. Block 16350, Lot p/o300. Borough of Queens.

COMMUNITY BOARD #14Q

213-12-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Linda McDermott-Paden, lessee.

SUBJECT – Application July 20, 2012 – The proposed reconstruction and enlargement of the existing single family dwelling partially within the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law.

AFFECTED PREMISES – 900 Beach 184th Street, east side Beach 184th Street, 240' north of Rockaway Point Boulevard. Block 16340, Lot p/o50. Borough of Queens.

COMMUNITY BOARD #14Q

239-12-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Donald Greaney, lessee.

SUBJECT – Application August 2, 2012 - The proposed reconstruction and enlargement of the 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 partially in the bed of the Service Road is contrary to Building Department policy. R4 zoning district.

AFFECTED PREMISES – 38 Irving Walk, west side of Irving Walk, 45' north of the mapped Breezy Point Boulevard. Block 16350, Lot p/o 400. Borough of Queens.

COMMUNITY BOARD #14Q

240-12-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Zorica & Jacques Tortoroli, owner.

SUBJECT – Application August 2, 2012 – The proposed reconstruction and enlargement of the existing single family dwelling partially in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system in the bed of the mapped street is contrary to Article 3 of the General City Law. R4 zoning district.

CALENDAR

PREMISES AFFECTED – 217 Oceanside Avenue, north side Oceanside Avenue, west of mapped Beach 201st Street, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

JANUARY 8, 2013, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 8, 2013, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

1-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Harran Holding Corp., owner; Moksha Yoga NYC LLC, lessee.

SUBJECT – Application January 3, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Moksha Yoga*) on the second floor of a six-story commercial building.

PREMISES AFFECTED – 434 6th Avenue, southeast corner of 6th Avenue and West 10th Street, Block 573, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #2M

261-12-BZ

APPLICANT – Sheldon Lobel, P.C., for One York Property, LLC, owner; Barry's Bootcamp Tribeca LLC, lessee.

SUBJECT – Application August 31, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Barry's Bootcamp*) on the first and cellar floors of the existing building at the premises. C6-2A (TMU) zoning district.

PREMISES AFFECTED – 1 York Street, south side of Laight Street between Avenue of Americas, St. John's and York Streets, Block 212, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #1M

280-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sheila Weiss and Jacob Weiss, owners.

SUBJECT – Application September 21, 2012 – Special Permit (§73-622) for the enlargement of an existing single family contrary to floor area, open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R-2 zoning district.

PREMISES AFFECTED – 1249 East 28th Street, east side of 28th Street, Block 7646, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

298-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application October 17, 2012– 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.

PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4th Street, Block 545, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 4, 2012
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of an automotive service station, which expired on March 12, 2004; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with continued hearings on October 30, 2012, and November 15, 2012, and then to decision on December 4, 2012; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the condition that the term be limited to five years due to concerns regarding the maintenance of the site; and

WHEREAS, the Community Board requested that the applicant undertake the following remediation measures: (1) clean the graffiti off the building; (2) replace the sidewalk; (3) remove the empty barrels located on the corner of 185th Street and Booth Memorial Avenue; (4) repair the rear wall and repair the wall on the west side of the building; (5) repair the fence between the gas station and the adjacent property; (6) remove the boat being stored on the site; (7) remove the “Mechanic on Wheels” van from the site; and (8) restrict

vehicles from parking on the site unless they are awaiting service; and

WHEREAS, a representative of the Auburndale Improvement Association, Inc., provided testimony citing similar concerns to those of the Community Board and also requesting that the term of the grant be limited to five years; and

WHEREAS, the site is an irregularly-shaped corner lot located at the intersection of the Horace Harding Expressway, 185th Street, and Booth Memorial Avenue, within a C2-2 (R3-1) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 20, 1959 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, on December 13, 1994, the Board granted a ten-year extension of term, to expire on March 12, 2004; and

WHEREAS, most recently, on October 16, 2001, the Board granted an amendment to permit the construction of a metal canopy over new gasoline pump islands and to allow the alteration of the sales area to provide an attendant’s booth; and

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

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

WHEREAS, at hearing, the Board directed the applicant to address the concerns raised by the Community Board; and

WHEREAS, in response, the applicant states that the maintenance concerns raised by the Community Board have been addressed, as the graffiti has been removed, the sidewalk has been repaired, the empty barrels and other debris have been removed, the building has been painted, the fence has been repaired, and the boat has been removed from the site; and

WHEREAS, the applicant states that the van referenced by the Community Board is an emergency repair van owned and operated by the service station repair facility; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 20, 1959, so that as amended this portion of the resolution shall read: “to extend the term for five years from the date of this grant, to expire on December 4, 2017; *on condition* that all use and operations shall substantially conform drawings filed with this application marked ‘Received July 11, 2012’-(2) sheets; and *on further condition*:

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THAT the term of the grant will expire on December 4, 2017;

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

THAT signage will comply with C2 district regulations

THAT parking on the site is limited to vehicles awaiting service;

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

THAT a new certificate of occupancy will be obtained by December 4, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; 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. 401076759)

Adopted by the Board of Standards and Appeals, December 4, 2012.

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 Cropsy Avenue, northeast corner of 19th Avenue. Block 6439, Lot 5, 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 Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with continued hearings on September 25, 2012 and October 30, 2012, and then to decision on December 4, 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 11, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of 19th Avenue and Cropsy Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 11, 1927 when, under BSA Cal. No. 454-27-BZ, the Board granted a variance to permit the construction of an extension of an existing garage for the storage of more than five motor vehicles; and

WHEREAS, on October 12, 1971, under the subject calendar number, the Board granted a reduction in floor area and reconstruction of an automotive service station with accessory uses, pursuant to ZR § 11-412; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, most recently, on July 13, 1999, the Board granted an amendment pursuant to ZR § 11-412 to permit the installation of an overhead canopy and the alteration of the permitted signage; and

WHEREAS, the applicant now seeks an amendment to eliminate the automotive repair service use and convert the automotive repair bays to an accessory convenience store; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the accessory convenience store is contained within a completely enclosed building; and (ii) the accessory convenience store has a maximum retail selling space of 2,500 sq. ft. or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the proposed convenience store is located within an enclosed building and has a retail selling space of less than 2,500 sq. ft. or 25 percent of the zoning lot area; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, at hearing, the Board questioned whether the signage complies with C1 district regulations, and raised concerns about the buffering between the subject site and the adjacent residential uses to the east; and

WHEREAS, in response, the applicant submitted a signage analysis which indicates that the signage on the site complies with C1 district regulations, and submitted revised plans reflecting that there is an existing six-ft. high fence with privacy slats buffering the site from the adjacent residential uses to the east, and the lighting on the site will not spill over to the residential uses; and

WHEREAS, based upon its review of the record, the Board finds the amendment to the approved plans is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *amends* the resolution, dated October 12, 1971, so that as amended this portion of the resolution shall read: “to permit the noted site modifications; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received October 11, 2012’–(7) sheets; and *on*

MINUTES

further condition:

THAT all signage will comply with C1 zoning district regulations;

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

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

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

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

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. 300788592)

Adopted by the Board of Standards and Appeals December 4, 2012.

