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255-12-BZ
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256-12-A
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257-12-BZ
2359 East 5th Street, East side of East 5th Street between Avenue W and Angela Drive., Block 7181, Lot(s) 44, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing three-family home to be converted into a single family home contrary to floor area, open space and lot coverage (ZR 23-141); side yard (23-461) and less than the required rear yard (ZR 23-47). R4 (OP) zoning district. R4(OP) district.

258-12-BZ
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259-12-BZ
5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot(s) 458, Borough of **Bronx, Community Board: 8**. Variance (§72-21) to permit the development of a single-family house contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district. R1-1, NA-2 district.

260-12-BZ
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261-12-BZ
1 York Street, south side of Laight Street beween Avenue of Americas, St. John's and York Street., Block 212, Lot(s) 7503, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical culture establishment on the first and cellar floors of the existing building at the premises. C6-2A (TMU) zoning district. C6-2A; TMU district.

262-12-BZ
132-10 149th Avenue, bounded by 132nd Street, 149th Avenue and Nassau Expressway Service Road, Block 11886, Lot(s) 12 & 21, Borough of **Queens, Community Board: 10**. Variance (§72-21) to permit a hotel (UG 5) contrary to use regulations (§42-00). M2-1 zoning district. M2-1 district.

263-12-BZ
232 City Island Avenue, site bounded by Schofield Street and City Island Avenue., Block 5641, Lot(s) 10, Borough of **Bronx, Community Board: 10**. Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00). M1-1 zoning district. M1-1 district.

264-12-A
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265-12-A
980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway., Block 5542, Lot(s) 41, Borough of **Bronx, Community Board: 10**. Appeal from Department of Building's determination that sign is not entitled to continued non-conforming use status as an advertising sign . M1-2 & R4/C2-1 M1-2and R4/C2-1 district.

266-12-A
980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway., Block 5542, Lot(s) 41, Borough of **Bronx, Community Board: 10**. Appeal from Department of Building's determination that sign is not entitled to continued non-conforming use status as an advertising sign . M1-2 & R4/C2-1 M1-2 and R4/C2- district.

267-12-A
691 East 133rd Street, northeast corner of Cypress Avenue and East 133rd Street., Block 2562, Lot(s) 94, Borough of **Bronx, Community Board: 1**. Appeal from Department of Buildings' determination that the sign is not entitled to continued non-conforming use status as advertising sign. M1-2 & R6A M1-3/R6A district.

268-12-A
8 Pavillon Hill Terrace, corner of Homer Street and Swan Street., Block 569, Lot(s) 318, Borough of **Staten Island, Community Board: 1**. Porposed construction of a sinlge family semi -detached building not fronting a mapped street is contrayt to Genrnal City Law Section 36 .R3-1 ZD R3-1 district.

269-12-A
10 Pavillion Hill Terrace, corner of Homer Street and Swan Street., Block 569, Lot(s) 317, Borough of **Staten Island, Community Board: 1**. Proposed construction of a sinlge family semi -detached building not fronting a mapped street is contrary to Genrnal City Law Section 36 .R3-1 ZD R3-1 district.

270-12-A
16 Pavillion Hill Terrace, corner of Homer Street and Swan Street., Block 569, Lot(s) 316, Borough of **Staten Island, Community Board: 1**. Proposed construction of a sinlge family semi -detached building not fronting a mapped street is contrary to Genrnal City Law Section 36 .R3-1 ZD R3-1 district.

271-12-A
18 Pavillion Hill Terrace, corner of Homer Street and Swan Street., Block 569, Lot(s) 285, Borough of **Staten Island, Community Board: 1**. Proposed construction of a sinlge family semi -detached building not fronting a mapped street is contrary to Genrnal City Law Section 36 .R3-1 ZD R3-1 district.

272-12-A
1278 Carroll Street, between Brooklyn Avenue and Carroll Avenue, Block 1291, Lot(s) 19, Borough of **Brooklyn, Community Board: 9**. Appeal challenging Depertament of Buildings determination that an existing non conforming single family home may not be enlarged as per ZR 52-22 . R2 zoning district . R2 district.

273-12-A
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274-12-A
Major Deegan @ 167 Street, Yankee Stadium, Block 2539, Lot(s) 502, Borough of **Bronx, Community Board: 4**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation.R7-1, M1-1 R7-1,M1-1 district.

275-12-BZ
2122 Avenue N, southwest corner of Avenue N and East 22nd Street., Block 7675, Lot(s) 61, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space ZR 23-141; side yard ZR 23-461. R-2 zoning district. R2 district.

276-12-BZ
833/45 Flatbush Avenue, north east corner of Flatbush Avenue and Linden Boulevard, Block 5086, Lot(s) 8, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-36) to permit a physical culture establishment within portions of existing commercial building in a C2-4 zoning district. C2-4(R7A),R6B district.

DOCKET

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

OCTOBER 16, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 16, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

299-82-BZ
APPLICANT – Bryan Cave LLP/Robert S. Davis, Esq., for 10 Stanton Owners LLC, Chrystie Land Assoc. LLC c/o Sukenik, Segal & Graff, P.C.
SUBJECT – Application May 4, 2012– Amendment to a prior Board approval to allow for a new building to be constructed. C6-1 Zoning District.
PREMISES AFFECTED – 207-217 Chrystie Street, northwest corner of Chrystie Street and Stan Street, Block 427, Lot 2,200, Borough of Manhattan.
COMMUNITY BOARD #3M

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 Use Group 6 use (Professional Offices) 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

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

APPEALS CALENDAR

196-12-A
APPLICANT – Deidre Duffy, for Breezy Point Cooperation, Inc., owner; Carol Anderson, lessee.
SUBJECT – Application June 19, 2012 – Proposed alteration and enlargement of an exisitng single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.
PREMISES AFFECTED – 26 Ocean Avenue, west side of Ocean Avenue, 492.25' north of Rockaway Point Boulevard. Block 16350, Lot 300. Borough of Queens.
COMMUNITY BOARD #14Q

OCTOBER 16, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 16, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

160-11-BZ
APPLICANT – Slater & Beckerman, LLP for Jewish National Fund, owner.
SUBJECT – Application October 14, 2011 – Variance (§72-21) to allow for the enlargement of a community facility (Jewish National Fund), contrary to rear yard ZR §24-33, rear yard setback ZR §24-552, lot coverage ZR §24-11, and height and setback ZR §23-633, §24-591 regulations. R8B zoning district.
PREMISES AFFECTED – 42 East 69th Street, south side of East 69th Street, between Park Avenue and Madison Avenue. Block 1383, Lot 43. Borough of Manhattan.
COMMUNITY BOARD #8M

45-12-BZ
APPLICANT – Moshe M. Friedman, P.E., for Bais Sina, owner.
SUBJECT – Application February 27, 2012 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a Synagogue (UG4) which will create non-compliances with respect to floor area ratio and lot coverage (§24-11), front yard (§24-34), side yards (§24-35) and rear yard (§24-36). R5 zoning district.
PREMISES AFFECTED – 1914 50th Street, 100' east from the corner formed by 19th Avenue and south of 50th Street, Block 5462, Lot 12, Borough of Brooklyn.
COMMUNITY BOARD #12BK

56-12-BZ
APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.
SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141); side yard requirement (§23-461); less than the required rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.
COMMUNITY BOARD #4BK

74-12-BZ
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 residence contrary to floor area, open space and lot coverage (ZR §23-141); side yard (ZR §23-461) and less than the required rear yard (ZR §23-47). 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

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 for category B1 in Use Group 6. 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

195-12-BZ
APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.
SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance, permitting the construction of a two story office building (UG6) with parking spaces for four cars in a residence use district, which expired on May 13, 2000. Waiver of the Rules of Practice and Procedure. R4 zoning district.
PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.
COMMUNITY BOARD #10Q

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 11, 2012
10:00 A.M.

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

SPECIAL ORDER CALENDAR

406-82-BZ
APPLICANT – Eric Palatnik, P.C., for Adolf Clause and Theodore Thomas, owners; Hendel Products, lessee.
SUBJECT – Application May 22, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously-approved special permit (§73-243) for an eating and drinking establishment (*McDonald's*) with accessory drive-thru, which expired on May 3, 2012. C1-3/R5 zoning district.
PREMISES AFFECTED – 2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #11BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on January 22, 2009; and

WHEREAS, a public hearing was held on this application on July 17, 2012 after due notice by publication in *The City Record*, with a continued hearing on August 14, 2012, and then to decision on September 11, 2012; and

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

WHEREAS, the site is located on the northeast corner of 24th Avenue and 86th street, within a C1-3 (R5) zoning district; and

WHEREAS, the site is operated as a McDonalds's eating and drinking establishment; and

WHEREAS, on January 18, 1983, under the subject calendar number, the Board adopted a resolution granting a special permit for the installation of an accessory drive-through facility for an existing eating and drinking establishment, for a term of five years; and

WHEREAS, the special permit was subsequently extended and amended at various times; and

WHEREAS, on July 22, 2008, the Board granted a five-year extension of term, to expire on January 18, 2013; a condition of the grant was that a certificate of occupancy be obtained by January 22, 2009; and

WHEREAS, most recently, on May 3, 2011, the Board granted a one-year extension of time to obtain a certificate of occupancy, which expired on May 3, 2012; and

WHEREAS, the applicant now seeks a one-year extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that a certificate of occupancy was not obtained by the stipulated date due to open applications at the Department of Buildings which the applicant is working to have closed and/or withdrawn; and

WHEREAS, at hearing, the Board questioned whether the signage at the site is in compliance with C1 district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that all excess signage on the site has been removed; and

WHEREAS, based upon its review of the record, the Board finds that the proposed additional one year 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 *reopens* and *amends* the resolution, dated January 18, 1983, so that as amended this portion of the resolution shall read: "to permit an extension of one year to obtain a certificate of occupancy, to expire on September 11, 2013; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the grant will expire on January 18, 2013;

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

THAT a certificate of occupancy will be obtained by September 11, 2013;

THAT all conditions from the prior resolution 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. 310120142)

Adopted by the Board of Standards and Appeals, September 11, 2012.

68-94-BZ
APPLICANT – Troutman Sanders, LLP, for Bay Plaza Community Center, LLP, owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application June 26, 2012 – Extension of Time to obtain a certificate of occupancy for a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Bally's Total Fitness*) on the first and second floors of the Co-Op City Bay Plaza Shopping Center which expired on June 16, 2012; Waiver of the Rules. C4-3/M1-1 zoning district.
PREMISES AFFECTED – 2100 Bartow Avenue, Baychester Avenue and The Hutchenson River Parkway, Block 5141, Lot 810, Borough of Bronx.
COMMUNITY BOARD #10BX
APPEARANCES –
For Applicant: Jeremiah Candreva.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a previously granted special permit for the operation of a physical culture establishment (PCE), which expired on June 16, 2010; 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 September 11, 2012; and

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

WHEREAS, Community Board 10, Bronx, states that it takes no position on this application; and

WHEREAS, the site is located on the south side of Bartow Avenue, between Baychester Avenue and the Hutchinson River Parkway, within a C4-3 zoning district; and

WHEREAS, the PCE is located on a portion of the first and second floors of the Co-op City Bay Plaza shopping center and occupies 20,290 sq. ft. of floor area; and

WHEREAS, the PCE is operated as "Bally Total Fitness"; and

WHEREAS, on November 1, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C4-3 district, the operation of a PCE for a term of ten years; and

WHEREAS, on April 12, 2005, the grant was extended for a term of ten years, to expire on November 1, 2014; and

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

WHEREAS, most recently, on June 16, 2009, the Board granted a one-year extension of time to obtain a certificate of occupancy, which expired on June 16, 2010; and

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

WHEREAS, the applicant represents that its application to DOB for a certificate of occupancy for the PCE is pending and that it is conditioned on approval by the Board of the instant application; and

WHEREAS, based upon its review of the record, the Board finds that an 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 *reopens* and *amends* the resolution, dated November 1, 1994, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to September 11, 2013; *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 a certificate of occupancy shall be obtained by September 11, 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."

Adopted by the Board of Standards and Appeals, September 11, 2012.

336-98-BZ & 337-98-BZ
APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.
SUBJECT – Application December 31, 2008 – Extension of Time to obtain a certification of occupancy for a special permit (§73-36) for a physical culture establishment (*Crunch Fitness*), which expired on June 8, 2011. C2-4 zoning district.
PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.
COMMUNITY BOARD #6BK
APPEARANCES –
For Applicant: Todd Dole.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a physical culture establishment ("PCE"), which expired on June 8, 2011; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2012, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the PCE is located on the northwest corner of the intersection of Flatbush Avenue and Sterling Place; and

WHEREAS, the site consists of two adjacent lots – Lot 19 (324/34 Flatbush Avenue) and Lot 14 (312/18 Flatbush Avenue) within a C4-2 (R7A) zoning district; and

WHEREAS, the site is located in portions of the cellar and on the first floor and second floor of a two-story commercial building; and

WHEREAS, the PCE has a total floor area of 16,135 sq. ft., with an additional 2,697 sq. ft. of space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 23, 1999 when, under the subject calendar numbers, the Board granted special permits for each address, to expire on November 23, 2009; and

WHEREAS, on August 11, 2009, the Board granted an extension of term and an amendment to legalize the use of the cellar space, extend the PCE use on the first floor from 629 sq. ft. of floor area to 2,515 sq. ft. of floor area at 324/34 Flatbush Avenue, and to reflect the change in ownership and operation of the PCE; a condition of the grant was that a certificate of occupancy be obtained by February 11, 2010; and

WHEREAS, most recently, on June 8, 2010, the Board granted an extension of time to obtain a certificate of occupancy, which expired on June 8, 2011; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the specified date due to delays associated with restructuring subsequent to a corporate bankruptcy, and issues with the prior architect; and

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

WHEREAS, at hearing, the Board raised concerns about the lack of progress since the Board's prior grant, and directed the applicant to provide a schedule for obtaining the certificate of occupancy; and

WHEREAS, in response, the applicant submitted a letter detailing their efforts to obtain a certificate of occupancy for the site since October 2011; and

WHEREAS, the applicant states that the primary cause of the delay in obtaining a new certificate of occupancy is the existence of open job applications filed by previous applicants; and

WHEREAS, the applicant further states that a new architect has been retained and withdrawal applications for each open job have been prepared and, after the open applications have been withdrawn, it is expected that new certificates of occupancy will be obtained within nine months to a year; and

WHEREAS, the applicant represents that efforts to obtain a temporary public assembly permit from DOB are also in progress; and

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 November 23, 1999, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy to September 11, 2013, *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy will be obtained by September 11, 2013;

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

THAT DOB shall review egress for compliance with all relevant regulations;

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;

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 Application No. 300740063)

Adopted by the Board of Standards and Appeals, September 11, 2012.

53-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Charter Management Group, LLC, owner; Eun Sung, Inc., lessee.

SUBJECT – Application April 27, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Silver Star Spa*) in a portion of the first and cellar floors of an existing commercial building which expired on July 10, 2010; Waiver of the Rules. C5-3/C6-4,5 (MID) zoning district.

PREMISES AFFECTED – 6 West 48th Street, located on the south of West 48th Street between Fifth and Sixth Avenues, Block 1263, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted special permit for a physical culture establishment (PCE), which expired on July 10, 2011; 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 September 11, 2012; and

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

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the south side of West 48th Street between Fifth Avenue and Sixth Avenue, partially in a C5-3 district and partially in a C6-4.5 district, within the Special Midtown District; and

WHEREAS, the site has approximately 50 feet of frontage on West 48th Street, a depth of 100 feet, and a total lot area of 5,021 sq. ft.; and

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

WHEREAS, the PCE occupies approximately 2,900 sq. ft. of floor space located in the cellar, with an entrance at the first floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 10, 2001 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on July 10, 2011; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, the applicant also seeks to legalize minor interior modifications to the approved plans, specifically to reflect an added partition creating separate men's and women's shower and locker rooms and minor changes to the layout of one bathroom, the pantry, and reception area; and

WHEREAS, the applicant states that the general layout of the PCE remains the same, but the aforementioned room sizes differ slightly as the result of the prior minor partition changes; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on July 10, 2001, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from July 10, 2011, to expire on July 10, 2021, and to permit the noted modifications to the previously-approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received April 27, 2012'-(3) sheets; and *on further condition*:

THAT the term of this grant will expire on July 10, 2021;

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

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

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;

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 Application No. 102945645)

Adopted by the Board of Standards and Appeals, September 11, 2012.

