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DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

Commissioners

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

OFFICE -	40 Rector Street, 9th Floor, New York, N.Y. 10006
HEARINGS HELD -	40 Rector Street, 6th Floor, New York, N.Y. 10006
BSA WEBPAGE @	http://www.nyc.gov/html/bsa/home.html

TELEPHONE - (212) 788-8500
FAX - (212) 788-8769

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53-13-BZ	116-118 East 169 th Street, Bronx

DOCKETS

New Case Filed Up to April 23, 2013

105-13-BZ

1932 East 24th street, West side of East 24th street between Avenue S and avenue T, Block 7302, Lot(s) 19, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to the enlargement of an single home in and an R3-2 zoning district. R3-2 district.

106-13-BZ

2022 East 21st Street, West side of East 21st street between Avenue S and Avenue T, Block 7299, Lot(s) 18, Borough of **Brooklyn, Community Board: 15**. Special Permit 73-622, to permit the enlargement of a single family resident located in a residential district varied by R3-2 zoning district. R3-2 district.

107-13-A

638 East 11th Street, South side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot(s) 25, 26 & 27, Borough of **Manhattan, Community Board: 03**. An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R7B district.

108-13-BZ

100/28 West 42nd Street, West side of 6th Avenue between West 41st Street and West 42nd Street, Block 00994, Lot(s) 7501, Borough of **Manhattan, Community Board: 05**. Special Permit (§73-36) to permit the operation of a physical Culture Establishment (PCE) (Equinox). C5-3, C6-6, C6-7 & C5-2 (Mid)(T) zoning district. district.

109-13-BZ

80 John Street, Lot bounded by John Street to the north, Platt Street to south, and Gold Street to the west., Block 00068, Lot(s) 7501, Borough of **Manhattan, Community Board: 01**. Special Permit (§73-36) to permit the operation of a physical Culture Establishment (PCE) (2nd Round KO). C5-5 (Special Lower Man)zoning district. C5-5 (SLMD) district.

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

CALENDAR

MAY 14, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 14, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

256-82-BZ

APPLICANT – Vito J. Fossella, P.E., for Philip Mancuso, owner.

SUBJECT – Application December 24, 2012 – Extension of Term of a previously granted Special Permit (§73-44) for the continued operation of a veterinary clinic, dental laboratory and general UG6 office use in an existing two (2) story building with a reduction of the required parking which expired on November 23, 2012. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 1293 Clove Road, north side of Clove Road, corner formed by the intersection of Glenwood Avenue and Clove Road, Block 605, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #2SI

102-94-BZ

APPLICANT – C.S. Jefferson Chang, for BL 475 Realty Corp., owner.

SUBJECT – Application January 9, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continuous use retail (Use Group 6) grocery store which expired on June 20, 2005; Waiver of the Rules. R-5 zoning district.

PREMISES AFFECTED – 475 Castle Hill Avenue, south side of Lacombe Avenue and West of the corner formed by the intersection of Lacombe Avenue and Castle Hill Avenue, Block 3510, Lot 34, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEALS CALENDAR

268-12-A thru 271-12-A

APPLICANT – Eric Palatnik, P.C., for Mr. Frank Naso, owner.

SUBJECT – Application September 6, 2012 – Proposed construction of a four single family semi-detached building not fronting a mapped street is contrary to General City Law Section 36. R3-1 zoning district.

PREMISES AFFECTED – 8/10/16/18 Pavillion Hill Terrace, corner of Homer Street and Swan Street, Block 569, Lot 318, 317, 316, 285, Borough of Staten Island.

COMMUNITY BOARD #1SI

ZONING CALENDAR

54-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Ricky Novick, owner.

SUBJECT – Application January 31, 2013 – Variance (§72-21) for the enlargement of the existing single-family residence at contrary §§23-141 (lot coverage and open space), 113-543 (minimum required side yards), and 23-461a (side yards for single-or two-family residences). R5/OPSD zoning district.

PREMISES AFFECTED – 1338 East 5th Street, western side of East 5th Street between Avenue L and Avenue M, Block 6540, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #12BK

56-13-BZ

APPLICANT – Francis R. Angelino, Esq., for 200 East Tenants Corporation, owner; In-Form Fitness, LLC, lessee.