84-91-BZ

APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner.
SUBJECT – Application May 17, 2012 – Extension of Term of a previously granted variance (§72-21) which permitted professional offices (Use Group 6) in a residential building which expires on September 15, 2012. R4A zoning district.
PREMISES AFFECTED – 2344 Eastchester Road, east side south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for an office building (Use Group 6) within an R4A zoning district, which expired on September 15, 2012; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2012, and then to decision on December 4, 2012; and

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

WHEREAS, Community Board 11, Bronx, recommends approval of this application with the condition that the attic not be used for office space or storage; and

WHEREAS, the site is located on the east side of Eastchester Road, south of Waring Avenue, within an R4A zoning district; and

WHEREAS, the site is occupied by a two-story building with basement and attic, and a total floor area of 5,291.89 sq. ft.; and

WHEREAS, on September 15, 1992, under the subject calendar number, the Board granted a variance to permit within an R3-2 zoning district, the legalization of the conversion of the subject building with medical offices (Use Group 4) in the basement and residential uses on the first and second floors to professional offices (Use Group 6B) throughout, for a term of ten years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board; and

WHEREAS, most recently, on July 15, 2008, the Board granted a ten-year extension of term from the expiration of the prior grant, to expire on September 15, 2012; and

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

WHEREAS, at hearing, the Board directed the applicant to remove the signage affixed to the building; and

WHEREAS, in response, the applicant submitted photographs reflecting that the signage has been removed from the building; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted revised plans reflecting that the attic will not be used for office space or storage; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term 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 15, 1992, so that as amended this portion of the resolution shall read: “to extend the term of the grant for a period of ten years from September 15, 2012, to expire on September 15, 2022; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition:*

THAT the term of the variance shall expire on September 15, 2022;

THAT the attic space will not be used for office space or storage;

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

THAT a new certificate of occupancy will be obtained by December 4, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; 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. 210019530)

MINUTES

Adopted by the Board of Standards and Appeals,
December 4, 2012.

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy, and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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

WHEREAS, the premises is located on the south side of St. John's Place, between Classon Avenue and Franklin Avenue, within an R7-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 29, 1919 when, under BSA Cal. No. 263-19-BZ, the Board granted a variance to permit the construction of a one-story building to be used for the storage of more than five motor vehicles; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on January 18, 1966, under BSA Cal. No. 327-63-BZ, the Board granted a change in use to permit the assembly of mirrors into frames, the storage and cutting of sheet glass, the manufacturing of plastic and wood frames and novelties, with an off-street loading berth; and

WHEREAS, on March 18, 1997, under the subject calendar number, the Board reinstated the expired variance and legalized a change in use to a public parking garage for not more than 150 cars (Use Group 8), for a term of ten years; and

WHEREAS, most recently, on February 2, 2010, the

Board granted a ten year extension of term, to expire March 18, 2017, an extension of time to obtain a certificate of occupancy to February 10, 2011, and an amendment to the previously approved plans to legalize the modification of the parking layout and the installation of 75 two-level automobile stacking devices; and

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

WHEREAS, the applicant states that the requested extension of time is necessary to resolve the open violations issued against the site; and

WHEREAS, at hearing, the Board questioned whether the automobile stacking requirements comply with Materials and Equipment Acceptance Division (“MEA”) requirements, in accordance with the prior grant; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the Office of Technical Certification and Research (“OTCR”) has replaced the MEA division, but that the substantive MEA conditions have been adequately addressed; and

WHEREAS, specifically, the architect states that the ceiling height, which is a minimum of 12'-0” in height, provides adequate height for the stackers and sprinkler coverage, the floor loads are not an issue because the stackers are located on the ground floor, the garage is sprinklered, and the parking spaces comply with the DOB standard size of 8'-6” by 18'-0”;

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 18, 1997, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to December 4, 2014; *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application; and *on further condition*:

THAT the term of this grant will expire on March 18, 2017;

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

THAT a new certificate of occupancy will be obtained by December 4, 2014;

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)/configuration(s) not related to the relief granted.” (DOB App. No. 310233841)

Adopted by the Board of Standards and Appeals,

MINUTES

December 4, 2012.

96-00-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for 4 East 77th 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 77th Street, south side of East 77th Street, between Fifth and Madison Avenues, Block 1391, Lot 69, 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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a portion of the second floor of a five-story building as an art gallery, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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

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

WHEREAS, the site is located on the south side of East 77th Street between Fifth Avenue and Madison Avenue, partially in an R8B zoning district within Limited Height District No. 1A and partially in an R10 zoning district within the Special Parks Improvement District; and

WHEREAS, the site has 25 feet of frontage along East 77th Street, a depth of 102.17 feet, and a total lot area of 2,554 sq. ft.; and

WHEREAS, the site is occupied by a five-story mixed-use building, with a 985 sq. ft. portion of the second floor occupied as a commercial art gallery (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 27, 1961 when, under BSA Cal. No. 210-61-BZ, the Board granted a variance to permit the use of a portion of the second floor of the existing five-story and cellar building as an art gallery, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on August 8, 2000, under the subject calendar number, the Board granted the reestablishment of the variance for ten years, to expire on August 8, 2010, and granted an amendment to permit the expansion of the floor area occupied by the art gallery from 659 sq. ft. to 985 sq. ft.; and

WHEREAS, the applicant now requests an additional ten-year extension of the term and an extension of time to obtain a certificate of occupancy; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated August 8, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of the term for ten years from August 8, 2010, to expire on August 8, 2020, and an extension of time to obtain a certificate of occupancy to December 4, 2013; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked ‘Received October 23, 2012’-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on August 8, 2020;

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

THAT a new certificate of occupancy will be obtained by December 4, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; 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. 4018275640)

Adopted by the Board of Standards and Appeals, December 4, 2012.

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 15th Avenue, corner lot of 15th Avenue and 110th Street. Block 4044, Lot 60. Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the enlargement of an existing industrial building in an M2-1 zoning district and its conversion to residential use, which expired on July 19, 2012; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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

WHEREAS, the subject site is located on the northwest corner of 15th Avenue and 110th Street, within an M2-1 zoning district; and

WHEREAS, the site is currently occupied by a three-story warehouse building, with a total floor area of 42,000 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 2005 when, under the subject calendar number, the Board granted a variance to permit the enlargement of an existing industrial building and its conversion to residential use; substantial construction was to be completed by July 19, 2009, in accordance with ZR § 72-23; and

WHEREAS, on the same date, the Board granted a companion application under BSA Cal. No. 210-04-A to permit construction in the bed of a mapped street; and

WHEREAS, on August 23, 2007, the Board issued a letter of substantial compliance approving minor modifications to the approved plans; and

WHEREAS, on April 28, 2009, the Board granted an extension of the time to complete construction for a term of three years from the expiration of the prior grant, to expire on July 19, 2012; and

WHEREAS, most recently, on June 18, 2012, the Board issued a letter of substantial compliance approving minor modifications to the approved plans; and

WHEREAS, the applicant now requests an additional extension of time to complete construction of the project; and

WHEREAS, the applicant represents that the construction has not been completed due to financing delays; and

WHEREAS, at hearing the Board questioned whether the applicant had obtained the required waterfront certification from the City Planning Commission (“CPC”) pursuant to ZR § 62-711; and

WHEREAS, in response, the applicant submitted a copy of the waterfront certification approval which was issued by

CPC on May 24, 2007; 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 July 19, 2005, 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 from the date of this grant, to expire on December 4, 2016; *on condition:*

THAT substantial construction shall be completed by December 4, 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. 401843617)

Adopted by the Board of Standards and Appeals, December 4, 2012.

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 64th Street, Block 8633, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the construction of a three-story and cellar synagogue with accessory religious-based preschool, which expired on July 22, 2012; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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

WHEREAS, the subject site is located on the southeast corner of Strickland Avenue and East 64th Street, within an R2 zoning district; and

WHEREAS, on July 22, 2008, under the subject calendar number, the Board granted a variance to permit the proposed construction of a three-story and cellar synagogue with accessory religious-based preschool, contrary to the underlying zoning district regulations for front and side yards, floor area and floor area ratio, front wall height, sky exposure plane, and parking; and

WHEREAS, substantial construction was to be completed by July 22, 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 is now prepared to proceed with construction; 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 July 22, 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 December 4, 2016; *on condition*:

THAT substantial construction will be completed by December 4, 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. 302279488)

Adopted by the Board of Standards and Appeals, December 4, 2012.