164-07-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rouse SI Shopping Center LLC, owner; ME Clinic Two LLC, lessee.
SUBJECT – Application April 23, 2012 – Amendment of a previously approved special permit (§73-36) which permitted the operation of a physical culture establishment (*Massage Envy*). The amendment seeks to enlarge the use. C4-1 district.
PREMISES AFFECTED – The Crossings @ Staten Island Mall (280 Marsh Avenue), north of Platinum Avenue, west of Marsh Avenue, east of Staten Island Mall Dr., Block 2400, Lot 300, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Todd Dale.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit for a physical culture establishment ("PCE"), to permit a 1,270 sq. ft. expansion of the PCE; 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

September 11, 2012; and

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

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

WHEREAS, the subject site is located within The Crossings at Staten Island Mall, which is north of Platinum Avenue, west of Marsh Avenue, and east of Staten Island Mall Drive, within a C4-1 zoning district; and

WHEREAS, the PCE occupies 3,081 sq. ft. of floor area in a commercial unit within a one-story mall building with a total floor area of 75,909 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 7, 2007 when, under the subject calendar number, the Board granted a special permit for the operation of a PCE at the subject site; and

WHEREAS, the applicant now requests an amendment to permit an expansion of the PCE use to an additional 1,270 sq. ft. of floor area within the one-story mall building, for a total of 4,351 sq. ft. of floor area; and

WHEREAS, the applicant states that the PCE will be expanded into an existing adjacent retail space which will be accessed from a new opening created within the existing facility; and

WHEREAS, the applicant further states that the proposed expansion will not result in any new storefront space or signage; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the grant 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 October 7, 2007, so that as amended this portion of the resolution shall read: "to permit a 1,270 sq. ft. expansion of the PCE on the first floor; *on condition* that any and all work shall substantially conform to drawings filed with this application marked 'Received September 6, 2012'- Three (3) sheets; and *on further condition*:

THAT the term of this grant will expire on October 2, 2017;

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

THAT all conditions from the prior resolution 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. 510001258)

Adopted by the Board of Standards and Appeals, September 11, 2012.

739-76-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application June 1, 2012 – Extension of Term of a Special Permit (§73-35) for the continued operation of an amusement arcade (*Peter Pan Games*) which expired on April 10, 2012; Waiver of the Rules. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

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 September 25, 2012, at 10 A.M., for decision, hearing closed.

271-90-BZ

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

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

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

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to October 16, 2012, at 10 A.M., for continued hearing.

93-97-BZ

APPLICANT – Eric Palatnik, P.C., for Pi Associates, LLC, owner.

SUBJECT – Application March 13, 2012 – Amendment to a previously granted variance (§72-21) to permit the change in use of a portion of the second floor from accessory parking spaces to UG 6 office use. C4-3 zoning district.

PREMISES AFFECTED – 136-21 Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to

November 20, 2012, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to October 16, 2012, at 10 A.M., for deferred decision.

194-02-BZ
APPLICANT – Sheldon Lobel, P.C., for Shore Plaza LLC, owner; Staten Island Fitness Group, LLC, lessee.
SUBJECT – Application May 16, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Planet Fitness*) which expired on December 1, 2011; Waiver of the Rules. C4-3 zoning district.
PREMISES AFFECTED – 1775 South Avenue, southeast corner of the intersection formed by Meredity and South Avenues, Block 2800, Lot 37, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Jordan Most.
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 October 16, 2012, at 10 A.M., for decision, hearing closed.

330-05-BZ
APPLICANT – Vito J. Fossella, P.E., LPEC, for Frank Bennett, owner.
SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*AF Bennett Salon and Wellness Spa*) which expired on January 30, 2102; Extension of Time to Complete Construction which expired on January 30, 2011; amendment to further enlarge the PCE into the neighboring cellar; Waiver of the Rules. R3-2/C2-2 zoning district.
PREMISES AFFECTED – 350 New Dorp Lane, south side of New Dorp Lane, 260' east of corner formed by the intersection of New Dorp Lane and Clawson Avenue, Block 4221, Lot 53, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Sameh M. El-Meniawy.
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 October 16, 2012, at 10 A.M., for decision, hearing closed.

98-06-BZ/284-06-A
APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.
SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A Zoning District.
PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of Beach 9th Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 23, 2012, at 10 A.M., for continued hearing.

APPEALS CALENDAR

80-11-A
APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9th Realty, LLC, owner.
SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.
PREMISES AFFECTED – 331 East 9th Street, between 1st and 2nd Avenue, Block 451, Lot 46, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES –
For Applicant: Marvin B. Mitzner.

ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 6, 2011, acting on Department of Buildings Application No. 120615218 reads, in pertinent part:

1) Every building erected after 04/08/29, exceeding 6 stories or 60 ft in height shall be equipped with an elevator as required by MDL Sect. 51.6, art 3… [MDL § 51.6]
2) All doors, stairs, hallways must be fire proof constructed. Two hours minimum required. [MDL §§ 148.3, 149.2]
3) 1st floor above cellar must be fire proof. [MDL § 143]
4) Hall & stairs must be separated with fire rated separations. [MDL §146]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310, to vary the noted sections of the MDL in order to allow for the proposed one-story vertical enlargement of the subject five-story residential building, contrary to MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 84-11-A, 85-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with continued hearings on July 17, 2012 and August 14, 2012, and then to decision on September 11, 2012; and

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

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application; and

WHEREAS, New York State Senator Tom Duane and New York State Assembly Member Brian Kananagh provided testimony in opposition to this application; and

WHEREAS, representatives for the East Village Community Coalition and the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the "Opposition;" and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed building does not comply with zoning, specifically with regard to ZR § 23-692 (the "Sliver Rule") and ZR § 23-621 (because the dormers exceed the permitted dimensions and therefore do not qualify as permitted obstructions); (2) the proposed building does not comply with other provisions of the MDL, particularly with regard to light and air; (3) the proposed enlargement does not comport with the low-rise character of the surrounding neighborhood; (4) the hardships cited by the applicant in complying with the MDL result from their decision to enlarge the building and are therefore self-created; (5) the proposal would set a precedent for other buildings to add additional stories contrary to MDL requirements; and (6) the Board should not allow the applicant to substitute their alternative fire safety measures for those required by the MDL; and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9th Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space and one residential unit on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9th Street (the "329 Building"), 333 East 9th Street (the "333 Building"), and 335 East 9th Street (the "335 Building"), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,625 sq. ft. and a height of 54'-3"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 554.5 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to ten; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,625 sq. ft. to 8,179.5 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,510 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the subject MDL non-compliances, as detailed below; and

WHEREAS, MDL § 51(6) requires that buildings exceeding six stories or 60'-0" in height must provide an elevator; and

WHEREAS, MDL § 148(3) requires that all stairs must

be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, MDL § 143 requires that the first floor of the building be fireproof; and

WHEREAS, MDL § 146 requires that the public halls and stairs which serve as a means of egress from the apartments be separated by a fireproof wall; and

WHEREAS, because the proposed addition of the sixth floor exceeds 60'-0" in height, and the building is constructed of non-fireproof material, the Department of Buildings ("DOB") determined that it does not comply with the requirements of MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that the requirement for an elevator under MDL § 51(6) would necessitate the creation of an entirely new elevator core only because the proposed addition is 7'-3" taller than the 60'-0" trigger for this requirement, even though it does not exceed six stories; and

WHEREAS, the applicant represents that, aside from the significant expense involved in such an undertaking, creating an elevator core would require significant physical alteration to the occupied dwelling units in the subject building, reducing the size of at least one of the two units on each floor; and

WHEREAS, the applicant further represents that, since the residential units in the building run parallel to each other, from the front to the back of the building, they are already narrow, and the placement of an elevator into the building would effectively cut at least one residential unit into two segregated portions; and

WHEREAS, the applicant represents that the requirement for fireproofing of the doors, stairs, and hallways under MDL §§ 148(3) and 149(2) is impossible to satisfy without the removal and replacement of the building's core structure, since the building is a wood frame structure; and

WHEREAS, the applicant further represents that such work cannot be performed since the building is currently occupied, and further, even if the building were empty such work would be so extensive that it would be akin to constructing a new building; and

WHEREAS, the applicant states that, similarly, the requirement for the first floor above the cellar to be fireproof under MDL § 143 is impossible to satisfy without removing the entire structure since the first floor and cellar ceiling are composed of wood; and

WHEREAS, finally, the applicant states that the requirement for a separation between the halls and stairs under MDL § 146 would necessitate either enclosing the staircases with fire-rated material or creating fire-rated vestibules between the apartments and the stairway; and

WHEREAS, the applicant represents that the logistics of the subject building are such that enclosing the staircases or creating fire-rated vestibules is impossible without encroaching into the occupied residential units; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed over a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant also submitted a cost analysis from a real estate appraiser estimating that the cost of the fully-MDL compliant scenario for the subject building in combination with the 329 Building, the 333 Building, and the 335 Building is $4,917,089, which is more than three times the cost of the proposed construction scenario for the four buildings of $1,524,916; and

WHEREAS, the applicant notes that the cost analysis represents only the increased construction costs between the scenarios, and that the MDL-compliant scenario would also create significant loss of rental space and effectively destroy the viability of almost half of the existing apartments; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed

enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 51(6), 148(3), 149(2), 143, and 146 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 ("Legislative Finding") provides that the intent of the law is to protect against dangers such as "overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire…"; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the installation of a non-combustible concrete floor in the first floor public hallway, (2) the installation of new fireproof stairs in the cellar/basement spaces; (3) the cladding of all remaining stairs with gypsum board underneath and fire retardant materials on the risers and treads; (4) the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) the installation of fire proof self-closing doors for the entrance to each dwelling unit: (7) the addition of fire sprinklers throughout the building; (8) the installation of hard-wired smoke detectors in all residential units; and (9) the installation of new fire escapes at the rear of the 333 Building and the 335 Building, to complement the existing fire escapes on the buildings; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, specifically, the applicant states that (1) adding concrete and sheetrock are classic mechanisms to retard fire spread, even though they are not technically deemed fire proof due to the underlying wood structure, (2) replacing the cellar level stairs with fireproof stairs will provide increased fire safety, particularly to first responders, (3) encasing the upper level stairs in fire-retardant materials and adding gypsum board to the public hall ceilings will also add a significant measure of fire safety, and (4) adding sprinklers to the common areas, which are the areas for which the subject MDL provisions are intended to increase fire protection, will decrease the likelihood of fire spread and smoke propagation more efficiently than the creation of segregated halls and stairwells; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that while the MDL is focused primarily on tenant safety from fire protection and security standpoints, the requirement for an elevator appears to be a provision related primarily to tenant convenience, and is properly classified as an amenity; and

WHEREAS, the applicant further represents that the 7'-3" of additional stairs that the sixth floor tenants would be required to climb beyond the 60'-0" height that triggers the elevator requirement does not create a hazard, and does not outweigh the extreme cost of creating elevator cores which would decrease the size of the dwelling units of tenants who currently live without the use of an elevator and would sever half of the dwelling units into disconnected parts; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, by letter dated July 16, 2012, the Fire Department states that it reviewed the proposed plans as to emergency egress routes and Fire Department emergency access to the building and between the four buildings on the proposed zoning lot, and has no objection to the proposal; and

WHEREAS, based on the above, the Board finds that the proposed variance to the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, as to the Opposition's contention that the proposal does not comply with zoning, the Board requested that DOB review the proposed plans for zoning compliance, specifically in regards to the Sliver Rule and whether the dormers qualified as permitted obstructions under ZR § 23-621; and

WHEREAS, by letter dated August 14, 2012, DOB states that if the 331 Building, the 333 Building, and the 335 Building are on the same zoning lot, then they may be considered a single building per ZR § 23-692 and the applications would not be subject to the Sliver Rule's height restriction because the combined abutting street walls above 60 feet are wider than 45 feet; further, DOB states that the 329 Building has a proposed height of 60 feet, which complies with the Sliver Rule; and

WHEREAS, in response, the applicant submitted additional evidence that all four buildings are on a single zoning lot, and states that therefore the buildings comply with the Sliver Rule per DOB's letter; and

WHEREAS, as to the dormer issue, the DOB letter states that the dormers proposed in the applications are approximately seven feet above the maximum base height of 60 feet, therefore the width of the dormers must be reduced to 53 percent of the width of the street wall of each building; further, DOB states that the triangular portions of the dormers proposed within the required setback for the 331 Building, the 333 Building, and the 335 Building need to be removed in order to comply with ZR § 23-621(c)(1); and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormer for the subject building has been removed and the width of the dormers for the 333 Building and the 335 Building have been enlarged, which the applicant states makes the dormer widths consistent with DOB's interpretation; and

WHEREAS, however, the applicant asserts that DOB has previously approved the creation of a dormer sidewall that is less than 65 degrees, and therefore argues that the sidewalls of the proposed dormers are not to be included in the aggregate width of the street walls of the dormers; and

WHEREAS, therefore, the applicant contends that the proposal is in full compliance with the Zoning Resolution, and states that any remaining issues regarding zoning compliance will be addressed with DOB prior to the issuance of a permit; and

WHEREAS, the Board does not take a position as to any zoning compliance, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL conditions; and

WHEREAS, as to the Opposition's contention that the building does not comply with other provisions of the MDL, the Board similarly does not take a position as to compliance with provisions of the MDL that are not the subject of the instant application, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, however, at the Board's direction, the applicant revised its plans during the course of the hearing process to preserve the distinctive cornice on the front facade of the buildings (which was originally proposed to be altered) in an effort to make the proposed buildings consistent with the character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated May 6, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 31, 2012" - (8) sheets, "August 28, 2012"-(4) sheets and "September 10, 2012"-(1) sheet; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

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

Adopted by the Board of Standards and Appeals, September 11, 2012.

84-11-A

APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9th Realty, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.

PREMISES AFFECTED – 333 East 9th Street, between 1st and 2nd Avenue, Block 451, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

ACTION OF THE BOARD – Application granted on condition.

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

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 11, 2011, acting on Department of Buildings Application No. 120615192 reads, in pertinent part:

1) Every dwelling erected after April 18th, 1929, which exceeds sixty feet in height shall be equipped with one or more passenger elevators, operative at all times, at least one of which shall be accessible to every apartment above the entrance story [MDL 51.6].
2) One means of egress from apartments shall not open directly to a stair; it shall open to a public hall connecting with an exit stair [MDL 146.1].
3) Every stair shall be completely separated from every public hall and shaft by fireproof walls (2 hr FRR), with fireproof doors and assemblies [MDL 148.3 and MDL 149.2].
4) Floor between ground floor and cellar shall be fireproof (2-hour fire-resistance rating) [MDL 143.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310, to vary the noted sections of the MDL in order to allow for the proposed one-story vertical enlargement of the subject five-story residential building, contrary to MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 85-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with continued hearings on July 17, 2012 and August 14, 2012, and then to decision on September 11, 2012; and

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

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application; and

WHEREAS, New York State Senator Tom Duane and New York State Assembly Member Brian Kananagh provided testimony in opposition to this application; and

WHEREAS, representatives for the East Village Community Coalition and the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the "Opposition;" and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed building does not comply with zoning, specifically with regard to ZR § 23-692 (the "Sliver Rule") and ZR § 23-621 (because the dormers exceed the permitted dimensions and therefore do not qualify as permitted obstructions); (2) the proposed building does not comply with other provisions of the MDL, particularly with regard to light and air; (3) the proposed enlargement does not comport with the low-rise character of the surrounding neighborhood; (4) the hardships cited by the applicant in complying with the MDL result from their decision to enlarge the building and are therefore self-created; (5) the proposal would set a precedent for other buildings to add additional stories contrary to MDL requirements; and (6) the Board should not allow the applicant to substitute their alternative fire safety measures for those required by the MDL; and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9th Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant notes that the site also consists of a separate three-story building and a separate one-story building located to the rear of the subject building, which are not part of the subject application; and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9th Street (the "329 Building"), 331 East 9th Street (the "331 Building"), and 335 East 9th Street (the "335 Building"), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,011 sq. ft. and a height of 54'-3"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 1,164 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to nine; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,011 sq. ft. to 8,175 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 331 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,510 sq. ft. (3.75 FAR) (the maximum permitted floor area is

33,580 sq. ft. (4.0 FAR)) and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the subject MDL non-compliances, as detailed below; and

WHEREAS, MDL § 51(6) requires that buildings exceeding six stories or 60'-0" in height must provide an elevator; and

WHEREAS, MDL § 148(3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, MDL § 143 requires that the first floor of the building be fireproof; and

WHEREAS, MDL § 146 requires that the public halls and stairs which serve as a means of egress from the apartments be separated by a fireproof wall; and

WHEREAS, because the proposed addition of the sixth floor exceeds 60'-0" in height, and the building is constructed of non-fireproof material, the Department of Buildings ("DOB") determined that it does not comply with the requirements of MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that the requirement for an elevator under MDL § 51(6) would necessitate the creation of an entirely new elevator core only because the proposed addition is 7'-3" taller than the 60'-0" trigger for this requirement, even though it does not exceed six stories; and

WHEREAS, the applicant represents that, aside from the significant expense involved in such an undertaking, creating an elevator core would require significant physical alteration to the occupied dwelling units in the subject building, reducing the size of at least one of the two units on each floor; and

WHEREAS, the applicant further represents that, since the residential units in the building run parallel to each other, from the front to the back of the building, they are already narrow, and the placement of an elevator into the building would effectively cut at least one residential unit into two segregated portions; and

WHEREAS, the applicant represents that the requirement for fireproofing of the doors, stairs, and hallways under MDL §§ 148(3) and 149(2) is impossible to satisfy without the removal and replacement of the building's core structure, since the building is a wood frame structure; and

WHEREAS, the applicant further represents that such work cannot be performed since the building is currently occupied, and further, even if the building were empty such work would be so extensive that it would be akin to constructing a new building; and

WHEREAS, the applicant states that, similarly, the requirement for the first floor above the cellar to be fireproof under MDL § 143 is impossible to satisfy without removing the entire structure since the first floor and cellar ceiling are composed of wood; and

WHEREAS, finally, the applicant states that the requirement for a separation between the halls and stairs under MDL § 146 would necessitate either enclosing the staircases with fire-rated material or creating fire-rated vestibules between the apartments and the stairway; and

WHEREAS, the applicant represents that the logistics of the subject building are such that enclosing the staircases or creating fire-rated vestibules is impossible without encroaching into the occupied residential units; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed over a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant also submitted a cost analysis from a real estate appraiser estimating that the cost of the fully-MDL compliant scenario for the subject building in combination with the 329 Building, the 331 Building, and the 335 Building is $4,917,089, which is more than three times the cost of the proposed construction scenario for the four buildings of $1,524,916; and

WHEREAS, the applicant notes that the cost analysis represents only the increased construction costs between the scenarios, and that the MDL-compliant scenario would also create significant loss of rental space and effectively destroy the viability of almost half of the existing apartments; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement in combination with the proposed enlargements of the 329 Building, the 331 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 51(6), 148(3), 149(2), 143, and 146 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 ("Legislative Finding") provides that the intent of the law is to protect against dangers such as "overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire…"; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate two additional residential units effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the installation of a non-combustible concrete floor in the first floor public hallway, (2) the installation of new fireproof stairs in the cellar/basement spaces; (3) the cladding of all remaining stairs with gypsum board underneath and fire retardant materials on the risers and treads; (4) the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) the installation of fire proof self-closing doors for the entrance to each dwelling unit: (7) the addition of fire sprinklers throughout the building; (8) the installation of hard-wired smoke detectors in all residential units; and (9) the installation of new fire escapes at the rear of the subject building and the 335 Building, to complement the existing fire escapes on the buildings; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, specifically, the applicant states that (1) adding concrete and sheetrock are classic mechanisms to retard fire spread, even though they are not technically deemed fire proof due to the underlying wood structure, (2) replacing the cellar level stairs with fireproof stairs will provide increased fire safety, particularly to first responders, (3) encasing the upper level stairs in fire-retardant materials and adding gypsum board to the public hall ceilings will also add a significant measure of fire safety, and (4) adding sprinklers to the common areas, which are the areas for which the subject MDL provisions are intended to increase fire protection, will decrease the likelihood of fire spread and smoke propagation more efficiently than the creation of segregated halls and stairwells; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that while the MDL is focused primarily on tenant safety from fire protection and security standpoints, the requirement for an elevator appears to be a provision related primarily to tenant convenience, and is properly classified as an amenity; and

WHEREAS, the applicant further represents that the 7'-3" of additional stairs that the sixth floor tenants would be required to climb beyond the 60'-0" height that triggers the elevator requirement does not create a hazard, and does not outweigh the extreme cost of creating elevator cores which would decrease the size of the dwelling units of tenants who currently live without the use of an elevator and would sever half of the dwelling units into disconnected parts; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, by letter dated July 16, 2012, the Fire Department states that it reviewed the proposed plans as to emergency egress routes and Fire Department emergency access to the building and between the four buildings on the

proposed zoning lot, and has no objection to the proposal; and

WHEREAS, based on the above, the Board finds that the proposed variance to the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, as to the Opposition's contention that the proposal does not comply with zoning, the Board requested that DOB review the proposed plans for zoning compliance, specifically in regards to the Sliver Rule and whether the dormers qualified as permitted obstructions under ZR § 23-621; and

WHEREAS, by letter dated August 14, 2012, DOB states that if the 331 Building, the 333 Building, and the 335 Building are on the same zoning lot, then they may be considered a single building per ZR § 23-692 and the applications would not be subject to the Sliver Rule's height restriction because the combined abutting street walls above 60 feet are wider than 45 feet; further, DOB states that the 329 Building has a proposed height of 60 feet, which complies with the Sliver Rule; and

WHEREAS, in response, the applicant submitted additional evidence that all four buildings are on a single zoning lot, and states that therefore the buildings comply with the Sliver Rule per DOB's letter; and

WHEREAS, as to the dormer issue, the DOB letter states that the dormers proposed in the applications are approximately seven feet above the maximum base height of 60 feet, therefore the width of the dormers must be reduced to 53 percent of the width of the street wall of each building; further, DOB states that the triangular portions of the dormers proposed within the required setback for the 331 Building, the 333 Building, and the 335 Building need to be removed in order to comply with ZR § 23-621(c)(1); and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormer for the 331 Building has been removed and the width of the dormers for the subject building and the 335 Building have been enlarged, which the applicant states makes the dormer widths consistent with DOB's interpretation; and

WHEREAS, however, the applicant asserts that DOB has previously approved the creation of a dormer sidewall that is less than 65 degrees, and therefore argues that the sidewalls of the proposed dormers are not to be included in the aggregate width of the street walls of the dormers; and

WHEREAS, therefore, the applicant contends that the proposal is in full compliance with the Zoning Resolution, and states that any remaining issues regarding zoning compliance will be addressed with DOB prior to the issuance of a permit; and

WHEREAS, the Board does not take a position as to any zoning compliance, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL conditions; and

WHEREAS, as to the Opposition's contention that the building does not comply with other provisions of the MDL, the Board similarly does not take a position as to compliance with provisions of the MDL that are not the subject of the instant application, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, however, at the Board's direction, the applicant revised its plans during the course of the hearing process to preserve the distinctive cornice on the front facade of the buildings (which was originally proposed to be altered) in an effort to make the proposed buildings consistent with the character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated May 11, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 31, 2012" - (8) sheets, "August 28, 2012"-(4) sheets and "September 10, 2012"-(1) sheet; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

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

Adopted by the Board of Standards and Appeals, September 11, 2012.

85-11-A
APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9th Realty, LLC, owner.
SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.
PREMISES AFFECTED – 335 East 9th Street, between 1st and 2nd Avenue, Block 451, Lot 44, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES –
For Applicant: Marvin B. Mitzner.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 18, 2011, acting on Department of Buildings Application No. 120615209 reads, in pertinent part:

1) Every building erected after 04/08/29, exceeding 6 stories or 60 ft in height shall be equipped with an elevator as required by MDL Sect. 51.6, art 3… [MDL § 51.6]
2) All doors, stairs, hallways must be fire proof constructed. Two hours minimum required. [MDL §§ 148.3, 149.2]
3) 1st floor above cellar must be fire proof. [MDL § 143]
4) Hall & stairs must be separated with fire rated separations. [MDL §146]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310, to vary the noted sections of the MDL in order to allow for the proposed one-story vertical enlargement of the subject five-story residential building, contrary to MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 84-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with continued hearings on July 17, 2012 and August 14, 2012, and then to decision on September 11, 2012; and

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

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application; and

WHEREAS, New York State Senator Tom Duane and New York State Assembly Member Brian Kananagh provided testimony in opposition to this application; and

WHEREAS, representatives for the East Village Community Coalition and the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the "Opposition;" and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed building does not comply with zoning, specifically with regard to ZR § 23-692 (the "Sliver Rule") and ZR § 23-621 (because the dormers exceed the permitted dimensions and therefore do not qualify as permitted obstructions); (2) the proposed building does not comply with other provisions of the MDL, particularly with regard to light and air; (3) the proposed enlargement does not comport with the low-rise character of the surrounding neighborhood; (4) the hardships cited by the applicant in complying with the MDL result from their decision to enlarge the building and are therefore self-created; (5) the proposal would set a precedent for other buildings to add additional stories contrary to MDL requirements; and (6) the Board should not allow the applicant to substitute their alternative fire safety measures for those required by the MDL; and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9th Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9th Street (the "329 Building"), 331 East 9th Street (the "331 Building"), and 333 East 9th Street (the "333 Building"), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the subject zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,023.5 sq. ft. and a height of 54'-3"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 1,164.3 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to nine; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,023.5 sq. ft. to 8,187.8 sq. ft., and in combination with

the proposed enlargements of the 329 Building, the 331 Building, and the 333 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,510 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)) and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the subject MDL non-compliances, as detailed below; and

WHEREAS, MDL § 51(6) requires that buildings exceeding six stories or 60'-0" in height must provide an elevator; and

WHEREAS, MDL § 148(3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, MDL § 143 requires that the first floor of the building be fireproof; and

WHEREAS, MDL § 146 requires that the public halls and stairs which serve as a means of egress from the apartments be separated by a fireproof wall; and

WHEREAS, because the proposed addition of the sixth floor exceeds 60'-0" in height, and the building is constructed of non-fireproof material, the Department of Buildings ("DOB") determined that it does not comply with the requirements of MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that the requirement for an elevator under MDL § 51(6) would necessitate the creation of an entirely new elevator core only because the proposed addition is 7'-3" taller than the 60'-0" trigger for this requirement, even though it does not exceed six stories; and

WHEREAS, the applicant represents that, aside from the significant expense involved in such an undertaking, creating an elevator core would require significant physical alteration to the occupied dwelling units in the subject building, reducing the size of at least one of the two units on each floor; and

WHEREAS, the applicant further represents that, since the residential units in the building run parallel to each other, from the front to the back of the building, they are already narrow, and the placement of an elevator into the building would effectively cut at least one residential unit into two segregated portions; and

WHEREAS, the applicant represents that the requirement for fireproofing of the doors, stairs, and hallways under MDL §§ 148(3) and 149(2) is impossible to satisfy without the removal and replacement of the building's core structure, since the building is a wood frame structure; and

WHEREAS, the applicant further represents that such work cannot be performed since the building is currently occupied, and further, even if the building were empty such work would be so extensive that it would be akin to constructing a new building; and

WHEREAS, the applicant states that, similarly, the requirement for the first floor above the cellar to be fireproof under MDL § 143 is impossible to satisfy without removing the entire structure since the first floor and cellar ceiling are composed of wood; and

WHEREAS, finally, the applicant states that the requirement for a separation between the halls and stairs under MDL § 146 would necessitate either enclosing the staircases with fire-rated material or creating fire-rated vestibules between the apartments and the stairway; and

WHEREAS, the applicant represents that the logistics of the subject building are such that enclosing the staircases or creating fire-rated vestibules is impossible without encroaching into the occupied residential units; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed over a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant also submitted a cost analysis from a real estate appraiser estimating that the cost of the fully-MDL compliant scenario for the subject building in

combination with the 329 Building, the 331 Building, and the 333 Building is $4,917,089, which is more than three times the cost of the proposed construction scenario for the four buildings of $1,524,916; and

WHEREAS, the applicant notes that the cost analysis represents only the increased construction costs between the scenarios, and that the MDL-compliant scenario would also create significant loss of rental space and effectively destroy the viability of almost half of the existing apartments; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 331 Building, and the 333 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 51(6), 148(3), 149(2), 143, and 146 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 ("Legislative Finding") provides that the intent of the law is to protect against dangers such as "overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire…"; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the installation of a non-combustible concrete floor in the first floor public hallway, (2) the installation of new fireproof stairs in the cellar/basement spaces; (3) the cladding of all remaining stairs with gypsum board underneath and fire retardant materials on the risers and treads; (4) the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) the installation of fire proof self-closing doors for the entrance to each dwelling unit: (7) the addition of fire sprinklers throughout the building; (8) the installation of hard-wired smoke detectors in all residential units; and (9) the installation of new fire escapes at the rear of the subject building and the 333 Building, to complement the existing fire escapes on the buildings; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, specifically, the applicant states that (1) adding concrete and sheetrock are classic mechanisms to retard fire spread, even though they are not technically deemed fire proof due to the underlying wood structure, (2) replacing the cellar level stairs with fireproof stairs will provide increased fire safety, particularly to first responders, (3) encasing the upper level stairs in fire-retardant materials and adding gypsum board to the public hall ceilings will also add a significant measure of fire safety, and (4) adding sprinklers to the common areas, which are the areas for which the subject MDL provisions are intended to increase fire protection, will decrease the likelihood of fire spread and smoke propagation more efficiently than the creation of segregated halls and stairwells; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that while the MDL is focused primarily on tenant safety from fire protection and security standpoints, the requirement for an elevator appears to be a provision related primarily to tenant convenience, and is properly classified as an amenity; and

WHEREAS, the applicant further represents that the 7'-3" of additional stairs that the sixth floor tenants would be required to climb beyond the 60'-0" height that triggers the elevator requirement does not create a hazard, and does not outweigh the extreme cost of creating elevator cores which would decrease the size of the dwelling units of tenants who currently live without the use of an elevator and would sever half of the dwelling units into disconnected parts; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, by letter dated July 16, 2012, the Fire Department states that it reviewed the proposed plans as to emergency egress routes and Fire Department emergency access to the building and between the four buildings on the proposed zoning lot, and has no objection to the proposal; and

WHEREAS, based on the above, the Board finds that the proposed variance to the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, as to the Opposition's contention that the proposal does not comply with zoning, the Board requested that DOB review the proposed plans for zoning compliance, specifically in regards to the Sliver Rule and whether the dormers qualified as permitted obstructions under ZR § 23-621; and

WHEREAS, by letter dated August 14, 2012, DOB states that if the 331 Building, the 333 Building, and the 335 Building are on the same zoning lot, then they may be considered a single building per ZR § 23-692 and the applications would not be subject to the Sliver Rule's height restriction because the combined abutting street walls above 60 feet are wider than 45 feet; further, DOB states that the 329 Building has a proposed height of 60 feet, which complies with the Sliver Rule; and

WHEREAS, in response, the applicant submitted additional evidence that all four buildings are on a single zoning lot, and states that therefore the buildings comply with the Sliver Rule per DOB's letter; and

WHEREAS, as to the dormer issue, the DOB letter states that the dormers proposed in the applications are approximately seven feet above the maximum base height of 60 feet, therefore the width of the dormers must be reduced to 53 percent of the width of the street wall of each building; further, DOB states that the triangular portions of the dormers proposed within the required setback for the 331 Building, the 333 Building, and the 335 Building need to be removed in order to comply with ZR § 23-621(c)(1); and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormer for the 331 Building has been removed and the width of the dormers for the subject building and the 333 Building have been enlarged, which the applicant states makes the dormer widths consistent with DOB's interpretation; and

WHEREAS, however, the applicant asserts that DOB has previously approved the creation of a dormer sidewall that is less than 65 degrees, and therefore argues that the sidewalls of the proposed dormers are not to be included in the aggregate width of the street walls of the dormers; and

WHEREAS, therefore, the applicant contends that the proposal is in full compliance with the Zoning Resolution, and states that any remaining issues regarding zoning compliance will be addressed with DOB prior to the issuance of a permit; and

WHEREAS, the Board does not take a position as to any zoning compliance, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL conditions; and

WHEREAS, as to the Opposition's contention that the building does not comply with other provisions of the MDL, the Board similarly does not take a position as to compliance with provisions of the MDL that are not the subject of the instant application, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, however, at the Board's direction, the applicant revised its plans during the course of the hearing process to preserve the distinctive cornice on the front facade of the buildings (which was originally proposed to be altered) in an effort to make the proposed buildings consistent with the character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated May 18, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 31, 2012"- (8) sheets, "August 28, 2012"-(4) sheets and "September 10, 2012"-(1) sheet; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

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

Adopted by the Board of Standards and Appeals,

September 11, 2012.