135-46-BZ

APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.

SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment

(§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.

PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8555, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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

812-61-BZ

APPLICANT – Peter Hirshman, for 80 Park Avenue Condominium, owner.

SUBJECT – Application June 28, 2012 – Extension of Term (§11-411) of approved variance permitting the use of accessory multiple dwelling garage for transient parking, which expires on October 24, 2012. R10, R8B zoning district.

PREMISES AFFECTED – 74-82 Park Avenue, southwest corner of East 39th Street and Park Avenue, Block 868, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 15, 2013, at 10 A.M., for decision, hearing closed.

165-91-BZ

APPLICANT – Law Offices of Stuart A. Klein, for United Talmudical Academy, owner.

SUBJECT – Application August 17, 2012 – Extension of Term of approved Special Permit (§73-19) which permitted the construction and operation of a school (UG 3) which expires on September 15, 2012. M1-2 zoning district.

PREMISES AFFECTED – 45 Williamsburg Street West, aka 32-46 Hooper Street, Block 2203, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

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

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

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APPEALS CALENDAR

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 32nd Street, 32nd Street at Grand Central Parkway Service Road, Block 837, Lot 95, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:.....0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Borough Commissioner of the Department of Buildings (“DOB”), dated March 27, 2012, denying Application No. 40069501 from registration for a sign at the subject site (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration.

This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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

WHEREAS, Community Board 1, Queens, recommends approval of the application; and

WHEREAS, the subject site is located at the corner of 32nd Street and the Grand Central Parkway Service Road, in an R5 zoning district; and

WHEREAS, the site has a lot area of approximately 3,462.5 sq. ft. and is occupied by a three-story residential building (the “Building”) and a sign with a surface area measuring 35 feet by 20 feet (700 sq. ft.) affixed to the Building (the “Sign”); and

WHEREAS, the Sign is located approximately 200 feet from the Grand Central Parkway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the owner of the Building (the “Appellant”); and

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of its sign registration based on (1) its reliance on DOB’s issuance of permits for the Sign in 1941 and 1981; and (2) its assertion that New York State courts and Building Code § 27-111 allow for the continuation of pre-existing non-conforming uses; and

WHEREAS, the Appellant states that it has also been before the Environmental Control Board (ECB) defending its position on the Sign’s legality and has filed an action in the Queens County Supreme Court seeking a declaratory judgment legalizing the Sign; and

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

REGISTRATION REQUIREMENT

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

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

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

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

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

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

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

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

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

WHEREAS, affidavits are also listed as an acceptable form of evidence; and

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

WHEREAS, the parties agree that prior to March 8, 2012, the Appellant submitted a Sign Registration Application for the Sign; and

WHEREAS, on March 8, 2012, DOB notified the Appellant that its Sign Registration Application failed to establish any basis for the sign to remain, in that it was an advertising sign in an R5 zoning district that had existed for more than ten years since the district became R5, contrary to ZR § 52-731; and

WHEREAS, on March 22, 2012, the Appellant responded that the sign was “non-conforming” and permitted to remain because the Department previously issued permits for the Sign; and

WHEREAS, by letter dated March 27, 2012, DOB issued the determination which forms the basis of the appeal, stating that it found the “documentation inadequate to support the registration and as such the sign is rejected from registration;” and

RELEVANT STATUTORY PROVISIONS

ZR § 52-11

General Provisions

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

* * *

ZR § 52-731

Advertising signs

In all #Residence Districts#, a #non-conforming advertising sign# may be continued for ten years after December 15, 1961, or such later date that such #sign# becomes #non-conforming#, providing that after the expiration of that period such #non-conforming advertising sign# shall terminate.

* * *

Building Code § 28-502.4 – Reporting Requirement

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

of such outdoor advertising company in accordance with the following provisions:

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

* * *

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

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

* * *

RCNY § 49-16 – Non-conforming Signs

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

* * *

RCNY § 49-43 – Advertising Signs

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

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

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

THE APPELLANT’S POSITION

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WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) DOB issued permits for the Sign in 1941 and 1981; and (2) New York State courts and Building Code § 27-111 allow for the continuation of pre-existing non-conforming uses; and

1. DOB May Not Rescind Permits Issued in 1941 and 1981

WHEREAS, the Appellant states that prior to purchasing the Building, it determined that the Sign was legal based on the existence of the 1941 and 1981 permits, which remained in effect; and

WHEREAS, the Appellant asserts that it purchased the Building in reliance on the fact that the Sign generates income; and

WHEREAS, the Appellant represents that the income generated by the Sign makes the Building financially viable and the termination of the Sign and the loss of its revenue would be a hardship; and

WHEREAS, the Appellant asserts that DOB may not reverse the position it took in 1981 that the Sign was legally permitted, and to do so would be inequitable; and

2. Legal Precedent Supports the Continuation of Pre-Existing Non-Conforming Uses

WHEREAS, the Appellant asserts that because DOB issued permits for the Sign in 1941 and 1981, the sign is “grandfathered” and, thus, rendered lawful as a pre-existing non-conforming use; and

WHEREAS, the Appellant cites to City of New York v. 330 Continental LLC, 60 A.D. 3d 226 (1st Dept. 2009) for the principle that a use established before the enactment of the current Zoning Resolution is “grandfathered” and not subject to the regulations of the current Zoning Resolution; and

WHEREAS, the Appellant notes that the facts in 330 Continental concern a hotel use which was permitted in a residential zoning district under the 1916 Zoning Resolution but is not permitted under the 1961 Zoning Resolution; and

WHEREAS, the Appellant cites to the court’s Footnote 11, which states “[i]n substance, ZR Section 52-11 permits the continuation of a ‘non-conforming use’ (defined in ZR Section 12-10) notwithstanding the inconsistency of that use with the current ZR, if the use lawfully existed before the adoption of the current ZR” See 330 Continental at 235; and

WHEREAS, the Appellant asserts that all violations pending before ECB and any enforcement action by DOB must be dismissed and enjoined because the Sign has been in existence prior to the adoption of the 1961 Zoning Resolution; and

WHEREAS, further, the Appellant states that DOB issued permits for the Sign in 1941 and 1981 and cannot now rescind those permits; and

WHEREAS, the Appellant also cites to Isaacs v. West 34th Apartments, 36 A.D. 3d 414 (1st Dept. 2007) and New York State Clerks Association v. Crosson, 269 A.D. 2d 335 (1st Dept. 2000) in support of its assertion that a grandfathering principle protects the Sign from enforcement;

and

WHEREAS, the Appellant cites to the following excerpts for support (1) “the Building Code does not apply since the building pre-dated its effective date (see 27-111), and exceptions to the grandfathering provision are inapplicable” Isaacs at 415-416 and (2) “contrary to petitioner’s contention, grandfathering, in the present context, although productive of some transitional salary inequities, is nonetheless a rationally justifiable means of facilitating the orderly implementation . . . and does not offend due process” New York State Clerks Association at 336; and

WHEREAS, finally, the Appellant cites to the Building Code Section 27-111 (Continuation of Lawful Existing Use) to support its position that the Building Code dictates that non-conforming uses established before a statutory change may continue even after the change renders them non-conforming; and

WHEREAS, Building Code Section 27-111 states, in pertinent part:

The lawful occupancy and use of any building, including the use of any service equipment therein, existing on the effective date of this code or thereafter constructed or installed in accordance with prior code requirements, as provided in Section 27-105 of Article 1 of this subchapter, may be continued unless a retroactive change is specifically required by the provisions of this code; and