103-11-A
APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9th Realty, LLC, owner.
SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.
PREMISES AFFECTED –329 East 9th Street, between 1st and 2nd Avenue, Block 451, Lot 47, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES –
For Applicant: Marvin B. Mitzner.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 15, 2011, acting on Department of Buildings Application No. 120615227 reads, in pertinent part:

1) Every building erected after 04/08/29, exceeding 6 stories or 60 ft in height shall be equipped with an elevator as required by MDL Sect. 51.6, art 3… [MDL § 51.6]
2) All doors, stairs, hallways must be fire proof constructed. Two hours minimum required. [MDL §§ 148.3, 149.2]
3) 1st floor above cellar must be fire proof. [MDL § 143]
4) Hall & stairs must be separated with fire rated separations. [MDL §146]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310, to vary the noted sections of the MDL in order to allow for the proposed one-story vertical enlargement of the subject four-story and basement residential building, contrary to MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 84-11-A and 85-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with continued hearings on July 17, 2012 and August 14, 2012, and then to decision on September 11, 2012; and

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

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application; and

WHEREAS, New York State Senator Tom Duane and New York State Assembly Member Brian Kananagh provided testimony in opposition to this application; and

WHEREAS, representatives for the East Village Community Coalition and the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the "Opposition;" and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed building does not comply with zoning, specifically with regard to ZR § 23-692 (the "Sliver Rule") and ZR § 23-621 (because the dormers exceed the permitted dimensions and therefore do not qualify as permitted obstructions); (2) the proposed building does not comply with other provisions of the MDL, particularly with regard to light and air; (3) the proposed enlargement does not comport with the low-rise character of the surrounding neighborhood; (4) the hardships cited by the applicant in complying with the MDL result from their decision to enlarge the building and are therefore self-created; (5) the proposal would set a precedent for other buildings to add additional stories contrary to MDL requirements; and (6) the Board should not allow the applicant to substitute their alternative fire safety measures for those required by the MDL; and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 16 feet of frontage along East 9th Street, a depth of 92.25 feet, and a total lot area of 1,476 sq. ft.; and

WHEREAS, the site is occupied by a four-story and basement non-fireproof building, with a total of four dwelling units on the first through fourth floors (one dwelling unit per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 331 East 9th Street (the "331 Building"), 333 East 9th Street (the "333 Building"), and 335 East 9th Street (the "335 Building"), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 4,006.5 sq. ft. and a height of 48'-0"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a fifth floor containing an additional 801.3 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in

the building to five; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 4,006.5 sq. ft. to 4,807.8 sq. ft., and in combination with the proposed enlargements of the 331 Building, the 333 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,510 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)) and will increase the height of the subject building from 48'-0" to approximately 60'-0" (the maximum permitted height is 75'-0"); and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the subject MDL non-compliances, as detailed below; and

WHEREAS, MDL § 51(6) requires that buildings exceeding six stories or 60'-0" in height must provide an elevator; and

WHEREAS, MDL § 148(3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, MDL § 143 requires that the first floor of the building be fireproof; and

WHEREAS, MDL § 146 requires that the public halls and stairs which serve as a means of egress from the apartments be separated by a fireproof wall; and

WHEREAS, because the proposed addition of the fifth floor exceeds 60'-0" in height, and the building is constructed of non-fireproof material, the Department of Buildings ("DOB") determined that it does not comply with the requirements of MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that the requirement for an elevator under MDL § 51(6) would necessitate the creation of an entirely new elevator core only because the proposed enlargement reaches the 60'-0" trigger for this requirement, even though it does not exceed six stories; and

WHEREAS, the applicant represents that, aside from the significant expense involved in such an undertaking, creating an elevator core would require significant physical alteration to the occupied dwelling units in the subject building, significantly reducing their size and effectively cutting the units into two segregated portions; and

WHEREAS, the applicant represents that the requirement for fireproofing of the doors, stairs, and hallways under MDL §§ 148(3) and 149(2) is impossible to satisfy without the removal and replacement of the building's core structure, since the building is a wood frame structure; and

WHEREAS, the applicant further represents that such work cannot be performed since the building is currently occupied, and further, even if the building were empty such work would be so extensive that it would be akin to constructing a new building; and

WHEREAS, the applicant states that, similarly, the requirement for the first floor above the cellar to be fireproof under MDL § 143 is impossible to satisfy without removing the entire structure since the first floor and cellar ceiling are composed of wood; and

WHEREAS, finally, the applicant states that the requirement for a separation between the halls and stairs under MDL § 146 would necessitate either enclosing the staircases with fire-rated material or creating fire-rated vestibules between the apartments and the stairway; and

WHEREAS, the applicant represents that the logistics of the subject building are such that enclosing the staircases or creating fire-rated vestibules is impossible without encroaching into the occupied residential units; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed over a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant also submitted a cost analysis from a real estate appraiser estimating that the cost of the fully-MDL compliant scenario for the subject building in combination with the 331 Building, the 333 Building, and the 335 Building is $4,917,089, which is more than three times

the cost of the proposed construction scenario for the four buildings of $1,524,916; and

WHEREAS, the applicant notes that the cost analysis represents only the increased construction costs between the scenarios, and that the MDL-compliant scenario would also create significant loss of rental space and effectively destroy the viability of almost half of the existing apartments; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 331 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 51(6), 148(3), 149(2), 143, and 146 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 ("Legislative Finding") provides that the intent of the law is to protect against dangers such as "overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire…"; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 48'-0" to approximately 60'-0" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the installation of a non-combustible concrete floor in the first floor public hallway, (2) the installation of new fireproof stairs in the cellar/basement spaces; (3) the cladding of all remaining stairs with gypsum board underneath and fire retardant materials on the risers and treads; (4) the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) the installation of fire proof self-closing doors for the entrance to each dwelling unit: (7) the addition of fire sprinklers throughout the building; (8) the installation of hard-wired smoke detectors in all residential units; and (9) the installation of new fire escapes at the rear of the 333 Building and the 335 Building, to complement the existing fire escapes on the buildings; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, specifically, the applicant states that (1) adding concrete and sheetrock are classic mechanisms to retard fire spread, even though they are not technically deemed fire proof due to the underlying wood structure, (2) replacing the cellar level stairs with fireproof stairs will provide increased fire safety, particularly to first responders, (3) encasing the upper level stairs in fire-retardant materials and adding gypsum board to the public hall ceilings will also add a significant measure of fire safety, and (4) adding sprinklers to the common areas, which are the areas for which the subject MDL provisions are intended to increase fire protection, will decrease the likelihood of fire spread and smoke propagation more efficiently than the creation of segregated halls and stairwells; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that while the MDL is focused primarily on tenant safety from fire protection and security standpoints, the requirement for an elevator appears to be a provision related primarily to tenant convenience, and is properly classified as an amenity; and

WHEREAS, the applicant further represents that the additional stairs that the fifth floor tenants would be required to climb does not create a hazard and does not outweigh the extreme cost of creating elevator cores which would decrease the size of the dwelling units of tenants who currently live without the use of an elevator and would sever half of the dwelling units into disconnected parts; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, by letter dated July 16, 2012, the Fire Department states that it reviewed the proposed plans as to

emergency egress routes and Fire Department emergency access to the building and between the four buildings on the proposed zoning lot, and has no objection to the proposal; and

WHEREAS, based on the above, the Board finds that the proposed variance to the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, as to the Opposition's contention that the proposal does not comply with zoning, the Board requested that DOB review the proposed plans for zoning compliance, specifically in regards to the Sliver Rule and whether the dormers qualified as permitted obstructions under ZR § 23-621; and

WHEREAS, by letter dated August 14, 2012, DOB states that if the 331 Building, the 333 Building, and the 335 Building are on the same zoning lot, then they may be considered a single building per ZR § 23-692 and the applications would not be subject to the Sliver Rule's height restriction because the combined abutting street walls above 60 feet are wider than 45 feet; further, DOB states that the 329 Building has a proposed height of 60 feet, which complies with the Sliver Rule; and

WHEREAS, in response, the applicant submitted additional evidence that all four buildings are on a single zoning lot, and states that therefore the buildings comply with the Sliver Rule per DOB's letter; and

WHEREAS, as to the dormer issue, the DOB letter states that the dormers proposed in the applications are approximately seven feet above the maximum base height of 60 feet, therefore the width of the dormers must be reduced to 53 percent of the width of the street wall of each building; further, DOB states that the triangular portions of the dormers proposed within the required setback for the 331 Building, the 333 Building, and the 335 Building need to be removed in order to comply with ZR § 23-621(c)(1); and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormer for the 331 Building has been removed and the width of the dormers for the subject building and the 333 Building have been enlarged, which the applicant states makes the dormer widths consistent with DOB's interpretation; and

WHEREAS, however, the applicant asserts that DOB has previously approved the creation of a dormer sidewall that is less than 65 degrees, and therefore argues that the sidewalls of the proposed dormers are not to be included in the aggregate width of the street walls of the dormers; and

WHEREAS, therefore, the applicant contends that the proposal is in full compliance with the Zoning Resolution, and states that any remaining issues regarding zoning compliance will be addressed with DOB prior to the issuance of a permit; and

WHEREAS, the Board does not take a position as to any zoning compliance, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL conditions; and

WHEREAS, as to the Opposition's contention that the building does not comply with other provisions of the MDL, the Board similarly does not take a position as to compliance with provisions of the MDL that are not the subject of the instant application, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, however, at the Board's direction, the applicant revised its plans during the course of the hearing process to preserve the distinctive cornice on the front facade of the buildings (which was originally proposed to be altered) in an effort to make the proposed buildings consistent with the character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated July 15, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 31, 2012" - (8) sheets, "August 28, 2012"-(4) sheets and "September 10, 2012"-(1) sheet; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

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

Adopted by the Board of Standards and Appeals, September 11, 2012.

172-11-A
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Folarunso Ovalabu, owner.
SUBJECT – Application November 7, 2011 – Appeal seeking determination that the owner of the property has acquired a common law vested right to complete construction under the prior R3-2 zoning. R3A zoning district.
PREMISES AFFECTED – 119-43 197th Street, south of intersection of east side of 197th Street and south side of 119th Avenue, Block 12653, Lot 42, Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES –
For Applicant: Todd Dale.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a semi-detached two-story, two-family residential building under the common law doctrine of vested rights; 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 September 11, 2012; and

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

WHEREAS, the site is located on the east side of 197th Street between 119th Avenue and 120th Avenue; and

WHEREAS, the site has 37.31 feet of frontage on 197th Street, a depth of 100.44 feet, and a total lot area of 3,261.5 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a semi-detached two-story, two-family home with a floor area of 1,947.75 sq. ft. (0.60 FAR) (the "Building"); and

WHEREAS, the subject site is currently located in an R3A zoning district, but was formerly located within an R3-2 zoning district; and

WHEREAS, the Building complies with the former R3-2 zoning district parameters; and

WHEREAS, however, on October 29, 2007 (the "Rezoning Date"), the City Council voted to adopt the St. Albans/Hollis Rezoning, which rezoned the site to an R3A zoning district, as noted above; and

WHEREAS, the Building does not comply with the R3A zoning district parameters; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the applicant states that New Building Permit No. 402442095-01-NB was issued on August 13, 2007 (the "Permit"), authorizing the development of a semi-detached two-story, two-family home pursuant to R3-2 zoning district regulations; and

WHEREAS, the Board notes that, as of the Rezoning Date, the applicant had obtained permits for the development and had completed 100 percent of the foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are permitted for the completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained within two years of the Rezoning Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of its lapse on October 29, 2009, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letter dated June 20, 2012, DOB states that the Permit was lawfully issued, authorizing construction of the Building prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a

party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that, in addition to completing all excavation and foundation work, as of the two-year anniversary of the Rezoning Date the applicant had completed 100 percent of the shell and roof of the building, and the only remaining work to be done prior to filing for a certificate of occupancy is the connection of water, gas, and sewer lines, and the installation of the curb cut and driveway; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: reports from the mortgage lender, including itemized construction holdback ledgers, and photographs of the site; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the two-year anniversary of the Rezoning Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that the owner expended approximately $210,000, including hard and soft costs and irrevocable commitments, out of $250,000 budgeted for the entire project; and

WHEREAS, thus, the expenditures up to the two-year anniversary of the Rezoning Date represent approximately 84 percent of the projected total cost; and

WHEREAS, as proof of the expenditures, the applicant has submitted reports from the mortgage lender, including itemized construction holdback ledgers, a construction payment chart, and copies of invoices; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that semi-detached buildings are not permitted in the subject R3A zoning district; and

WHEREAS, accordingly, the applicant states that if the owner is not permitted to vest under the former R3-2 zoning, demolition of the existing building would be necessary as it would not be feasible to retain any of the existing structure to construct a compliant home; and

WHEREAS, the applicant further states that, due to the yard regulations associated with the subject R3A district, a complying home would be less than 14 feet in width; and

WHEREAS, the Board agrees that the need to demolish and reconstruct the existing building, coupled with the loss of expenditures and outstanding fees that could not be recouped, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the two-year anniversary of the Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 402442095-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 11, 2012.

47-12-A

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

SUBJECT – Application March 2, 2012 – Appeal to Department of Building' determination that the proposed two-family building did not qualify for rear yard reduction pursuant §23-52. R3-1 zoning district.

PREMISES AFFECTED – 22 Lewiston Street, west side of Lewiston Street, 530.86' north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated February 2, 2012 by the Staten Island Borough Commissioner of the Department of Buildings ("DOB") (the "Final Determination"), with respect to DOB Application No. 520089056; and

WHEREAS, the Final Determination states, in pertinent part:

> Proposed construction of two family residential building on zoning lot that is not less than 70 feet deep at all points, which is contrary to ZR 23-52; and

WHEREAS, a public hearing was held on this appeal on June 19, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 7, 2012, and then to decision on September 11, 2012; and

WHERAS, the appeal is filed on behalf of the property owner who contends that DOB's denial was erroneous (the "Appellant"); and

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

WHEREAS, the subject site consists of an irregularly-shaped lot with 114.15 feet of frontage on a mapped but unbuilt portion of Lewiston Street, a depth ranging from a minimum of 40.97 feet along the northern lot line to a maximum of 92.11 feet along the southern lot line, and a total lot area of 6,654 sq. ft.; and

WHEREAS, the Appellant states that the subject site was previously part of a larger tax lot (Lot 152), consisting of property which extended across Lewiston Street, a final mapped street; however, the Appellant represents that the subject site has always consisted of a single and separate zoning lot pursuant to ZR § 12-10; and

WHEREAS, as discussed further below, DOB claims that the Appellant has not established that the subject site constitutes a valid zoning lot that is owned separately and individually from all other tracts of land; and

WHEREAS, the site is currently vacant and is located in an R3-1 zoning district within the Lower Density Growth Management Area (LDGMA); and

PROCEDURAL HISTORY

WHEREAS, the subject appeal concerns the proposal to construct a two-story two-family home with a floor area of 3,482.3 sq. ft. (0.52 FAR) on the site; and

WHEREAS, the applicant states that the proposed home complies with all requirements of the underlying R3-1 (LDGMA) zoning district; and

WHEREAS, however, the rear yard for the proposed home provides a rear yard with a depth of 10'-7" along the northerly building line and a depth of more than 30'-0" at the southerly building line (a rear yard with a minimum depth of 30'-0" is required), with the home angled parallel to the street line such that the depth of the rear yard increases proportionally to the increase in the depth of the subject lot from the northern lot line to the southern lot line; and

WHEREAS, on February 2, 2011, DOB issued the Final Determination, denying the Appellant's application because the maximum depth of the subject site was not less than 70 feet at all points, and therefore was not entitled to a reduction in the depth of the rear yard under ZR § 23-52; and

WHEREAS, the Appellant asserts that the Final Determination is contrary to the plain language of ZR § 23-52, which permits a reduction in the required rear yard depth for lots which are "less than 70 feet deep at any point," and therefore allows for the reduction of the rear yard depth for portions of the subject lot, which has a depth ranging from 40.97 feet to 92.11 feet; and

WHEREAS, accordingly, the question on appeal is limited to the determination of whether ZR § 23-52 provides a rear yard reduction for all lots that are "less than 70 feet deep at any point" or only when "the maximum depth of such zoning lot is less than 70 feet"; and

PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the ZR provision the Appellant and DOB cite reads, in pertinent part:

> ZR § 23-52 (Special Provisions for Shallow Interior Lots)
>
> R3 R4 R5 R6 R7 R8 R9 R10
>
> In the districts indicated, if an #interior lot#:
>
> (a) was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961 and on the date of application for a building permit; and
>
> (b) is less than 70 feet deep at any point;
>
> the depth of a required #rear yard# for such #interior lot# may be reduced by one foot for each foot by which the maximum depth of such #zoning lot# is less than 70 feet. On any #interior lot# with a maximum depth of 50 feet or less, the minimum depth of a required #rear yard# shall be ten feet.
>
> * * *
>
> ZR § 33-27 (Special Provisions for Shallow Interior Lots)
>
> C1 C2 C3 C4 C5 C6 C7 C8
>
> In all districts, as indicated, if an #interior lot# consists entirely of a tract of land:
>
> (a) which was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961 and on the date of application for a building permit; and
>
> (b) which is less than 70 feet deep;
>
> the depth of a required #rear yard# for such #interior lot# may be reduced by one foot for each two feet by which the maximum depth of such #interior lot# is less than 70 feet. No #rear yard# is required on any #interior lot# with a maximum depth of 50 feet.
>
> * * *
>
> ZR § 62-332 (Rear Yards and Waterfront Yards)
>
> (a)…For such shallow portions of lots, the

minimum depth may be reduced by one foot for each foot that the lot dimension measured from such edge is less than 70 or 80 feet, as applicable…; and

DISCUSSION

A. The Appellant's Interpretation

WHEREAS, the Appellant asserts that the language of ZR § 23-52 is clear and unambiguous and that, accordingly, it must be construed "so as to give effect to the plain meaning of the words used" (Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98 106-107 (1997); citing Patrolmen's Benevolent Assn. v. City of New York, 41 N.Y.2d 205, 208 (1976) [citations omitted]; and

WHEREAS, specifically, the Appellant argues that the Final Determination is contrary to the plain meaning of ZR § 23-52, which provides for applicability of the provision in the event that the lot "is 70 feet deep *at any point*" [emphasis added]; and

WHEREAS, the Appellant argues that there is no legal or rational basis for DOB to expand the clear language of ZR § 23-52; and

WHEREAS, the Appellant contends that the words "at any point" in ZR § 23-52(b) are unambiguous and should take precedence over potentially conflicting subsequent provisions of the text; and

WHEREAS, specifically, the Appellant argues that the words "at any point" in ZR § 23-52(b) should be given more weight than the potentially conflicting language in ZR § 23-52 permitting a reduction in the depth of the rear yard "by one foot for each foot by which *the maximum depth of such #zoning lot# is less than 70 feet*" [emphasis added] because the words "at any point" appear first in the text and are therefore predominant; and

WHEREAS, the Appellant also contends that DOB's reliance on the phrase "by which the maximum depth of such zoning lot is less than 70 feet" as proof that the intent of the statute is erroneous, and argues that DOB's interpretation appears to create a conflict with the inclusion and plain meaning of the word "any" in the statute; and

WHEREAS, specifically, the Appellant states that, rather than applying an interpretation that is consistent with use of the word "any," DOB's interpretation would make ZR § 23-52(b) a totally superfluous appendage to the statute; and

WHEREAS, the Appellant argues that a more cogent interpretation of the text results from reviewing the "maximum depth" clause more carefully, and looks to the ZR § 12-10 definition of "Lot Depth" ("the mean horizontal distance between the #front lot line# and #rear lot line# of a #zoning lot#...") for guidance; and

WHEREAS, the Appellant contends that DOB's interpretation ignores the clear discrepancy between measuring a "mean" distance (a single number, based on an average of the lot depth), versus the language in ZR § 23-52, which is intended to apply to shallow lots that may be irregularly shaped but which are less than 70 feet deep "at any point" (regardless of the mean measurement); and

WHEREAS, the Appellant further contends that a reasonable reading of ZR § 23-52 provides for a reduction of one foot for each foot by which the maximum depth of such zoning lot is less than 70 feet (as applied only to those portions of the lot that are a maximum of 70 feet in depth), and that the use of the words "maximum depth" in the provision is merely intended to refer to the maximum depth (a fixed point as opposed to a mean) up to which a property owner is entitled to a reduction in the rear yard; and

WHEREAS, the Appellant argues that by measuring each point, as opposed to the usual "mean" measurement, ZR § 23-52 provides for a rear yard reduction of one foot for portions of a lot that are 69 feet deep, a reduction of two feet for portions that are 68 feet deep, a reduction of three feet for portions that are 67 feet deep, etc.; and

WHEREAS, the Appellant states that this formula would apply down to a depth of 50 feet, at which point a maximum reduction of 20 feet would be permitted (to a rear yard with a minimum depth of ten feet), and that portions of the lot that are greater than 70 feet in depth would not be entitled to a reduction in the required rear yard; and

WHEREAS, the Appellant represents that the proposed interpretation does not require that the word "any" be omitted from consideration, and furthermore accounts for irregularly shaped lots by not providing a benefit to lots that are less than 70 feet deep in only a small area, while also not penalizing lots that are primarily less than 70 feet deep but may have a section that is more than 70 feet in depth; and

WHEREAS, the Appellant also argues that the legislative intent supports its interpretation of the text, and submitted three iterations of the ZR § 23-52 language: (1) the text of the section from Zoning New York City, the 1958 proposal for the update of the Zoning Resolution prepared by Voorhees Walker Smith & Smith (the "1958 Voorhees Proposal"); (2) the original text of the section from the December 15, 1961 Zoning Resolution (the "1961 Text"); and (3) the February 20, 1964 resolution by the Board of Estimate amending ZR § 23-52 (the "1964 Amendment"); and

WHEREAS, the Appellant notes that the 1958 Voorhees Proposal did not include the words "at any point" in subsection (b) of the proposed text, and contends that the fact that the text was changed from the 1958 Voorhees Proposal to include the words "at any point" in subsection (b) of the 1961 Text demonstrates a clear intent to have the section apply to zoning lots with varied depths, and to allow the section to apply to zoning lots that might exceed a depth of 70 feet at certain points; and

WHEREAS, the Appellant further contends that the inclusion of the word "any" in the 1961 Text was not an arbitrary inclusion, and by any reasonable interpretation the addition of this word must be considered an effort to expand the application of the provision; and

WHEREAS, the Appellant argues that the 1964 Amendment further evidences the intent to expand the application of ZR § 23-52 because it allows the provision to apply within R3, R4, and R5 zoning districts where it previously only applied in R6 through R10 zoning districts, and the legislature's expansion of the application of the

provision to lower density residential neighborhoods reflects that the history of amendments to ZR § 23-52 is one of expansion, not limitation, and the presence of potentially contradictory words within ZR § 23-52 should be viewed in the context of the history of expansion of this provision; and

WHEREAS, the Appellant also points to ZR §§ 33-27 and 62-332(a) as further evidence of the intended meaning of ZR § 23-52, specifically with regards to the inclusion of the words "at any point" in ZR § 23-52(b); and

WHEREAS, the Appellant notes that ZR § 33-27, which is the commercial/community facility equivalent to ZR § 23-52, parallels the language of ZR § 23-52, however ZR § 33-27(b) does not include the language "at any point;" and

WHEREAS, the Appellant argues that the purposeful inclusion of "at any point" in ZR § 23-52 clearly and unambiguously calls for application of a different standard than ZR § 33-27, and contends that the relevant language of ZR § 23-52 should be read as follows: "the depth of a required rear yard for such interior lot may be reduced by one foot for each foot by which the maximum depth of such *portion of the* zoning lot is less than 70 feet" [language added]; and

WHEREAS, the Appellant asserts that such an interpretation provides for relief where a residential lot is unreasonably shallow, but avoids granting relief for portions of a lot where it is possible to provide a required rear yard; and

WHEREAS, the Appellant represents that in similar sections of the Zoning Resolution enacted on later dates, the Zoning Resolution includes language designed to indicate the application of provisions that apply to portions of lots; and

WHEREAS, specifically, the Appellant argues that ZR § 62-332(a), which concerns the required depth of waterfront yards (and provides relief for shallow lots) is an example of a section of the Zoning Resolution which addresses this issue, by noting that: "*[f]or such shallow portions of lots*, the minimum depth may be reduced by one foot for each foot that the lot dimension measured from such edge is less than 70 or 80 feet, as applicable" [emphasis added]; and

WHEREAS, the Appellant notes that the reference to shallow portions of lots is similarly repeated in ZR §§ 62-332(b) and 62-53(a)(3)(i); and

WHEREAS, the Appellant asserts that, rather than ignore the intentional inclusion of the "at any point" language in ZR § 23-52, it is more reasonable to assume that the drafters merely neglected to modify the second part of the provision to refer to the affected "portions" of the lot; and

B. The Department of Buildings Interpretation

WHEREAS, DOB argues that the Appellant's interpretation disregards the plain meaning of the text because ZR § 23-52 specifies that a reduction is allowed only where the maximum depth of the lot is greater than 70 feet, regardless of any point that may be shallower than 70 feet; and

WHEREAS, DOB asserts that, although a lot may meet the criteria set forth in subparagraphs (a) and (b), the operative language of ZR § 23-52 is contained in the last paragraph, which reflects that the maximum depth of the lot is the critical dimension for the purpose of calculating the amount of the rear yard deduction; and

WHEREAS, DOB further asserts that the purpose of the phrase under ZR § 23-52(b) describing a lot "which is less than 70 feet deep at any point" is to identify the category of interior lots for which a reduction may be available, and pursuant to the last paragraph of the text, for lots that meet the prerequisites of subsections (a) and (b), a lot having a maximum depth of less than 70 feet may apply one formula to reduce the rear yard depth, and a lot having a maximum depth of less than 50 feet may apply another formula; and

WHEREAS, DOB contends that subsections (a) and (b) describe a threshold that must be met prior to the application of the reduction formula, but satisfaction of subsections (a) and (b) do not guarantee a rear yard reduction, nor do they establish how much of a reduction is available; and

WHEREAS, by letter dated July 13, 2012, the Department of City Planning ("DCP") states that it agrees with DOB's interpretation of ZR § 23-52, noting that "[s]ince the maximum depth of the zoning lot, as stated by the applicant, is more than 70 feet deep, no reduction is possible;" and

WHEREAS, DOB argues that, contrary to the Appellant's claim that the phrase "any point" was intentionally added to the 1961 Text because it intended to change the 1958 Voorhees Proposal which did not include such language, the addition or omission of the words "any point" does not change the fact that the rear yard depth reduction allowed by ZR § 23-52 is calculated only according to a lot's maximum depth; and

WHEREAS, DOB asserts that both the 1958 Voorhees Proposal and the adopted text of ZR § 23-52 allow a rear yard to be reduced by one foot for each foot by which the maximum depth of the zoning lot is less than 70 feet, and that even though the words "at any point" were added in the adopted 1961 Text, the last paragraph of the section dictates that the reduction is calculated based on the amount by which the *maximum* lot depth is less than 70 feet, and there is no rational application of this formula that allows a rear yard depth reduction if the zoning lot's maximum depth is 70 feet or more; and

WHEREAS, as to the Appellant's contention that the 1964 Amendment's addition of R3 through R5 zoning districts to the list of districts in which the rear yard reduction may be taken demonstrates an intent to expand the application of ZR § 23-52 to permit a reduction in rear yard depth for lots having varying depths which fall short of 70 feet at certain points and exceed 70 feet at certain points, DOB asserts that the addition of applicable zoning districts has no bearing on the circumstances under which the statute allows a rear yard depth reduction; and

WHEREAS, DOB further argues that the minor differences in the versions of the 1958 Voorhees Proposal, the 1961 Text, the 1964 Amendment, as well as the February 2, 2011 amended text which removed the phrase

"consists of a tract of land" from ZR § 23-52, do not affect the critical part of the text that sets forth the rear yard depth reduction calculation, and the meaning of the section did not change as a result of any of these minor amendments; and

WHEREAS, as to the Appellant's claim that the fact that ZR § 33-27 does not include the phrase "at any point" and is purposefully dissimilar to the language of ZR § 23-52, DOB asserts that there is no basis to conclude that the words "at any point" in ZR § 23-52 allow a rear yard reduction along shallow portions of a lot in the residential district, and the absence of such words in ZR § 33-27 allow a rear yard reduction only where every point on the lot is less than 70 feet deep, since both sections only permit a deduction that corresponds to the amount by which the maximum lot depth is less than 70 feet; and

WHEREAS, as to the Appellant's claim that the language of ZR § 62-332(a), which allows a reduction in minimum depth of a rear yard along portions of waterfront zoning lots, should be used as guidance in interpreting ZR § 23-52, DOB argues that the two provisions are not comparable; and

WHEREAS, specifically, DOB asserts that ZR § 62-332(a) is unlike ZR § 23-52 (and ZR § 33-27) in that it allows a rear yard reduction along shallow portions of the waterfront zoning lot rather than a reduction of the minimum required rear yard for the entire lot; and

WHEREAS, DOB argues that the difference in the language of ZR § 62-332(a) actually shows that there is a significant difference between the calculation of a rear yard reduction on a shallow interior lot and on a waterfront lot, as there is no indication that a reduction is allowed along the shallow portions of interior lots, and contrary to the Appellant's claim, the meaningful difference in language between these sections makes clear that the rear yard reduction of ZR § 23-52 is only available for the entire lot if the maximum depth of the lot is less than 70 feet; and

CONCLUSION

WHEREAS, the Board agrees with DOB and DCP's interpretation of ZR § 23-52 as allowing for a reduction of the depth of the rear yard only if the zoning lot is less than 70 feet deep at every point; and

WHEREAS, specifically, the Board agrees with DOB that the operative language of ZR § 23-52 is found in the last paragraph, which states that "the depth of a required #rear yard# for such #interior lot# may be reduced by one foot for each foot by which the maximum depth of such #zoning lot# is less than 70 feet…" and that satisfaction of subsections (a) and (b) of ZR § 23-52 does not guarantee a rear yard reduction; and

WHEREAS, the Board disagrees with the Appellant's claim that the language "less than 70 feet deep at any point" is clear and unambiguous, given that when the statute is read in its entirety, the language relied upon by the Appellant is clearly at odds with the last paragraph of the statute ("by which the maximum depth of such #zoning lot# is less than 70 feet"); and

WHEREAS, the Board acknowledges that there is a contradiction between the words "at any point" in ZR § 23-52(b) and "maximum depth" in the last paragraph of the statute; however, the Board finds that when the statute is read in its entirety the only rational way to interpret the text is to allow for a rear yard reduction only if the zoning lot is less than 70 feet deep at every point; and

WHEREAS, the Board disagrees with the Appellant's argument that the language "at any point" is predominant in the text and should be given more weight than the words "maximum depth" merely because the phrase "at any point" is found earlier in the text of ZR § 23-52; and

WHEREAS, the Board notes that the text of ZR § 23-52 is formatted in such a way that ZR §§ 23-52(a) and (b) are subsections of the main body of the text which begins "[i]n the districts indicated, if an #interior lot#," and which resumes in the last paragraph which provides the reduction formula that serves as the operative language of the section and includes the phrase "the maximum depth of such #zoning lot#"; therefore, the Board finds no support for the Appellant's claim that the phrase "at any point" should be given more weight in interpreting the statute; and

WHEREAS, the Board finds that the formula advocated by the Appellant for applying the rear yard reduction of ZR § 23-52, which relies in part on the ZR § 12-10 definition of "lot depth" to interpret the text and would create a "sliding scale" whereby the depth of a rear yard would vary in accordance with the portions of the lot that are less than 70 feet, is not supported by the text; and

WHEREAS, the Board notes that ZR § 23-52 refers only to "the maximum depth" of a zoning lot and at no point uses the term "lot depth"; as such the Board does not find it appropriate to invoke the definition of "Lot Depth" in ZR § 12-10 in order to give meaning to the phrase "maximum depth"; and

WHEREAS, the Board further rejects the Appellant's suggestion that the Board should alter the relevant language of ZR § 23-52 to read: "the depth of a required rear yard for such interior lot may be reduced by one foot for each foot by which the maximum depth of such *portion of the* zoning lot is less than 70 feet" [language added]; and

WHEREAS, the Board finds that while the text of ZR § 23-52 may be imperfect, there is no rational basis for the Board to add language to a section of the Zoning Resolution that was not included by the drafters of the text, and if the Appellant seeks to have the text of the Zoning Resolution amended it can pursue such an amendment at the City Planning Commission; and

WHEREAS, the Board disagrees with the Appellant's assertion that the legislative history of ZR § 23-52 supports its interpretation of the text; and

WHEREAS, the Board agrees with DOB that the 1964 Amendment's addition of R3 through R5 zoning districts to the list of districts in which the rear yard reduction may be taken has no bearing on the circumstances under which the statute allows a rear yard depth reduction, and contrary to the Appellant's claim, does not demonstrate an intent to expand the application of ZR § 23-52; and

WHEREAS, the Board finds that none of the amendments to the text of ZR § 23-52 demonstrate an intent that the section be applied to allow a reduction in the depth of the rear yard for lots that have a maximum depth of 70 feet or more; and

WHEREAS, to the contrary, the Board notes that the commentary that accompanies the 1964 Amendment states that:

> Sections 23-52 and 24-37 of the Zoning Resolution provide for a reduction in the depth of required rear yards in R6, R7, R8, R9 and R10 Districts, *if the affected lots are less than 70 feet in maximum depth*. This amendment will permit the same reduction of the depth of rear yard in R3, R4 and R5 Districts [emphasis added]; and

WHEREAS, accordingly, the Board finds that the commentary to the 1964 Amendment, which is the only portion of the legislative history materials provided by the Appellant which addresses the language at issue in the subject appeal, actually supports DOB and DCP's interpretation of the text in that it indicates that the intent of the text is for rear yard reductions to be permitted only for lots that "are less than 70 feet in maximum depth"; the commentary to the 1964 Amendment does not mention the language "at any point"; and

WHEREAS, the Board agrees with DOB that the fact that phrase "at any point" is absent from the text of ZR § 33-27 (the commercial/community facility equivalent to ZR § 23-52) does not provide a basis to conclude that in residential districts ZR § 23-52 allows a rear yard reduction along shallow portions of a lot, while in commercial districts ZR § 33-27 only allows a rear yard reduction where every point on the lot is less than 70 feet deep, since both sections only permit a deduction that corresponds to the amount by which the maximum lot depth is less than 70 feet; and

WHEREAS, the Board notes that the Appellant has not provided any rationale as to why a more liberal formula for providing a rear yard reduction should apply to residential districts as opposed to commercial districts, and the Board is not convinced that the mere inclusion of the words "at any point" in ZR § 23-52 was intended to evoke a significantly different formula for calculating a rear yard reduction where the text of ZR §§ 23-52 and 33-27 are otherwise substantially identical; and

WHEREAS, as to the Appellant's comparison of the language of ZR § 23-52 and 62-332(a), the Board agrees with DOB that the difference in the language of ZR § 62-332(a) actually shows that there is a significant difference between the calculation of a rear yard reduction on a shallow interior lot and on a waterfront lot, and the meaningful difference in language between these sections makes clear that the rear yard reduction of ZR § 23-52 is only available for the entire lot if the maximum depth of the lot is less than 70 feet; and

WHEREAS, the Board notes that during the course of the hearing process DOB raised an additional concern that the subject site also did not satisfy the threshold requirement under ZR § 23-52(a) because the Appellant did not demonstrate that the site was a zoning lot owned separately and individually from all other tracts of land on December 15, 1961 and on the date of the application for a building permit; and

WHEREAS, however, because DOB's objection related to ZR § 23-52(a) was not part of the Final Determination which serves as the basis of this appeal, and because the Board deems it unnecessary to make a determination on the ZR § 23-52(a) issue in order to reach a decision on the merits of the subject appeal, the Board therefore finds it appropriate to limit the scope of its determination accordingly; and

WHEREAS, the Board concludes that, based upon the above, ZR § 23-52 allows a reduction in the depth of the required rear yard only when the maximum depth of the zoning lot is less than 70 feet at every point; and

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Staten Island Borough Commissioner, dated February 2, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, September 11, 2012.