WHEREAS, accordingly, the Appellant asserts that the Sign is grandfathered and may remain in light of the cited case law, other legal authority, and a prohibition on DOB from rescinding earlier permits; and

DOB’S POSITION

WHEREAS, DOB asserts that zoning regulations prohibit the Sign in the subject R5 zoning district, as set forth at ZR § 22-30, which does not include advertising signs among the permitted uses; and

WHEREAS, DOB states that non-conforming advertising signs are permitted in residential zoning districts only when they comply with Chapter 2 of Article 5 of the Zoning Resolution; and

WHEREAS, specifically, DOB cites to ZR § 52-11, which states that “a non-conforming use may be continued, except as otherwise provided in this Chapter;” and

WHEREAS, DOB continues by citing ZR § 52-731, which expressly provided a limitation on the use of non-conforming advertising signs in residential zoning districts; the original text states that:

[i]n all Residence Districts, a non-conforming advertising sign may be continued for eight years after the effective date of this resolution or such later date that such sign becomes non-conforming, provided that after the expiration of that period such non-conforming advertising sign shall terminate; and

WHEREAS, DOB notes that on August 22, 1963, the

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original ZR § 52-731 was amended to allow a ten-year, rather than an eight-year, amortization period; the 1963 version of the text, allowing for a ten-year amortization period remains in effect today; and

WHEREAS, DOB states that in order to maintain the Sign, the Appellant must demonstrate that: (1) the Sign is non-conforming (a lawful pre-existing non-conforming use, as defined at ZR § 12-10) and (2) it has been less than ten years since the sign became non-conforming;” and

WHEREAS, DOB asserts that the Appellant has failed to provide adequate evidence to demonstrate that the advertising sign has ever been “non-conforming” in the sense that it was lawfully established per ZR § 12-10 as “[a]ny lawful use...which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto;” and

WHEREAS, DOB states that the lawful use must have been established on December 15, 1961 or at the time of a relevant zoning amendment; and

WHEREAS, DOB notes that the Appellant has submitted proof of a permit issued by DOB in 1941 for a painted wall sign and states that if it were to assume that the sign existed lawfully on December 15, 1961, based on the 1941 permit, on December 15, 1961, it would have become “non-conforming;” and

WHEREAS, DOB states that even if the Sign existed lawfully on December 15, 1961, such a sign would have become non-conforming on that date when the site was zoned R5 and the 1963/current version of ZR § 52-731 requires that the Sign be removed within ten years of it becoming non-conforming, which was on December 15, 1971; and

WHEREAS, as to the effect of DOB’s issuance of permits in 1941 and 1981, DOB asserts that it cannot be estopped from enforcing the Zoning Resolution and the requirement that the Sign use be terminated by December 15, 1971; and

WHEREAS, DOB cites to Parkview Associates v. City of New York, 71 N.Y.2d 274, 282 (1988) for its ability to correct its erroneous issuance of the permit in 1981 when the use should have been discontinued in 1971; and

WHEREAS, DOB distinguishes the New York Supreme Court cases the Appellant cites as relevant case law establishing precedent for “grandfathering” the subject sign because the cited cases all lack an explicit Zoning Resolution provision which prohibits the use of non-conforming advertising signs in residential zoning districts after a certain period of time; and

WHEREAS, accordingly, DOB asserts that its rejection of the sign registration is appropriate because the Appellant does not comply with ZR § 52-731; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the language of ZR § 52-731 is clear and requires that because any advertising sign at the site became a non-conforming use on December 15, 1961 when it was mapped to be within an

R5 zoning district, such use should have been terminated by December 15, 1971; and

WHEREAS, as to the Appellant’s assertion that DOB has improperly changed its position on the legality of the signs, the Board supports DOB’s position that it may correct the erroneous issuance of its permits; and

WHEREAS, further, the Board notes that the presence of a permit does not render a use lawful, when the permit was issued erroneously; and

WHEREAS, the Board declines to take a position on the fairness of DOB’s rejection of the registration after erroneously issuing a permit in 1981, but it does note that the Appellant has enjoyed the benefit of the Sign for more than 40 years past the December 15, 1971 date when any sign at the site should have been terminated; and

WHEREAS, the Board agrees with DOB that even if the Appellant were to establish that the Sign was lawfully non-conforming at relevant dates, the question is moot since even a lawfully non-conforming sign would have to have been terminated on or before December 15, 1971; and

WHEREAS, accordingly, the Board finds that the advertising sign use should have been terminated on or before December 15, 1971, pursuant to ZR § 52-731; and

WHEREAS, the Board agrees with DOB that the three cases the Appellant cites can be distinguished from the subject facts in that (1) 330 Continental, the only case that involves the Zoning Resolution, does not involve a specific provision such as ZR § 52-731 which sets forth a specific timeframe for termination of the use; and (2) Isaacs and New York Clerks do not involve the Zoning Resolution and are thus inapplicable but, similarly, do not appear to involve an explicit provision that imposes a termination date for a non-conforming use; and

WHEREAS, the Board also finds that the Appellant’s reference to Building Code § 27-111 is misplaced in that even if it were relevant to the subject sign use, it relates to Building Code compliance and is not relevant in the context of DOB’s enforcement against a sign use based on zoning non-conformance; and

WHEREAS, the Board notes that the ZR § 12-10 definition of non-conforming use and ZR § 52-731 contemplate prospective enforcement in that uses that were rendered non-conforming on December 15, 1961 (like the subject Sign) were able to remain for ten years so long as they were lawful on December 15, 1961 (per ZR § 12-10); and

WHEREAS, the Board notes that the adoption of the 1961 Zoning Resolution did not prohibit the continuance of non-conforming uses, but rather newly non-conforming uses were able to exist in derogation of the Zoning Resolution, but only for a specified period; and

WHEREAS, as to the applicability of statutes adopted after a use has been established, the Board states that per the Court of Appeals, municipalities may adopt laws regarding previously existing nonconforming uses. 550 Halstead Corp. v. Zoning Bd. Of Appeals, 1 N.Y.3d 561, 562 (2003);

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Matter of Toys "R" Us v Silva, 89 N.Y.2d 411, 417, (1996); and

WHEREAS, specifically, the Board notes that the Court of Appeals has held that, “[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination[,]” and “municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them.” 550 Halstead Corp., 1 N.Y.3d at 562; and

WHEREAS, further, the Board notes that in Off Shore Restaurant Corp. v. Linden (30 N.Y.2d 160, 331 N.Y.S.2d 397 (1972)), the Court stated, “the courts do not hesitate to give effect to restrictions on non-conforming uses . . . It is because these restrictions flow from a strong policy favoring the eventual elimination of nonconforming uses” 30 N.Y.2d at 164; and

WHEREAS, lastly, the Board notes that ZR § 52-731 is not contrary to ZR § 52-11, which states that “a nonconforming use may be continued, except as otherwise provided in [Chapter 2]” because the Board notes that nonconforming uses are protected by Article V, but, as anticipated at ZR § 52-11, there are limiting conditions; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that its purported satisfaction of the Sign Registration requirement supersedes the clear, undisputed text of the Zoning Resolution; and

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

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 27, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, December 4, 2012.