201-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Scott Whalen, owner; TSC Building, LLC, lessee.

SUBJECT – Application June 28, 2012 – Proposed construction of a single family home that does not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.

PREMISES AFFECTED – 112 Alberta Avenue, southeast corner of intersection of Wild Avenue and Alberta Avenue, Block 2643, Lot 10, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 31, 2012, acting on Department of Buildings Application No. 520094095, reads in pertinent part:

> 1 – The proposed building which does not front on a legally mapped street is contrary to Article 3, Section 36 of the General City Law; and

WHEREAS, a public hearing was held on this application on September 11, 2012 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated August 8, 2012, the Fire

Department advises the Board that because the paved portion of Alberta Avenue, which is considered a private access road, has a width of 30 feet, the entire building must be fully sprinklered in conformance with the sprinkler provisions of Fire Code § 503.8.2.1; and

WHEREAS, in response, the applicant submitted plans reflecting that the building will be fully sprinklered in accordance with the Fire Department's request; 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 May 31, 2012, acting on Department of Buildings Application No. 520094095 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 29, 2012 "- one (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 the building shall be fully sprinklered in accordance with the BSA-approved plans;

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, September 11, 2012.

119-11-A
APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.
SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.
PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES – None.

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

125-11-A
APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.
SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings' determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.
PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 25, 2012, at 10 A.M., for deferred decision.

162-11-A
APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.
SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.
PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES –
For Applicant: Steven M. Sinacori.
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 October 16, 2012, at 10 A.M., for decision, hearing closed.

21-12-A
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Pavel Kogan, owner.
SUBJECT – Application January 30, 2012 – Proposed construction of an accessory swimming pool partially within the bed of a mapped street, contrary to General City Law Section 35. R1-2 (NA-1) Zoning District.
PREMISES AFFECTED – 55 Louise Lane, west of intersection of north side of Louise Lane and west side of Tiber Place, Block 687, Lot 281, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to October 16, 2012, at 10 A.M., for continued hearing.

103-12-A
APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.
SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.
PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.
COMMUNITY BOARD #2BK
APPEARANCES –
For Applicant: Jordan Most.
ACTION OF THE BOARD – Laid over to October 23, 2012, at 10 A.M., for continued hearing.

194-12-A
APPLICANT – John Sullivan, for Gelu-Durius Musica, owner.
SUBJECT – Application June 15, 2012 – Appeal challenging the Department of Buildings' determination that the proposed nursery school complies with ZR §24-11. R2A Zoning District.
PREMISES AFFECTED – 213-14 Union Turnpike, south side of Union Turnpike at corner of 214th Street, Block 7787, Lot 44, Borough of Queens.
COMMUNITY BOARD #11Q
APPEARANCES –
For Applicant: John Sullivan.
For Administration: Amandus Derr of DOB.
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 October 30, 2012, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 12:00 P.M.

REGULAR MEETING
TUESDAY AFTERNOON, SEPTEMBER 11, 2012
1:30 P.M.

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

ZONING CALENDAR

165-11-BZ
CEQR #12-BSA-034K
APPLICANT – Sheldon Lobel, P.C., for Agudath Israel Youth of Boro Park, owner.
SUBJECT – Application October 19, 2011 – Variance (§72-21) to enlarge an existing Use Group 4A house of worship (*Agudath Israel Youth of Boro Park*) for an educational center on proposed third and fourth floors and to legalize two interior balconies, contrary to rear yard (§24-36) and lot coverage (§24-11) regulations. R6 zoning district.
PREMISES AFFECTED – 1561 50th Street, near the corner of 16th Avenue, Block 5453, Lot 51, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Richard Lobel.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –
WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 20, 2011, acting on Department of Buildings Application No. 301222665 reads, in pertinent part:

> The proposed enlargement of the approved community facility building, to add two side interior balconies at the second floor level within the required 30 foot rear yard and to extend the third and fourth floors to the rear lot line, is contrary to:
> 1. ZR 24-36, in that the proposed rear yard at the second, third and fourth floors is less than the minimum required rear yard of 30 feet.
> 2. ZR 24-11, in that the proposed lot coverage is more than the maximum permitted lot coverage of 65%; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R6 zoning district, the enlargement of the third story of an existing synagogue building and the addition of a fourth story to be occupied by a Holocaust education center, and the legalization of the extension of the women's balcony on the

second floor, which does not comply with rear yard or lot coverage requirements for community facilities, contrary to ZR §§ 24-36 and 24-11; 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 July 24, 2012 and August 14, 2012, and then to decision on September 11, 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, Brooklyn, recommends approval of this application; and

WHEREAS, New York City Council Member David G. Greenfield recommends approval of this application; and

WHEREAS, this application is being brought on behalf of Agudath Israel Youth of Boro Park, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject site is located on the north side of 50th Street, between 15th Avenue and 16th Avenue, within an R6 zoning district; and

WHEREAS, the site has 60 feet of frontage on 50th Street, a depth of approximately 100'-2", and a total lot area of 6,011 sq. ft.; and

WHEREAS, the site is currently occupied by a three-story synagogue building (Use Group 4) with a floor area of 13,767 sq. ft. (2.29 FAR) and a total height of 42'-6"; and

WHEREAS, the applicant proposes to legalize the extension of the second floor to the rear lot line and to enlarge the subject building by extending the existing third floor to the rear lot line and adding a fourth floor; and

WHEREAS, the enlarged third and fourth floors of the synagogue building will be occupied by the Kleinman Family Holocaust Education Center (the "Holocaust Center"), a non-profit organization; and

WHEREAS, the proposed building will have the following parameters: a floor area of 21,334 sq. ft. (3.55 FAR) (the maximum permitted floor area is 28,851 sq. ft. (4.8 FAR)); a total height of 60'-0" (the maximum permitted total height is 60'-0"); a lot coverage of 99.26 percent (the maximum permitted lot coverage is 65 percent); and a rear yard with a depth of approximately 0'-2" (a rear yard with a minimum depth of 30'-0" is required above the first floor); and

WHEREAS, the applicant originally proposed to construct a building with no rear yard at the fourth floor; however, in response to concerns raised by the Board during the hearing process, the applicant submitted revised plans reflecting that the fourth floor will be set back ten feet from the rear lot line; and

WHEREAS, the proposed building will provide the following uses: (1) a mikvah, social hall, men's and women's lobbies, coat rooms, and an accessory kitchen for the Synagogue, and a media center and library for the Holocaust Center at the cellar level; (2) the main synagogue and lobby for the Synagogue at the first floor; (3) a women's gallery, women's lobby, conference room/playroom, office, and coat room for the Synagogue at the second floor; (4) museum exhibit space, a theater and accessory space for the Holocaust Center at the third floor; and (5) a multi-purpose room, temporary exhibit space, a recording studio, offices and accessory space for the Holocaust Center at the fourth floor; and

WHEREAS, because the proposed building does not comply with the underlying zoning regulations for lot coverage and rear yard, the applicant seeks the subject variance; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to provide a women's balcony with sufficient space to accommodate the current size of the congregation and allow for future growth; and (2) to provide floor plates with a sufficient depth to accommodate the layout of interactive displays and permanent exhibition space required to allow the Holocaust Center to operate effectively; and

WHEREAS, the applicant states that the requested lot coverage and rear yard waivers are necessary to legalize the extension of the second floor of the existing synagogue building to accommodate the enlargement of the women's balcony; and

WHEREAS, the applicant further states that attendance at the Synagogue currently ranges from approximately 65 women during a typical weekday service, 100 women during Friday evening service, and 175 women during High Holiday services; and

WHEREAS, the applicant states that a complying women's balcony at the second floor would have a maximum of 1,277 sq. ft. of floor area, and would be capable of accommodating only 116 women, while the existing (proposed to be legalized) women's balcony has a floor area of 1,835 sq. ft. and can accommodate 152 women congregants; and

WHEREAS, accordingly, the applicant states that an as-of-right women's balcony at the second floor would not be sufficient to accommodate the existing congregation, let alone allow for future growth, and therefore the requested rear yard and lot coverage waivers are necessary to satisfy the programmatic needs of the Synagogue; and

WHEREAS, the applicant states that the Synagogue also has a programmatic need to accommodate the proposed Holocaust Center on the third and fourth floors of the subject building, and that the requested waivers are necessary in order to provide floor plates with a sufficient depth to allow for the efficient operation of the Holocaust Center; and

WHEREAS, the applicant submitted a letter from the exhibition designer, stating that the larger floor plate at the third floor is necessary because the design of the historical exhibition is modeled upon a "continuum flow" layout, which enables the visitor to become immersed in the story line and move through a set of interrelated experiences that build sequentially through the space to the end; and

WHEREAS, the letter from the exhibit designer further

states that the emotional momentum provided by this layout is critical to the success of the design, and there are 14 content areas which the applicant has been able to accommodate on the expanded third floor only with great effort, and splitting the exhibition into two separate floors would break the cohesion required to facilitate the immersive experience; and

WHEREAS, as to the fourth floor, the exhibit designer states that the proposed floor plate with a 10'-0" setback at the rear is the minimum necessary to provide sufficient space to accommodate temporary exhibitions on that floor; and

WHEREAS, specifically, the exhibit designer states that temporary exhibitions, which are typically produced by outside organizations such as the United States Memorial Holocaust Museum or the Museum of Jewish Heritage, are usually provided for periods of ten to 12 weeks and are produced in sizes generally ranging from 3,000 to 3,250 sq. ft., 2000 to 2,500 sq. ft., and 1,000 to 1,500 sq. ft.; and

WHEREAS, the applicant states that an as-of-right floor plate on the fourth floor would only be capable of accommodating approximately 800 sq. ft. of temporary exhibition space which space would also have to be shared with other programming such as lectures and conferences, while the proposed floor plate on the fourth floor, with a rear setback of 10'-0", would allow approximately 1,250 sq. ft. of floor area to be allocated specifically for temporary exhibition space, which the applicant represents is the bare minimum required to accommodate available exhibitions offered at the low end of the size range; and

WHEREAS, the applicant states that, in addition to its programmatic needs, the following unique physical condition creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the physical constraints of the existing building; and

WHEREAS, as to the constraints of the existing building, the applicant states that an as-of-right scenario which would house the proposed Holocaust Center on the existing third and new fourth and fifth floors would not be feasible, as the existing structure is not designed to sustain the additional assembly load of a fifth floor; and

WHEREAS, specifically, the applicant submitted a letter from the engineer stating that while the existing building was designed to support one additional story (a fourth floor), the added incremental load imposed by a new fifth floor addition would (1) overstress the existing structural support elements by approximately 20 percent; (2) result in severe distress and likely cracking of the exterior walls; (3) cause settlement of the existing structure to such a degree that plumbing and gas lines are likely to crack, electrical conduits are likely to snap, and all interior sheetrock joints are likely to open up; and (4) create the potential for a possible failure and partial collapse of the building; and

WHEREAS, the letter from the engineer further states that in order to support a fifth floor, an independent structural support system for that level would be required, necessitating (1) underpinning of the existing and adjacent structures, (2) reinforcement of the existing structure, (3) placement of new concrete footings, and (4) new steel columns which would need to be threated through the existing building perimeter; and

WHEREAS, the letter submitted by the engineer notes that although the above measures are feasible, they are not recommended as they are extremely dangerous under normal circumstances and particularly in the tight urban environment found at the subject site; further, such an undertaking would be extremely costly, rendering the construction impractical; and

WHEREAS, accordingly, the applicant states that the deeper floor plates at the third and fourth floors are necessary both to satisfy the programmatic needs of the Synagogue to provide a functional and efficient permanent exhibition space for the Holocaust Center on the third floor and sufficient space for the temporary exhibition space on the fourth floor, as well as to overcome the physical constraints of the existing building which preclude the construction of a complying fifth floor; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the applicant represents that the Holocaust Center also qualifies as a religious use such that it is entitled to deference as to zoning and its ability to rely on programmatic needs; and

WHEREAS, as evidence of its religious nature, the applicant submitted the mission statement for the Holocaust Center, which states that it is established, in part, for the following reasons: (1) to serve as a Holocaust education center within the framework fashioned by the precepts of Halacha as well as the ethos of Torah Hashkafa; (2) to focus special emphasis on the spiritual and moral dimensions to the Holocaust; (3) to illustrate the life of Torah-observant Jewry in Europe which preceded the Holocaust; (4) to transmit an appreciation for the spiritual and moral heroism by those who retained their faith and adherence to the Torah practices; and (5) to illustrate the resurgence of the Torah world, in the post-Holocaust era, and the rebuilding of Torah communities and institutions; and

WHEREAS, the applicant represents that the primary focus of the Holocaust Center's mission statement is one of religious study; and

WHEREAS, the applicant states that the proposed enlargement of the Synagogue will enable the Holocaust Center to achieve its mission statement by providing (1) a secure place for members of the Orthodox community of Brooklyn and beyond to learn more about the Holocaust

from the unique perspective of the Orthodox community, (2) an innovative media resource to facilitate memorializing oral testimonies recorded by Holocaust survivors, (3) a permanent exhibition space for unique Judaic materials and religious documents preserved from the Holocaust era, (4) temporary exhibition space for films and exhibits on loan or correlating with Jewish holidays, and (5) a library of historical and religious accounts relating to the Holocaust; and

WHEREAS, the applicant states that, while the Holocaust may be studied within the framework of a variety of different academic disciplines (e.g., sociological, psychological, etc.), the clear focus of the Holocaust Center is to study the Holocaust under the precepts of Jewish law, which the applicant represents qualifies the Holocaust Center for treatment as a religious use; and

WHEREAS, at hearing, the Board directed the applicant to address how the subject Holocaust Center is distinguishable from the holocaust center in Yeshiva & Mesivta Toras Chaim v. Rose, 136 A.D.2d 710 2d Dep't 1988), where the court upheld the Board of Zoning Appeals of the Town of Hempstead's determination that the holocaust center did not constitute a "religious use;" and

WHEREAS, the applicant represents that the subject application is distinguishable from Yeshiva & Mesivta Toras Chaim, which involved a not-for profit corporation which operated a private school for Jewish children from nursery through eighth grade, which purchased a parcel of property for the purpose of creating "a center for the study of Nazi persecution known as the 'Holocaust'" Yeshiva & Mesivta Toras Chaim, 136 A.D.2d at 710; and

WHEREAS, in upholding the zoning board's determination that the holocaust center did not constitute a religious use and was, thus, not a permitted use at the proposed site, the court stated that

> While recognizing that the courts of this State have been very flexible in their interpretation of religious uses under local zoning ordinances (citations omitted), the flexibility has been directed to ancillary or accessory functions of religious institutions *whose principal use is a place of worship*. (Emphasis added). Affiliation with or supervision by religious organizations does not, per se, transform institutions into religious ones. "It is the proposed use of the land, not the religious nature of the organization, which must control" (citations omitted) Yeshiva & Mesivta Toras Chaim, 136 A.D.2d at 711; and

WHEREAS, based upon the above, the applicant states that the subject Holocaust Center can be distinguished from the facts of Yeshiva & Mesivta Toras Chaim on two key grounds: (1) a central issue in that case was that the proposed holocaust center was not permitted by the relevant zoning district regulations unless it was deemed to be a religious or educational use, and the subject Holocaust Center poses no such issue as it would be permitted in the subject R6 district as-of-right; and (2) the court expressly limited its holding by noting that greater discretion may be exercised by zoning boards in interpreting what constitutes religious uses when such uses occur in buildings whose principal use is a house of worship, such as the subject case where the primary use of the building is for the Synagogue; and

WHEREAS, the applicant states that the Holocaust Center is ancillary or accessory to the primary use of the site for the Synagogue, pursuant to both the definition of "accessory use" set forth in ZR § 12-10, and in light of the analysis of accessory uses to religious institutions pursuant to New York case law; and

WHEREAS, the applicant notes that ZR § 12-10 defines an "accessory use" as a use: (1) conducted on the same zoning lot as the principal use to which it is related; (2) which is clearly incidental to, and customarily found in connection with, such principal use; and (3) which is either in the same ownership as such principal use, or is operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal use; and

WHEREAS, the applicant states that the Holocaust Center will be located within the Synagogue building and therefore clearly satisfies the first prong of the definition of "accessory use;" and

WHEREAS, as to the second prong of the definition of "accessory use," the applicant represents that the Holocaust Center is clearly incidental to, and customarily found in connection with the Synagogue in that, as set forth in its mission statement, the Holocaust Center primarily serves as a place of education pursuant to religious principles, and that the use of synagogues for purposes of education is well-documented; and

WHEREAS, specifically, the applicant likens the Holocaust Center to a "Beit Midrash," which is a house of learning which encourages the expansion of religious knowledge through discussion and debate, and which the applicant represents is commonly found in connection with a synagogue; and

WHEREAS, the applicant also submitted a copy of the Synagogue's by-laws, which states that in order to achieve its objectives, "the Organization shall establish, maintain and operate facilities, projects and programs, including educational, charitable and religious activities, in accordance with the Torah principles of the Organization;" and

WHEREAS, the applicant states that the primary purpose of the Holocaust Center is to serve as an education center "within the framework fashioned by the precepts of Halacha as well as well as the ethos of the Torah Hashkafa," and therefore it is entirely within the framework of the central purposes of the Synagogue as described in its by-laws, and is the type of educational activity that should be considered clearly incidental to and customarily found in connection with the Synagogue; and

WHEREAS, the applicant represents that the Holocaust Center also satisfies the third prong of the

definition of "accessory use," as the Holocaust Center is maintained on the same zoning lot substantially for the benefit of the congregation of the Synagogue; and

WHEREAS, specifically, the applicant states that the Holocaust Center offers lectures attended by up to 450 people, and typically 30 to 50 percent of attendees at these lectures are members of the Synagogue; and

WHEREAS, the applicant represents that the fact that the executive leadership of the Holocaust Center and the Synagogue contain significant crossover, as several Synagogue board members are members of the Holocaust Center's executive board, serves as further evidence that the Holocaust Center is maintained substantially for the benefit of the Synagogue; and

WHEREAS, the applicant also contends that New York case law indicates a deferential and broad interpretation of accessory uses for religious institutions; and

WHEREAS, the applicant cites to Lawrence School Corporation v. Lewis, 174 A.D.2d, 42, 46 (2nd Dept. 1992) for the proposition that "religious institutions are generally entitled to locate on their property facilities for such social, recreational, athletic and other accessory uses as are reasonably associated with their educational or religious purposes;" and

WHEREAS, the Board notes that the holocaust center in Yeshiva & Mesivta Toras Chaim was not located in New York City and was not subject to the Zoning Resolution and agrees that it can otherwise be distinguished from the proposed Holocaust Center on its facts; and

WHEREAS, the Board finds that the principal use of the subject building is for the Synagogue, and based on the unique circumstances of the subject case, including the religious mission of the Holocaust Center, its location within the same building as the Synagogue, and the significant interrelation between the Synagogue and the Holocaust Center as evidenced by the fact that several board members of the Synagogue serve on the executive Board of the Holocaust Center and the anticipation that the Synagogue congregation will comprise a large portion of the attendees at the Holocaust Center's functions, the Holocaust Center is entitled to religious deference; and

WHEREAS, based upon the above, the Board finds that both the programmatic needs of the Synagogue and the physical constraints of the existing building, as set forth by the evidence provided in the record, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant further states that the enlargement of the existing building is entirely as-of-right, with the exception of the non-compliant lot coverage and rear yard; and

WHEREAS, the applicant states that there are a number of buildings in the surrounding area which are larger than the proposed building, including a five-story 23,000 sq. ft. building less than 50 feet to the east of the site on 50th Street, and a six-story 70,000 sq. ft. multiple dwelling less than 150 feet to the west of the site on 49th Street; and

WHEREAS, the applicant notes that the existing building already has a complying encroachment into the rear yard of the site at the first floor, which is a permitted obstruction up to a height of 23 feet, and the proposed variance merely seeks to match the floor plate of the first floor at the above floors (with a ten-ft. setback at the rear of the fourth floor); and

WHEREAS, the applicant further notes that the requested lot coverage and rear yard waivers would be required even if the subject application merely sought to legalize the extension of the women's balcony at the second floor; the proposed enlargement of the third floor and addition of a fourth floor merely extends the rear yard encroachment at the second floor to the third floor and a portion of the fourth floor (which is set back 10'-0") to accommodate the proposed Holocaust Center; and

WHEREAS, the applicant states that the proposed enlargement matches the design of the existing building and will therefore be compatible with the surrounding neighborhood; and

WHEREAS, accordingly, 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 was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

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

WHEREAS, the applicant represents that the proposal only requires waivers for lot coverage and rear yard above the first floor and otherwise complies with all zoning district regulations; and

WHEREAS, as noted above, in response to concerns raised by the Board, the applicant revised its proposal during the hearing process to provide a ten-ft. setback at the rear of the fourth floor; and

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct an enlargement that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the

evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as 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. 12BSA034K, dated April 9, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; 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 § 72-21 and grants a variance, to permit, on a site within an R6 zoning district, the enlargement of the third story of an existing synagogue building and addition of a fourth story to be occupied by a Holocaust education center, and the legalization of the enlargement of a women's balcony on the second story, which does not comply with rear yard or lot coverage requirements for community facilities, contrary to ZR §§ 24-36 and 24-11, *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 17, 2012" – Thirteen (13) sheets; and *on further condition*:

THAT the building parameters will be: a floor area of 21,334 sq. ft. (3.55 FAR); a total height of 60'-0"; lot coverage of 99.26 percent; and a rear yard with a minimum depth of approximately 0'-2", as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4) and Holocaust education center;

THAT no commercial catering shall take place onsite;

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

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

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

THAT 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, September 11, 2012.

48-12-BZ
CEQR #12-BSA-083M

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for IGS Realty Co., owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to permit the legalization of an existing 14-story commercial building for use as offices, contrary to Special Garment Center regulations (§121-11). C6-4 (GC, P2) zoning district.

PREMISES AFFECTED – 336 West 37th Street, between Eighth and Ninth Avenues, Block 760, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 7, 2012, acting on Department of Buildings Application No. 120929905, reads in pertinent part:

> Proposed use group #6- 'Office' is not permitted as per ZR 121-11/ZR121-113. Provide approval from Board of Standards and Appeals for proposed work; and

WHEREAS, this is an application under ZR § 72-21, to permit, in a C6-4 zoning district within the P2 Preservation Area of the Garment Center Special District, the legalization of office use (Use Group 6) within a fourteen-story commercial building, contrary to ZR §§ 121-11 and 121-113; and

WHEREAS, a public hearing was held on this application on June 12, 2012, after due notice by publication in the *City Record*, with continued hearings on July 17, 2012 and August 21, 2012, and then to decision on September 11, 2012; and

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

WHEREAS, Community Board 2, Manhattan, initially recommended disapproval of this application unless the applicant agreed to provide space for non-profit organizations within the building; and

WHEREAS, in response to the request of the Community Board, the applicant agreed to set aside space in the building for a non-profit organization; and

WHEREAS, the Community Board also requests that the following uses be prohibited from operating in the subject building: (1) adult establishments; (2) banks; (3) banquet halls; (4) catering establishments; (5) drug stores; and (6) eating or drinking establishments, except restaurants with a capacity of 200 persons or less; and

WHEREAS, the subject site is located on the south side of West 37th Street, between Eighth Avenue and Ninth Avenue, in a C6-4 zoning district within the P2 Preservation Area of the Garment Center Special District; and

WHEREAS, the site has approximately 100 feet of frontage on West 37th Street, a depth of 98 feet, and a lot area of 9,875 sq. ft.; and

WHEREAS, the site is occupied by a 14-story commercial building with a floor area of 112,088 sq. ft. (11.35 FAR) with office uses on all floors; and

WHEREAS, the applicant proposes to legalize floors two through fourteen for Use Group 6 office use; and

WHEREAS, because Use Group 6 office uses are not permitted within buildings greater than 70,000 sq. ft. within the P2 Preservation Area of the Garment Center Special District, the subject use variance is requested; and

WHEREAS, the applicant states the following are unique physical conditions, which create practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: the physical constraints of the building which render it obsolete for conforming uses; and

WHEREAS, the applicant represents that the building is constrained by the following physical conditions which render it obsolete for conforming uses: (1) limited and varying size of floor plates; (2) low floor-to-ceiling heights; (3) no off-street loading; and (4) small freight elevators; and

WHEREAS, as to the floor plates of the building, the applicant represents that the above-mentioned physical constraints of the subject building render it obsolete for conforming uses; and

WHEREAS, the applicant states that the floor plates narrow from 8,800 sq. ft. on floors two through six to 5,500 sq. ft. on the 14th floor; and

WHEREAS, the applicant represents that the reduction in the size of the floor plates on the upper floors, due to a series of setbacks, limits the viability of the building for production type uses; and

WHEREAS, specifically, the applicant states that the 5,500 sq. ft. floor plate at the 14th floor includes the building core (elevators, stairs, shafts), which does not factor into production space and is located centrally in the floor plates thereby significantly disrupting the already limited space; and

WHEREAS, the applicant states that the floor-to-ceiling height on the upper floors is ten feet, while modern manufacturing uses typically have floor-to-ceiling heights of 25 feet or more; and

WHEREAS, the applicant represents that the lack of off-street loading would force as-of-right tenants to use the sidewalk which would conflict with residential and hotel uses on the street; and

WHEREAS, the applicant states that the freight elevators are small, with dimensions of only 7'-0" by 5'-0", and they are insufficient to carry heavy loads, with a weight capacity of only 3,000 pounds; and

WHEREAS, the applicant states that the building has been listed with real estate brokers to attract as-of-right uses, but there has been no interest in conforming use of the building; and

WHEREAS, as to the uniqueness of the site, the applicant analyzed all of the buildings within the P2 Preservation Area (amounting to approximately 75 buildings) and found 23 that are used for industrial uses; and

WHEREAS, the Board notes that of the 23 buildings with industrial uses, ten contain less than 70,000 sq. ft. of floor area and therefore may be used as-of-right for non-preservation area restricted uses; and

WHEREAS, of the remaining 13 buildings, four are larger than the subject building and have correspondingly larger floor plates; one is much smaller and therefore not comparable, and one is already authorized to be converted to residential use under the City Planning Commission Approval; and

WHEREAS, accordingly, there are only six other buildings within the preservation area that are comparable to the subject building in terms of lot area and building square footage, and which have certificates of occupancy for factory and/or showroom use and range in height between eight and 16 stories; and

WHEREAS, the applicant represents that only one of these six buildings has residential uses on all three sides, similar to the subject site which further restricts the marketability of industrial uses because of potential incompatibility; and

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

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) a conforming building with ground floor retail space and manufacturing/showroom use above; (2) a lesser variance scenario with conforming uses located on floors two through six; and (3) the proposed office building; and

WHEREAS, the study concluded that neither the conforming scenario nor the lesser variance scenario would

result in a reasonable return, but that the proposal would realize a reasonable return; and

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

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

WHEREAS, the applicant notes that the street in which the site is located does not have a manufacturing presence; and

WHEREAS, the applicant notes that the proposed office use is more appropriate with the existing surrounding residential and hotel uses than manufacturing use; and

WHEREAS, the applicant states that many of the office uses in the subject building support the garment center manufacturing and showroom uses found in the more appropriate buildings located along the fashion avenue; and

WHEREAS, the applicant further states that there is minimal truck traffic on the subject street, and that the office use in the subject building presents a stable yet low impact use that has presented no significant issues in the surrounding area to date; and

WHEREAS, the applicant represents that use of the building for a conforming manufacturing use would actually be less compatible with the surrounding neighborhood, as the associated noises, fumes and movement of goods would be at odds with the adjacent residential neighbors directly to the east, west and north of the site; and

WHEREAS, the applicant further represents that, due to the lack of any off-street loading capabilities, an as-of-right production business would have to utilize the public street and sidewalk for loading purposes, creating innate conflicts with the residential and hotel occupants surrounding the site; and

WHEREAS, the Board notes that the applicant has agreed to the Community Board conditions to limit certain uses including adult establishments, banks, banquet halls, catering establishments, drug stores, and eating or drinking establishment, except restaurants with a capacity of 200 persons or less, and will also rent space to a non-profit/charity group; and

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

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

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

WHEREAS, as noted above, the applicant analyzed a lesser variance scenario consisting of as of right uses located on floors two through six and determined it was not feasible; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA083M, dated December 9, 2011; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, in a C6-4 zoning district within the P2 Preservation Area of the Garment Center Special District, the legalization of office use (Use Group 6) on floors two through fourteen within a fourteen-story commercial building, contrary to ZR §§ 121-11 and 121-113; *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 April 26, 2012"–six (6) sheets; and *on further condition*:

THAT the building will not be occupied by the following uses: adult establishments; banks; banquet halls; catering establishments; drug stores; eating or drinking establishments, except restaurants with a capacity of 200 persons or less;

THAT the applicant will reserve at least one space within the building to be rented to a non-profit organization;

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

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

THAT the approved plans shall be considered approved

only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, September 11, 2012.

65-12-BZ
CEQR #12-BSA-097K
APPLICANT – Lewis E. Garfinkel, for Yisroel Brodt, owner.
SUBJECT – Application March 20, 2012 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1140 East 28th Street, west side of East 28th Street, 313' south of Avenue K, Block 7627, Lot 62, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Adam Rothkrug and Lewis E. Garfinkel.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 2, 2012, acting on Department of Buildings Application No. 320432741, reads in pertinent part:

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

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

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2012, and then to decision on September 11, 2012; and

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

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

WHEREAS, the subject site is located on the west side of East 28th Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,667 sq. ft., and is occupied by a single-family home with a floor area of 1,711 sq. ft. (0.64 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 1,711 sq. ft. (0.64 FAR) to 2,654 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,333.5 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 54 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a minimum width of 2'-9" and to maintain the existing side yard along the northern lot line with a width of 5'-10" (two side yards with minimum widths of 5'-0" each are required); and

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

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

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR

§§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 20, 2012"-(5) sheets and "August 1, 2012"-(6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,654 sq. ft. (1.0 FAR); a minimum open space ratio of 54 percent; a side yard with a minimum width of 2'-9" along the southern lot line; a side yard with a width of 5'-10" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, September 11, 2012.

68-12-BZ
CEQR #12-BSA--100Q

APPLICANT – Vassalotti Associates Architects, LLP, for Rockaway Boulevard Associates, LLC, owner.

SUBJECT – Application March 21, 2012 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on December 22, 1999; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 89-15 Rockaway Boulevard, northwest corner of the intersection of Rockaway Boulevard and 90th Street, Block 9093, Lot 13, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 28, 2012, acting on Department of Buildings Application No. 420534639, reads in pertinent part:

> Proposed extension of term for variance beyond 12/22/99 is contrary to Board of Standards and Appeals BZ # 865-55 Bul # 45 Vol. LXIV; and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement, an extension of term, and an extension of time to obtain a certificate of occupancy for a prior Board approval of an automobile service station with accessory uses (Use Group 16) in an R5 zoning district, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in the *City Record*, with continued hearings on July 10, 2012 and August 7, 2012, and then to decision on September 11, 2012; and

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

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, the premises is located on the northwest corner of Rockaway Boulevard and 90th Street, within an R5 zoning district; and

WHEREAS, the subject site is a triangularly-shaped lot with 160 feet of frontage along Rockaway Boulevard, 160 feet of frontage along 90th Street, and a total lot area of 12,213 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 11, 1956 when, under BSA Cal. No. 865-55-BZ, the Board granted a variance to permit the site to be occupied as 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 at various times; and

WHEREAS, most recently, on January 22, 1992, the Board granted a ten-year extension of term, which expired on December 22, 1999; and

WHEREAS, the term of the variance has not been extended since its expiration on December 22, 1999; and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station with accessory uses has been continuous since the initial grant; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

WHEREAS, the applicant has requested a ten-year extension of term and extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, at hearing, the Board directed the applicant to remove the cars listed for sale from the site and to provide landscaping on the site; and

WHEREAS, in response, the applicant submitted photographs and revised plans reflecting the removal of the cars for sale and the addition of landscaped areas along the western lot line and around the identification sign post area and the addition of raised planters around the pump island areas; and

WHEREAS, based upon the above, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, issues a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR § 11-411 to permit the reinstatement, extension of term, and extension of time to obtain a certificate of occupancy for a prior Board approval of an automobile service station with accessory uses (UG 16), *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received March 21, 2012"-(1) sheet and "July 31, 2012"-(1) sheet; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on September 11, 2022;

THAT the lot will be kept free of debris and graffiti;

THAT all signage will comply with C1 district regulations;

THAT parking on the site will be limited to vehicles awaiting service;

THAT landscaping will be maintained in accordance with the BSA-approved plans;

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

THAT a new certificate of occupancy be obtained by September 11, 2013;

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;

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, September 11, 2012.