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 38th Street, Block 234, Lot 31, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:.....0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter

from the Borough Commissioner of the Department of Buildings (“DOB”), dated March 27, 2012, denying Application No. 40062501 from registration for a sign at the subject site (the “Final Determination”), which reads, in pertinent part:

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

WHEREAS a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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

WHEREAS, the subject site is located on Hunters Point Avenue between Greenpoint Avenue and 38th Street, in an R4 zoning district; and

WHEREAS, the site has a lot area of approximately 2,090 sq. ft. and is occupied by a three-story residential building (the “Building”) and a sign with a surface area measuring 14 feet by 48 feet (672 sq. ft.) affixed to the eastern wall of the Building (the “Sign”); and

WHEREAS, the Sign is located approximately 133 feet from the Queens-Midtown Expressway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

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

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of its sign registration based on (1) DOB’s issuance of permits for the Sign in 1980 and 1989 allowing for the construction and maintenance of an advertising sign; and (2) its assertion that it provided sufficient evidence in compliance with the requirements of Rule 49 for the registration of the Sign; and

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

REGISTRATION REQUIREMENT

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

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

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being

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maintained without a valid permit; and

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

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

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

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

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

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

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

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

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

REGISTRATION PROCESS

WHEREAS, the parties agree that on April 4, 2011, the Appellant submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company

Sign Profile, attaching the following documentation: (1) a diagram of the Sign showing its size and distance from the Long Island Expressway; (2) Plan/Work approval Application No. 40012491 and plans for an illuminated sign with “changeable copy,” approved by DOB on October 10, 1989; and (3) tax photos issued by the Department of Finance for the years 1982 to 1987 showing the Sign; and

WHEREAS, on October 3, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that it is unable to accept the Sign for registration due to “Failure to provide proof of compliance with ZR § 52-731 for advertising signs in residential districts – Sign in R zone” in that it was an advertising sign in an R4 zoning district that had existed for more than ten years after the district was zoned R4; and

WHEREAS, by letter dated January 12, 2012, the Appellant submitted a response to DOB, asserting that the sign was non-conforming and permitted to remain because DOB issued permits for the Sign notwithstanding ZR § 52-731, in 1980 and 1989; and

WHEREAS, the Appellant notes that its 1989 application and permit identify that the Sign is located in a residential zoning district; and

WHEREAS, the Appellant states that in its communication with DOB, it asserted the position that the DOB permit was sufficient for registration along with evidence that the sign was an advertising sign prior to 1979 (including deeds and DOB records); and

WHEREAS, by letter dated March 27, 2012, DOB issued the determination which forms the basis of the appeal, stating that it found the “documentation inadequate to support the registration and as such the sign is rejected from registration;” and

RELEVANT STATUTORY PROVISIONS

ZR § 52-11

General Provisions

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

* * *

ZR § 52-731

Advertising signs

In all #Residence Districts#, a #non-conforming advertising sign# may be continued for ten years after December 15, 1961, or such later date that such #sign# becomes #non-conforming#, providing that after the expiration of that period such #non-conforming advertising sign# shall terminate.

* * *

Building Code § 28-502.4 – Reporting Requirement

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

(1) The list shall include all signs, sign structures and sign locations located (i) within a distance

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of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more...

* * *

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

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

* * *

RCNY § 49-16 – Non-conforming Signs

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

* * *

RCNY § 49-43 – Advertising Signs

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

- (a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or
- (b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) DOB’s issuance of permits in 1980 and 1989 constitutes evidence of the Sign’s lawfulness, and (2) it provided sufficient evidence

in compliance with the requirements of Rule 49 for the registration of the Sign; and

1. DOB’s Permit Issuance is Evidence of the Sign’s Lawfulness

WHEREAS, the Appellant sets forth the following history for the Sign: (1) in the early to mid-1970s, a painted wall sign (which did not require a permit from DOB until 1968) occupied the site; (2) the Sign began functioning as an advertising sign in the early to mid-1970s; (3) in 1980, under permit 226/80, the Appellant obtained a DOB permit for an off-site advertising sign on a sign structure; (4) in 1989, under Application No. 400012491, DOB approved plans for an illuminated advertising sign with “changeable copy,” measuring 14 feet by 48 feet, stating that it complied with ZR § 52-83; and

WHEREAS, the Appellant asserts that documentary evidence including the DOB permits from 1980 and 1989 and affidavits from an employee and an officer of the sign company stating that the sign existed from the 1970s establishes that an illuminated advertising sign has existed at the site since before 1980; and

WHEREAS, the Appellant asserts that in 1980 and DOB had the opportunity to evaluate the legality of the Sign as an advertising sign in a residential zoning district and to determine whether or not it was lawful; and

WHEREAS, the Appellant asserts that instead of taking a position that the signs were unlawful, DOB issued permits in 1980 and 1989 for the continued use of the Sign as a non-conforming advertising sign in a residential zoning district; and

WHEREAS, the Appellant asserts that in reliance on the DOB permits, it has continued to invest in repairs, maintenance, and marketing for the Sign for 23 years since the last permit issuance in 1989; and

WHEREAS, the Appellant asserts that DOB’s change in position on the legality of the Sign is arbitrary, contrary to public policy, and detrimental to business; and

WHEREAS, the Appellant notes that the zoning has not changed since 1989 when DOB last issued a permit for the Sign and determined it to be legal; and

WHEREAS, the Appellant reiterates that it has submitted permits which it asserts should provide sufficient proof of legal establishment for the Sign to be registered; and

2. The Appellant has Satisfied Rule 49’s Registration Requirements

WHEREAS, the Appellant states that when Rule 49 was enacted, it submitted evidence in accordance with the rule for the Sign; and

WHEREAS, specifically, the Appellant asserts that it submitted all four of the following preferred forms of evidence listed in the Rule 49 guidance document: (1) DOB-issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indication of sign permit approval; and (4) a photograph from the Department of Finance; and

WHEREAS, the Appellant concludes that because it

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submitted four forms of Rule 49 preferred evidence, as well as other supporting evidence, DOB must accept the sign registration application; and

DOB'S POSITION

WHEREAS, DOB asserts that zoning regulations prohibit the sign in the subject R4 zoning district, as set forth at ZR § 22-30, which does not include advertising signs among the permitted uses; and

WHEREAS, DOB states that non-conforming advertising signs are permitted in residential zoning districts only when they comply with Chapter 2 of Article 5 of the Zoning Resolution; and

WHEREAS, specifically, DOB cites to ZR § 52-11, which states that "a non-conforming use may be continued, except as otherwise provided in this Chapter;" and

WHEREAS, DOB continues by citing ZR § 52-731, which expressly provided a limitation on the use of non-conforming advertising signs in residential zoning districts; the original text states that:

[i]n all Residence Districts, a non-conforming advertising sign may be continued for eight years after the effective date of this resolution or such later date that such sign becomes non-conforming, provided that after the expiration of that period such non-conforming advertising sign shall terminate; and

WHEREAS, DOB notes that on August 22, 1963, the original ZR § 52-731 was amended to allow a ten-year, rather than an eight-year, amortization period; the 1963 version of the text, allowing for a ten-year amortization period remains in effect today; and

WHEREAS, DOB states that in order to maintain the Sign, the Appellant must demonstrate that: (1) the Sign is non-conforming (a lawful pre-existing non-conforming use, as defined at ZR § 12-10) and (2) it has been less than ten years since the sign became non-conforming;" and

WHEREAS, DOB asserts that the Appellant has failed to provide adequate evidence to demonstrate that the advertising sign has ever been "non-conforming" in the sense that it was lawfully established per ZR § 12-10 as "[a]ny lawful use...which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto;" and

WHEREAS, DOB states that the lawful use must have been established on December 15, 1961 or at the time of a relevant zoning amendment; and

WHEREAS, DOB notes that the Appellant has submitted an affidavit from its CEO indicating that the Appellant operated the Sign from the "early or mid-1970s" until 1997 and prior to that "the sign had been a painted wall sign . . . (that) displayed off-site advertising for an oil company;" and

WHEREAS, DOB states that it finds the affidavit to be vague; uncorroborated by objective evidence like a photograph or a permit; and potentially biased, given the affiant's position as CEO for the Appellant; and

WHEREAS, accordingly, DOB rejects the affidavit as sufficient to prove lawful establishment of the Sign on December 15, 1961; and

WHEREAS, however, DOB states that assuming *arguendo* that the Sign existed lawfully on December 15, 1961, an argument that the Appellant does not even make, such a sign would have become non-conforming on that date when the site was zoned R4 and the 1963/current version of ZR § 52-731 requires that the Sign be removed within ten years of it becoming non-conforming, which was on December 15, 1971; and

WHEREAS, as to the effect of DOB's issuance of permits in 1980 and 1989, DOB asserts that it cannot be estopped from enforcing the Zoning Resolution and the requirement that the Sign use be terminated by December 15, 1971; and

WHEREAS, DOB cites to Parkview Associates v. City of New York, 71 N.Y.2d 274, 282 (1988) for its ability to correct its erroneous issuance of the permits in 1980 and 1989 when the use should have been discontinued in 1971; and

WHEREAS, accordingly, DOB asserts that its rejection of the sign registration is appropriate because the Appellant does not comply with ZR § 52-731; and

WHEREAS, further, DOB notes that the Appellant's Sign Registration Application incorrectly states that the Sign has non-conforming status pursuant to ZR § 42-55, a section that applies to signs in manufacturing zoning districts; and

CONCLUSION
WHEREAS, the Board agrees with DOB that the language of ZR § 52-731 is clear and requires that because any advertising sign at the site became a non-conforming use on December 15, 1961 when it was mapped to be within an R4 zoning district, such use should have been terminated by December 15, 1971; and

WHEREAS, the Board finds that the Appellant's assertions about the sufficiency of its sign registration pursuant to Rule 49 are misplaced in that Rule 49 does not provide a waiver to ZR § 52-731; and

WHEREAS, as to the Appellant's assertion that DOB has improperly changed its position on the legality of the signs, the Board supports DOB's position that it may correct the erroneous issuance of its permits; and

WHEREAS, further, the Board notes that the presence of a permit does not render a use lawful, when the permit was issued erroneously; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing permits in 1980 and 1989, but it does note that the Appellant has enjoyed the benefit of the Sign for more than 40 years past the December 15, 1971 date when any sign at the site should have been terminated; additionally, the Board notes that the Appellant noted on its 1989 application that the sign was a non-conforming use in a manufacturing district, per ZR § 52-83 (a section that applies to non-conforming uses in manufacturing and certain commercial zoning districts) which was incorrect as the sign has been in an

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R4 zoning district since December 15, 1961; and

WHEREAS, the Board agrees with DOB that even if the Appellant were to establish that the Sign was lawfully non-conforming at relevant dates, the question is moot since even a lawfully non-conforming sign would have to have been terminated on or before December 15, 1971; and

WHEREAS, accordingly, the Board finds that the advertising sign use should have been terminated on or before December 15, 1971, pursuant to ZR § 52-731; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that its purported satisfaction of the Sign Registration requirement supersedes the clear, undisputed text of the Zoning Resolution; and

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

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 27, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, December 4, 2012.

140-12-A

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

SUBJECT – Application April 30, 2012 – Proposed construction of a two-family dwelling located in the bed of a mapped street, contrary to General City Law Section 35. 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

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Commissioner Borough Commissioner, dated March 29, 2012, acting on Department of Buildings Application No. 520091329, reads:

Proposed dwelling in the bed of a final mapped street is contrary to Article III, Section 35 of the General City Law; and

WHEREAS, this is an application under General City Law (“GCL”) § 35, to permit the construction of a two-family dwelling on the western portion of the lot located partially within the bed of Vogel Avenue, a mapped street; and

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

WHEREAS, the subject site is located on the east side of Parkwood Avenue, approximately 200 ft. south of the intersection of Parkwood Avenue and Uncas Avenue, within an R3X (SRD) zoning district; and

WHEREAS, the site has a total lot area of 20,271 sq. ft. and proposed to be divided into two tax lots comprising a through lot that extends from the east side of Parkwood Avenue to the west side of Foster Road; and

WHEREAS, by letter, dated November 28, 2012, the Fire Department states that it does not have any objections to the subject proposal; and

WHEREAS, by letter dated June 18, 2012, the Department of Environmental Protection (“DEP”) states that (1) there are no existing City sewers or existing City water mains within the referenced location and (2) the Amended Drainage Plan No. D-1 (R-1)/TD-5 (R-3), sheet 7 of 11, dated July 2, 2010, for the above-referenced location calls for a future 10-in. diameter sanitary sewer and a 15-in. diameter storm sewer to be installed in Vogel Avenue starting east of Parkwood Avenue; and

WHEREAS, DEP also states that existing Lot 105 and Lot 140 would have no additional benefit from the future 10-in. diameter sanitary sewer and the 15-in. diameter sewer in the bed of Vogel Avenue starting east of Parkwood Avenue, since these lots are fronting the existing 10-in. diameter sanitary sewer and the 4-in. diameter storm sewer in Parkwood Avenue, which are available for connection; and

WHEREAS, further, DOT notes that Tentative Lot 120 would benefit from the above-referenced future sewers in the bed of Vogel Avenue, starting east of Parkwood Avenue fronting the existing 10-in. diameter sanitary sewer and 24-in. diameter storm sewer in Parkwood Avenue and that the future 10-in. diameter sanitary sewer and the 15-in. diameter storm sewer in the mapped portion of Vogel Avenue may be initiated outside of the limits of tentative Lot 120 (formerly part of Lot 25) at no consequence to the City; and

WHEREAS, based on the above conditions, DEP states that it has no objection to the proposed application; and

WHEREAS, by letter dated July 11, 2012, the Department of Transportation (“DOT”) states that due to the lack of connectivity of the mapped street, applicants should de-map this portion of Vogel Avenue through a Uniform Land Use Review Procedure (“ULURP”) which would be a more appropriate since improving Vogel Avenue at this location would involve the taking of a portion of the applicant's property, it is not presently included in DOT's Capital Improvement Program and DOT does not have any intention to acquire it in the future; and

WHEREAS, in response, the applicant states that GCL § 35 empowers the Board to grant a permit for construction in the bed of a mapped street where a proposed street widening or extension has been shown on the official map or plan for ten years or more and the City has not acquired title thereto; and

WHEREAS, the applicant also asserts that a de-mapping is a burdensome process reserved for rare instances such as when the street to be de-mapped is also proposed to be

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acquired from the City and that the Board is the proper venue for the subject application to permit construction in the bed of a mapped street and it is not required to undertake a ULURP action to de-map this portion of Vogel Avenue; and

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

WHEREAS, the Board agrees with the applicant that the subject application is properly within the scope of a GCL § 35 approval and does not require a ULURP action to de-map the street; and

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

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated March 29, 2012, acting on Department of Buildings Application No. 520091329, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 30, 2012"– (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals December 4, 2012.

97-12-A & 98-12-A

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

OWNER OF PREMISES - 620 Properties Associates, LLC.

SUBJECT – Application April 11, 2012 – Appeal challenging Department of Buildings’ determination regarding right to maintain existing advertising sign in manufacturing district. M1-5/CL zoning district.

PREMISES AFFECTED – 620 12th Avenue, between 47th and 48th Streets, Block 1095, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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

ACTION OF THE BOARD – Laid over to February 5, 2013, at 10 A.M., for decision, hearing closed.

108-09-A & 109-12-A

APPLICANT – Davidoff Malito & Hatcher LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES – Kehley Holding Corp.

SUBJECT – Application April 18, 2012 – Appeal challenging Department of Buildings’ determination that signs are not entitled to non-conforming use status as accessory business or non-commercial signs, pursuant to Z.R.§§42-58 and 52-61.