79-12-BZ
CEQR #12-BSA-110M

APPLICANT – Jeri Fogel, for Impala Retail Owner LLC, owner; House of Jai, lessee.

SUBJECT – Application April 4, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*House of Jai*). C1-9 zoning district.

PREMISES AFFECTED – 1456 First Avenue, east side of First Avenue, 50' south of corner of 76th Street, Block 1470, Lot 1002, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Kelly Shaw.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 22, 2012, acting on Department of Buildings Application No. 120855039, reads in pertinent part:

> Proposed 'Physical Culture Establishment' in a C1-9/R8B zoning district is not permitted As-of-Right to section ZR 32-10 and a special permit by the Board of Standards and Appeals is required; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C1-9 zoning district and partially within an R8B zoning district, the operation of a physical culture establishment (PCE) on a portion of the first floor and cellar of a 31-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 21, 2012, after due notice by publication in *The City Record*, and then to decision on September 11, 2012; and

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

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

WHEREAS, the subject site is located on the east side of First Avenue, between East 75th Street and East 76th Street, partially within a C1-9 zoning district and partially within an R8B zoning district; and

WHEREAS, the site is an irregularly-shaped lot with 80 feet of frontage on First Avenue and a total lot area of 21,820 sq. ft.; and

WHEREAS, the site is occupied by a 31-story mixed-use commercial/residential building; and

WHEREAS, the proposed PCE will occupy 2,105 sq. ft. of floor area on a portion of the first floor, with an additional 1,619 sq. ft. of floor space on at a portion of the cellar level;

and

WHEREAS, the Board notes that the proposed PCE will be located entirely within the C1-9 portion of the site; and

WHEREAS, the PCE will be operated as House of Jai; 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 applicant notes that the PCE will incorporate the following sound attenuation measures to comply with the NYC Noise Control Code and will have a STC rating of no less than 50, ensuring that the sound level will be less than 45 dBA in the residential units of the subject building: 1) tectum, sound-absorbing, acoustic ceiling panels, covering approximately 70 percent of the project area throughout thePCE; (2) acoustic batt insulation in all partitions; (3) vinyl flooring, covering approximately 35 percent of the project area throughout the PCE; and 4) ductwork that is acoustically lined for the first 15 feet from the commercial unit; 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. 12BSA110M, dated March 30, 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 C1-9 zoning district and partially within an R8B zoning district, the operation of a PCE on a portion of the first floor and cellar of a 31-story mixed-use building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 20, 2012" – Four (4) sheets, and *on further condition*:

THAT the term of this grant will expire on September 11, 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 the site will be maintained free of graffiti;

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

THAT the sound attenuation measures will be provided as indicated on the BSA-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, September 11, 2012.

160-12-BZ
CEQR #12-BSA-139X
APPLICANT – Rothkrug Rothkrug & Spector LLP, for CP Associaes LLC c/o Jeffrey Mgmt., owner; Blink 820 Concourse Inc., lessee.
SUBJECT – Application May 25, 2012 – Special Permit to allow a physical culture establishment (*Blink*) within existing commercial building. C8-3 zoning district.
PREMISES AFFECTED – 820 Concourse Village West, east side of Concourse Village West, 312.29' south of intersection of Concourse Village West and East 161st Street, Block 2443, Lot 91, Borough of Bronx.
COMMUNITY BOARD #4BX
APPEARANCES –
For Applicant: Adam Rothkrug.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated May 16, 2012, acting on Department of Buildings Application No. 210085325, reads in pertinent part:

> Proposed physical culture establishment in zoning district C8-3 is not permitted as of right and requires a special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C8-3 zoning district, the operation of a physical culture establishment (PCE) on portions of the sub-cellar, cellar, and first floor of a five-story commercial building, contrary to ZR § 32-10; 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 September 11, 2012; and

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

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

WHEREAS, the subject site is located on the east side of Concourse Village West approximately 312.29 feet south of its intersection with East 161st Street, within a C8-3 zoning district; and

WHEREAS, the site has approximately 190 feet of frontage on Concourse Village West, and a total lot area of 13,398 sq. ft.; and

WHEREAS, the subject tax lot is part of a larger zoning lot comprising the Concourse Village Shopping Center that extends over tax lots 90, 91, and 94 in Block 2443 for an area of approximately 400,000 sq. ft.; and

WHEREAS, the proposed PCE will occupy 4,675 sq. ft. of floor area on a portion of the first floor, with an additional 13,335 sq. ft. of floor space located in portions of the cellar and sub-cellar; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Saturday, from 5:30 a.m. to 11:00 p.m., 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.12BSA139X, dated May 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 makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C8-3 zoning district, the operation of a PCE on portions of the sub-cellar, cellar, and first floor of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 25, 2012" - Four (4) sheets and "Received July 30, 2012" – One (1) sheet and *on further condition*:

THAT the term of this grant will expire on September 11, 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 the site will be maintained free of graffiti;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, September 11, 2012.

113-11-BZ
APPLICANT – Slater & Beckerman, LLP, for St. Patrick's Home for the Aged and Infirm, owners.
SUBJECT – Application August 10, 2011 – Variance (§72-21) to permit a proposed enlargement of a Use Group 3 nursing home (*St. Patricks Home for the Aged and Infirm*) contrary to rear yard equivalent requirements (§24-382). R7-1 zoning district.
PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, Borough of Bronx.
COMMUNITY BOARD #8BX
APPEARANCES –
For Applicant: Neil Weisbard.

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

147-11-BZ
APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.
SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.
PREMISES AFFECTED – 24-47 95th Street, east side of 95th Street, between 24th and 25th Avenues, Block 1106, Lot 44, Borough of Queens.
COMMUNITY BOARD #3Q
APPEARANCES –
For Applicant: Jordan Most, Arthur Paris and Consuelo Paris Celestine.
For Opposition: Jeffrey Chester.

ACTION OF THE BOARD – Laid over to October 23, 2012, at 1:30 P.M., for continued hearing.

156-11-BZ
APPLICANT – Sheldon Lobel, P.C., for The Rector Church Warden and Vestry Men of St. Simeon's Church owners.
SUBJECT – Application October 5, 2011 – Variance (§72-21) to permit the construction of a 12-story mixed residential (UG 2 supportive housing) and community facility (*St. Simeon's Episcopal Church*) (UG4 house of worship) building, contrary to setback (§23-633(b)), floor area (§§23-145, 24-161, 77-2), lot coverage (§23-145) and density (§§23-22, 24-20) requirements. R8 zoning district.
PREMISES AFFECTED – 1020 Carroll Place, triangular corner lot bounded by East 165th Street, Carroll Place and Sheridan Avenue, Block 2455, Lot 48, Borough of Bronx.
COMMUNITY BOARD #4BX
APPEARANCES –
For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

187-11-BZ
APPLICANT – Davidoff Malito & Hutcher, LLP, for Sandford Realty, LLC, owner.
SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.
COMMUNITY BOARD #3BK
APPEARANCES – None.

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

2-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Tehjila Development, LLC, owner.
SUBJECT – Application January 3, 2012 – Variance (§72-21) for the construction of a three-story, two-family dwelling, contrary to side yard requirement (§23-48); less than the required number of parking spaces (§25-21) and location of one parking space within the front yard (§23-44). R5 zoning district.
PREMISES AFFECTED – 95-36 115th Street, 335.29' south of intersection of95th Avenue and 115th Street, Block 9416, Lot 24, Borough of Queens.
COMMUNITY BOARD #9Q
APPEARANCES –
For Applicant: Adam Rothkrug.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez…….....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

10-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Natalie Hardeen, owner.
SUBJECT – Application January 18, 2012– Variance (§72-21) to permit the legalization of an existing cellar and two story, two-family detached dwelling, contrary to front yard (§23-45) and side yard (§23-461) regulations. R5 zoning district.
PREMISES AFFECTED – 114-01 95th Avenue, northeast corner of 95th Avenue and 114th Street, Block 9400, Lot 37, Borough of Queens.
COMMUNITY BOARD #9Q
APPEARANCES –
For Applicant: Adam Rothkrug.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez…….....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 25, 2012, at 1:30 P.M., for decision, hearing closed.

11-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.
SUBJECT – Application November 17, 2012 – Special Permit (§73-622) for the legalization of an enlargement to an existing single-family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.
PREMISES AFFECTED – 3599 Bedford Avenue, East side of Bedford Avenue, between Avenue N and Avenue O, Borough of Brooklyn, Block 7679, Lot 13, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Lyra J. Atlman.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez…….....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

12-12-BZ & 110-12-A
APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.
SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.
Variance to §§26(7) and 30 of the Multiple Dwelling Law (pursuant to §310) to facilitate the new building, contrary to court regulations. M1-6 zoning district.
PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Deirdre A. Carson.
For Opposition: Jay Goldstein.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez…….....5
Negative:.....0

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

23-12-BZ
APPLICANT – Simons & Wright LLC, for 949-951 Grand Street, LLC, owner.
SUBJECT – Application February 2, 2012 – Variance (§72-21) to allow for the development of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 951 Grand Street, between Morgan and Catherine Streets, Block 2924, Lot 48, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Laid over to October 16, 2012, at 1:30 P.M., for deferred decision.

76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.

SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area, open space and lot coverage (§23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15K

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 16, 2012 at 1:30 P.M., for adjourned hearing.

80-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; SoulCycle East 63rd Street, LLC, lessee.

SUBJECT – Application April 5, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*). C1-8X and R8B zoning districts.

PREMISES AFFECTED – 140 East 63rd Street, southeast corner of intersection of East 63rd Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Chris Rizzo.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

82-12-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Stanley Rosow and Alice Rosolo.

ACTION OF THE BOARD – Laid over to October 23, 2012, at 1:30 P.M., for continued hearing.

86-12-BZ

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

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

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

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Jeremiah Candreva.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 23, 2012, at 1:30 P.M., for decision, hearing closed.

141-12-BZ

APPLICANT – Eric Palatnik, for Won Hoon Cho, Inc., owner.

SUBJECT – Application May 3, 2012 – Re-Instatement (§§11-411 & 11-412) of a previously approved variance which permitted retail (UG 6) in a residential district which expired on October 14, 1989; amendment to permit the installation of awnings/signage, and changes to the interior layout; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 65-02/10 164th Street, southwest corner of 65th Street, Block 6762, Lot 53, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam Rothrug.

ACTION OF THE BOARD – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

189-12-BZ
APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.
SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00). C1-3/R7-1, R6 zoning districts.
PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, Borough of Brooklyn.
COMMUNITY BOARD #2BK
APPEARANCES –
For Applicant: Michael Sillerman, Gene Kaufman, Jack Freeman, Martin Taub, Cario Scissura, Brigit Pinnell, A. Raskin, Mike Tuiach, Glenn Marfman, Katie Lyon, Tom Conoscerti and Joseph Steinberg.
For Opposition: Albert K. Butzel, Stephen Lavin, Jane McGroarty, Richard F. Ziegler, Carolyn L. Ziegler, Margaret E. O'Neal, Waldo C. Falkener, Jr., Katherine B. Desai, Lisa Donnesow, Maritza Shelley, Elizabeth Beitg and Rohit Desai.

ACTION OF THE BOARD – Laid over to October 23, 2012, at 1:30 P.M., for continued hearing.

198-12-BZ
APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for JZS Madison, LLC, owner.
SUBJECT – Application June 22, 2012 – Variance (§72-21) to permit the conversion and enlargement of existing buildings to contain UG 6 retail and UG 2 residential uses, contrary to floor area, lot coverage (§23-145), rear yard (§23-47), rear yard setback (§23-633(b), height (§§23-691, 99-054(b))), streetwall (§23-692(c), 99-051(a)), inner court (§23-851), window-to-lot-line (§23-861), and commercial use (§32-422) regulations. C5-1(MP), R8B zoning district.
PREMISES AFFECTED – 933-943 Madison Avenue, block bounded by Madison and Park Avenues, East 74th and East 75th Streets, Block 1389, Lot 25, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Gary Tarnoff, Chris Couran and Robert Vonaincken.

ACTION OF THE BOARD – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on July 17, 2012, under Calendar No. 163-04-BZ and printed in Volume 97, Bulletin No. 30, is hereby corrected to read as follows:

163-04-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee.
SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy of a special permit (§73-36) for the operation of a physical culture establishment (*Crunch Fitness*) which expired on April 24, 2011; Waiver of the Rules. R7A (C2-4) zoning district.
PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of intersection of Fulton Street and St. Felix Street, Block 2096, Lot 66, 69, Borough of Brooklyn.
COMMUNITY BOARD #2BK
APPEARANCES –
For Applicant: Todd Dale.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez…...4
Absent: Commissioner Ottley-Brown 1
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, which expired on April 24, 2011; and

WHEREAS, a public hearing was held on this application on June 12, 2012 after due notice by publication in *The City Record*, and then to decision on July 17, 2012; and

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

WHEREAS, the subject premises is located on the northwest corner of Fulton Street and St. Felix Street and is located within a C2-4 (R6) zoning district; and

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

WHEREAS, the site is occupied by a two-story commercial building at 691 Fulton Street (Lot 69) and an adjacent one-story commercial building at 695 Fulton Street (Lot 66); and

WHEREAS, the PCE occupies a portion of the first floor of both buildings and the mezzanine of the two-story building; and

WHEREAS, on July 12, 2005, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE within a portion of the existing two-story building for a term of ten years to expire on July 12, 2015; and

WHEREAS, most recently, on April 24, 2007, the Board granted an amendment to permit the enlargement of the first floor by adding 2,775 sq. ft. of floor area on the first floor within the adjacent one-story building, and to extend the hours of operation to 24 hours, daily; and

WHEREAS, substantial construction was to be completed and a certificate of occupancy obtained by April 24, 2011, in accordance with ZR § 73-70; and

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

WHEREAS, the applicant states that, although work is substantially completed, a certificate of occupancy has not been obtained due to problems with contractors and a recent audit of the application affecting Lot 66; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time is appropriate, with the conditions 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 July 12, 2005, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on July 17, 2013; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

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

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

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

THAT a certificate of occupancy must be obtained by July 17, 2013;

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

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 Nos. 302207403 and 301441296)

Adopted by the Board of Standards and Appeals, July 17, 2012.

***The resolution has been revised to correct the DOB Application No. which read:** *300326895;* **now reads:** *Application Nos. 302207403 and 301441296.* **Corrected in Bulletin Nos. 36-38, Vol. 97, dated September 20, 2012.**

***Correction**

This resolution adopted on August 21, 2012, under Calendar No. 155-12-BZY and printed in Volume 97, Bulletin No. 35, is hereby corrected to read as follows:

155-12-BZY

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 511 Property LLC, owner.

SUBJECT – Application May 11, 2012 – Extension of time (§11-332) to complete construction of a minor development commenced prior to a zoning text amendment related to parking. C1-7(A) Special Hudson Zoning District.

PREMISES AFFECTED – 511 Ninth Avenue, southwest corner of Ninth Avenue and West 39th Street (block bounded by West 38th Street and 10th Avenue), Block 736, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Robin Kramer.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

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

WHEREAS, the site was inspected by Chair Srinivasan; and

WHEREAS, the subject site is located on the southwest corner of Ninth Avenue and West 39th Street, in a C1-7A zoning district within Subarea D5 of the Hell's Kitchen Subdistrict of the Special Hudson Yards District; and

WHEREAS, the site has a total lot area of 22,732 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 12-story mixed-use residential/ commercial/community facility building (the "Building"); and

WHEREAS, the Building is proposed to have a floor area of 126,861 sq. ft. (5.58 FAR), with an accessory parking garage for 32 cars; and

WHEREAS, the Building complies with the former zoning parameters of the Special Hudson Yards District; and

WHEREAS, however, on April 14, 2010 (hereinafter, the "Enactment Date"), the City Council voted to enact the Hudson Yards Parking Text Amendment, which does not permit new parking spaces at the subject site unless there is a decrease in the number of parking spaces in Hudson Yards; and

WHEREAS, accordingly, the Building does not comply with the current zoning because the proposed accessory parking spaces are not permitted; and

WHEREAS, on March 10, 2008, New Building Permit No. 104576246-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the proposed 12-story mixed-use building with an accessory parking garage for 32 cars; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and

specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated June 27, 2012, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of April 14, 2012 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the excavation, dewatering, concrete foundations, pits, basement walls and waterproofing, and construction of a portion of the required Con Edison vaults; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; applications and certifications for payments; accounting tables; and an affidavit from the construction manager; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is $8,879,855, or 18 percent, out of the approximately $50,369,810 cost to complete; and

WHEREAS, as noted above, the applicant has submitted applications and certifications for payments, accounting tables; and an affidavit from the construction manager; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the initial permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104576246-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on August 21, 2014.

Adopted by the Board of Standards and Appeals, August 21, 2012.

***The resolution has been corrected to indicate that** APPEARANCES – For Applicant was "*Robin Kramer*" **Corrected in Bulletin Nos. 36-38, Vol. 97, dated September 20, 2012.**