PREMISES AFFECTED – 46-12 Third Avenue, between 46th and 47th Streets, Block 185, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for decision, hearing closed.

142-12-A

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

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

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

COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 15, 2013, at 10 A.M., for decision, hearing closed.

205-12-A

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

OWNER OF PREMISES – Borden Realty Corporation.

SUBJECT – Application June 29, 2012 – Appeal challenging the Department of Buildings’ determination that

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a sign is not entitled to non-conforming use status as an advertising sign. R7-2 /C2-4 (HRW) Zoning District.

PREMISES AFFECTED – 355 Major Deegan Expressway, bounded by Exterior Street, Major Deegan Expressway to the east, Harlem River to the west, north of the Madison Avenue Bridge, Block 2349, Lot 46, Borough of Bronx.

COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, DECEMBER 4, 2012 1:30 P.M.

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

ZONING CALENDAR

74-12-BZ

CEQR #12-BSA-105K

APPLICANT – Harold Weinberg, P.E., for Diana Trost, owner.

SUBJECT – Application March 30, 2012 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 252 Exeter Street, west side 350' north of Esplanade and Oriental Boulevard, Block 8742, Lot 2, 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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 26, 2012, acting on Department of Buildings Application No. 320411700, reads in pertinent

part:

The proposed enlargement of the existing one family residence in an R3-1 zoning district:

- 1- Increases the degree of non-compliance with respect to one side yard and is contrary to Sections 23-461 & 54-31 of the Zoning Resolution.
- 2- Creates non-compliance with respect to floor area and floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
- 3- Creates non-compliance with respect to open space and lot coverage and is contrary to Section 23-141 of the Zoning Resolution.
- 4- Creates non-compliance with respect to rear yard and is contrary to Section 23-47 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (FAR), open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, 54-31 and 23-47; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication with a continued hearing on November 20, 2012, and then to decision on December 4, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Exeter Street, approximately 420 feet south of Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 4,160 sq. ft., and is occupied by a single-family home with a floor area of 1,553 sq. ft. (0.37 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,553 sq. ft. (0.37 FAR) to 3,816 sq. ft. (0.92 FAR); the maximum permitted floor area is 2,080 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 2,600 sq. ft. (2,704 sq. ft. is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 37.3 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-11" and to maintain the existing side yard along the southern lot line with a width of 8'-6" (two side yards with minimum widths of 5'-0" and 8'-0", respectively, are required); and

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WHEREAS, the proposed enlargement will provide a rear yard with a depth of 21'-5 1/2" (a minimum rear yard depth of 30'-0" is required); and

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

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, 54-31 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 30, 2012"- (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,816 sq. ft. (0.92 FAR); a minimum open space of 2,600 sq. ft.; a maximum lot coverage of 37.3 percent; a side yard with a minimum width of 4'-11" along the northern lot line; and a rear yard with a minimum depth of 21'-5 1/2", 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 objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 4, 2012.

152-12-BZ
CEQR #12-BSA-134Q

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 105th Avenue, north side of 105th Avenue, 34.65' southwest of intersection of 105th Avenue and Sutphin Boulevard, Block 10055, Lot 19, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 9, 2012, acting on Department of Buildings Application No. 420327872, reads in pertinent part:

The proposed 3'-0" side yard in C2-4 in R6A zoning district is contrary to Section 33-25 of the Zoning Resolution and requires a variance from the Board of Standards & Appeals; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C2-4 (R6A) zoning district, the proposed construction of a four-story mixed-use commercial/residential building that does not comply with the zoning requirements for side yards, contrary to ZR § 33-25; and

WHEREAS, a public hearing was held on this application on September 25, 2012 after due notice by publication in *The City Record*, with continued hearings on October 23, 2012 and November 20, 2012, and then on decision on December 4, 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 12, Queens, recommends disapproval of this application; and

WHEREAS, the site is located on the west side of 105th Avenue between Sutphin Boulevard and Waltham Street, within a C2-4 (R6A) zoning district; and

WHEREAS, the site has a width of approximately 20'-4", a depth of 100'-6", and a total lot area of 2,034 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story mixed-use commercial/ residential building with ground

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floor commercial use and three residential units above (with one dwelling unit on each of the second, third, and fourth floors); and

WHEREAS, the proposed building will have the following complying parameters: a total floor area of 5,219 sq. ft. (2.56 FAR); a commercial floor area of 1,348 sq. ft. (0.66 FAR); a residential floor area of 3,871 sq. ft. (1.90 FAR); lot coverage of 60 percent, a wall height of 40'-0"; a total height of 45'-0"; a front yard with a depth of 10'-0"; a rear yard with a depth of 30'-0"; and no side yard along the eastern lot line; and

WHEREAS, however, the applicant proposes a side yard with a width of 3'-0" along the western lot line (a side yard with a minimum width of 8'-0" is required); and

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

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject lot in combination with the historic driveway easement along the westerly lot line; and

WHEREAS, the applicant represents that the pre-existing lot width of 20'-4" cannot feasibly accommodate a complying development because the site is also encumbered by a driveway easement with a width of 3'-0" along the westerly lot line; and

WHEREAS, as to the easement, the applicant submitted a copy of the 1924 agreement that created the driveway easement which encumbers the subject site and the adjacent lot to the west with a common driveway easement with a width of 7'-0" (consisting of 4'-0" along the easterly lot line of the adjacent lot and 3'-0" along the westerly lot line of the subject lot) which extends to a depth of 80'-0"; and

WHEREAS, the applicant notes that pursuant to ZR § 23-462(c), in the subject zoning district "no side yards are required. However, if any open area extending along a side lot line is provided at any level, it shall measure at least eight feet wide for the entire length of the side lot line"; and

WHEREAS, accordingly, the applicant states that the driveway easement requires the applicant to maintain an open area along the side lot line with a width of 3'-0", which results in the need to provide an open area with a width of 8'-0" along the entire length of the side lot line pursuant to ZR § 23-462; and

WHEREAS, the applicant further states that but for the existence of the driveway easement, no side yards would be required for the subject site and the building could be constructed from lot line to lot line; and

WHEREAS, the applicant states that providing the required side yard with a width of 8'-0" along the western lot line results in a complying building with a width of only 12'-4", which would result in constricted floor plates and would be infeasible and impractical to occupy for commercial or residential use; and

WHEREAS, accordingly, the applicant represents that

the side yard waiver is necessary to create a building with a sufficient width; and

WHEREAS, as to the uniqueness of the site, the applicant submitted a 400-ft. radius diagram which reflects that the subject site is the only lot with a width of less than 25'-0" in the surrounding area that is not in common ownership with an adjacent lot, and is the only vacant lot in the surrounding area; 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 applicant submitted a feasibility study analyzing an as-of-right four-story mixed-use building with a total floor area of 3,330 sq. ft. (1.64 FAR) with ground floor commercial use and three residential units above, and the proposed mixed-use building with a total floor area of 5,219 sq. ft. (2.56 FAR) with ground floor retail use and residential use above; and

WHEREAS, the feasibility study concluded that the as-of-right building would not result in a reasonable return, but that the proposed building would result in 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 negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the surrounding area is characterized by a mix of residential, commercial, and community facility buildings; and

WHEREAS, the applicant notes that the proposed mixed-use commercial/residential building is a conforming use in the underlying district and immediately adjacent to the east of the subject site is an automotive repair shop within a building that extends to the lot line, and directly across 105th Avenue from the site is a large medical facility; and

WHEREAS, the applicant represents that the proposed construction of a mixed-use commercial/residential building is consistent with the residential nature of development along 105th Avenue as well as the commercial and community facility development along Sutphin Boulevard; and

WHEREAS, the applicant states that the requested side yard waiver would not have a detrimental impact on the adjacent building to the west of the site, as that lot is encumbered with a corresponding 4'-0" wide portion of the subject driveway easement which creates an open area with a width of 7'-0" between the subject building and the adjacent building to the west; and

WHEREAS, the applicant notes that the portion of the easement on the adjacent lot to the west is currently an open area with a paved concrete walkway and planted grass; and

WHEREAS, the applicant further notes that, if not for

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the driveway easement, it could construct an as-of-right building with no side yard along the western lot line; therefore, despite the need for the requested side yard waiver, the proposed building actually has a lesser impact on the adjacent lot to the west than that of an as-of-right building on an unencumbered lot; and

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

WHEREAS, the applicant states that the hardship on the site is the result of the narrow width of the lot and the impact of the historical easement, which was put in place in 1924, several decades prior to the imposition of the current zoning regulations; and

WHEREAS, accordingly, the Board finds that the 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 the impact of the historical easement; and

WHEREAS, the applicant states that the proposed mixed-use commercial/residential building is a conforming use which complies with all bulk requirements of the underlying C2-4 (R6A) zoning district, except for the side yard along the western lot line; and

WHEREAS, as noted above, the applicant analyzed a proposal for an as-of-right mixed-use commercial/residential building on the site; however, the applicant determined that the as-of-right proposal was not feasible due to the physical constraints of the site; 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 a C2-4 (R6A) zoning district, the proposed construction of a four-story mixed-use commercial/residential building that does not comply with the zoning requirements for side yards, contrary to ZR § 33-25; *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 July 12, 2012"-(7) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a total floor area of 5,219 sq. ft. (2.56 FAR); a commercial floor area of 1,348 sq. ft. (0.66 FAR); a residential floor area of 3,871 sq. ft. (1.90 FAR); and a side yard with a width of 3'-0" along the western lot line, 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 substantial 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, December 4, 2012.

210-12-BZ

CEQR #13-BSA-007M

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

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

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

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 4, 2012, acting on Department of Buildings Application No. 121110902, reads in pertinent part:

The existing Physical Cultural establishment as defined by ZR 12-10, proposed at the second floor under Alteration Type 1 application is not permitted as-of-right in C6-4X and M1-6 zoning districts is contrary to ZR 32-10 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 located partially within a C6-4X zoning district and partially within an M1-6 zoning district, the legalization of a physical culture establishment (PCE) on the second floor of a 16-story commercial building, contrary to ZR §§ 32-10 and 42-10; and

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

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

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

WHEREAS, the subject site is located on the south side of West 28th Street, between Broadway and Sixth Avenue, partially within a C6-4X zoning district and partially within an M1-6 zoning district; and

WHEREAS, the site has 99 feet of frontage on West 28th Street, a depth of 98'-9", and a total lot area of 9,776 sq. ft.; and

WHEREAS, the site is occupied by a 16-story commercial building; and

WHEREAS, the proposed PCE will occupy 8,000 sq. ft. of floor area located on the second floor of the building, with an exclusive PCE entrance on the ground floor leading to the elevator and stairway; and

WHEREAS, the PCE will be operated as CrossFit NYC; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: 6:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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, the Board notes that the PCE has been in operation since April 2012 without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant will be reduced for the period of time between April 1, 2012 and the date of this grant; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA007M, dated July 9, 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 Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C6-4X zoning district and partially within an M1-6 zoning district, the legalization of a PCE on the second floor of a 16-story commercial building, contrary to ZR §§ 32-10 and 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 30, 2012- Four (4) sheets, and *on further condition*:

THAT the term of this grant will expire on April 1, 2022;

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

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 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.

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Adopted by the Board of Standards and Appeals,
December 4, 2012.

237-12-BZ

CEQR #13-BSA-011M

APPLICANT – Wachtel Masyr & Missry LLP, for Red Circle New York Corp., owner; Crunch LLP, lessee.

SUBJECT – Application August 1, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch*). C6-4A zoning district.

PREMISES AFFECTED – 220 West 19th Street between 7th and 8th Avenues, Block 768, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 17, 2012, acting on Department of Buildings Application No. 121073426, reads in pertinent part:

The proposed physical culture establishment in zoning district C6-2A is not a permitted use as of right. A special permit is required from the Board of Standards and Appeals as per Sections 32-31 and 73-36 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-2A zoning district, the operation of a physical culture establishment (PCE) at the cellar, first, and second floors of a 12-story commercial building, contrary to ZR § 32-10; and

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

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

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

WHEREAS, the subject site is located on the south side of West 19th Street, between Seventh Avenue and Eighth Avenue, within a C6-2A zoning district; and

WHEREAS, the site has 91.67 feet of frontage along West 19th Street, a depth of 92 feet, and a total lot area of 8,379 sq. ft.; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the proposed PCE will occupy 12,003 sq. ft. of floor area located on the first floor and second floor of the building, with an additional 3,437 sq. ft. of floor space located at the cellar level; and

WHEREAS, the PCE will be operated as Crunch; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Thursday, from 5:00 a.m. to 11:00 p.m.; Friday, from 5:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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 an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA011M, dated July 24, 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 Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and

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makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-2A zoning district, the operation of a physical culture establishment (PCE) at the cellar, first, and second floors of a 12-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 30, 2012" – Five (5) sheets, and *on further condition*:

THAT the term of this grant will expire on December 4, 2022;

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

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 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, December 4, 2012.

75-12-BZ

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

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

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

COMMUNITY BOARD #2M

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

115-12-BZ

APPLICANT – Sheldon Lobel, P.C., for RMDS Realty Associates, LLC, owner.

SUBJECT – Application April 24, 2012 – Special Permit (§73-44) to allow for a reduction in parking from 331 to 221 spaces in an existing building proposed to be used for ambulatory diagnostic or treatment facilities in Use Group 6 parking category B1. C4-2A zoning district.

PREMISES AFFECTED – 701/745 64th Street, Seventh and Eighth Avenues, Block 5794, Lot 150 & 165, Borough of Brooklyn.

COMMUNITY BOARD #4BK

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

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 21st Street, north side of West 21st Street, between 5th and 6th Avenues. Block 823, Lot 17. Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

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

200-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Oversea Chinese Mission, owner.

SUBJECT – Application June 26, 2012 – Variance (§72-21) to permit the enlargement of UG4 house of worship (*The Chinese Overseas Mission*), contrary floor area (§109-121), lot coverage (§109-122) and enlargement of non-complying building (§54-31). C6-2 zoning district.

PREMISES AFFECTED – 154 Hester Street, southwest corner of Hester Street and Elizabeth Street, Block 204, Lot 16, 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 January 8, 2013, at 1:30 P.M., for decision, hearing closed.

MINUTES

244-12-BZ

APPLICANT – Watchel, Masyr & Missry LLP by Ellen Hay for EQR-600 Washington LLC, owner; Gotham Gym 1 LLC, lessee.

SUBJECT – Application August 8, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Gotham Gym*). M1-5 zoning district.

Special Permit (§73-36) to permit a physical culture PREMISES AFFECTED – 600 Washington Street, west side of Washington Street between Morton and Leroy Streets, Block 602, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

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

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

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

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 floor area and open space (§23-141(a); side yards (§23-461(a)) and rear yard (§23-47) regulations. R-2 zoning district.

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

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

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

258-12-BZ

APPLICANT – Holland & Knight, LLP, for Old Firehouse No. 4 LLC, owner.

SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the conversion of two buildings into a single-family residence, contrary to lot coverage, minimum distance between buildings and minimum distance of legally required windows. R8B zoning district.

PREMISES AFFECTED – 113 East 90th Street, north side of East 90th Street, 150' west of the intersection of 90th Street, and Park Avenue, Block 1519, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,