SUBJECT – Application February 4, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Inform Fitness*) within a portion of an existing building. C6-6(MID) C5-2 zoning district.

PREMISES AFFECTED – 201 East 56th Street aka 935 3rd Avenue, East 56th Street, Third Avenue and East 57th Street, Block 1303, Lot 4, Borough of Manhattan

COMMUNITY BOARD # 6M

62-13-BZ

APPLICANT – Sheldon Lobel, P.C., for BXC Gates, LLC, owner.

SUBJECT – Application February 7, 2013 – Special Permit (§73-243) seeking to legalize the existing Wendy's eating and drinking establishment with an accessory drive-through facility at the premises. C1-2/R6 zoning district.

PREMISES AFFECTED – 2703 East Tremont Avenue, property fronts on St. Raymond's Avenue to the northwest, Williamsbridge Road to the northeast, and East Tremont

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Avenue to the southwest, Block 4076, Lot 12, Borough of Bronx.

COMMUNITY BOARD #10BX

72-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Western Beef Properties, Inc., owner; Euphora-Citi, LLC, lessee.

SUBJECT – Application February 14, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Euphora Health Medi-Spa and Salon*) within the existing building. M1-1/C4-2A zoning district.

PREMISES AFFECTED – 38-15 Northern Boulevard, north side of Northern Boulevard between 38th Street and Steinway Street, Block 665, Lot 5 and 7, Borough of Queens.

COMMUNITY BOARD #1Q

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, APRIL 23, 2013 10:00 A.M.

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

SPECIAL ORDER CALENDAR

543-91-BZ

APPLICANT – Eric Palatnik P.C., for George F. Salamy, owner.

SUBJECT – Application December 20, 2012 – Extension of Term of a previously approved variance (§72-21) permitting a one-story household appliance store (*P.C. Richards*) which expired on July 28, 2012; Waiver of the Rules. C4-2A/R4-1 zoning district.

PREMISES AFFECTED – 576-80 86th Street, between Fort Hamilton Parkway, Brooklyn Queens Expressway, Block 6053, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, April 23, 2013.

62-99-BZ

APPLICANT – Akerman Senterfitt LLP, for Starlex LP, owner; Bliss World LLC, lessee.

SUBJECT – Application June 19, 2012 – Extension of Term of a previously-approved Special Permit (§73-36) for the continued operation of a physical cultural establishment (*Bliss*) which expired on January 31, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on February 1, 2004; Waiver of Rules. C6-6 zoning district.

PREMISES AFFECTED – 541 Lexington Avenue, east side of Lexington Avenue, between E. 49th Street and E. 50th Streets, Block 1304, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an

extension of term for a special permit to operate a physical culture establishment (“PCE”), which expired on January 31, 2009, for an additional term of ten years; and

WHEREAS, a public hearing was held on this application on March 5, 2013, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2013, and then to decision on April 23, 2013; and

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

WHEREAS, the site is located on the east side of Lexington Avenue between East 49th Street and East 50th Street, within a C6-6 zoning district within the Special Midtown District; and

WHEREAS, the site is currently occupied by 15-story hotel; the PCE occupies 13,705 sq. ft. of floor area on the fourth floor of the hotel, and is operated as Bliss Spa; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 1, 2000, when, under the subject calendar number, the Board granted a special permit for the operation of a PCE; and

WHEREAS, by resolution dated September 14, 2004, under the subject calendar number, the PCE was expanded in size from the 8,000 sq. ft. permitted under the original grant to 21,000 sq. ft.; the applicant represents that the PCE has since been reduced in size and currently occupies, as noted above, 13,705 sq. ft. on the fourth floor; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 1, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from the expiration of the prior grant and to allow amendments as described; *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 March 26, 2013- (1) sheet; and *on further condition*:

THAT the term of this grant will expire on January 31, 2019;

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

THAT the conditions above and the conditions from the prior resolutions will be noted on the certificate of occupancy;

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

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

Adopted by the Board of Standards and Appeals, April

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23, 2013.

211-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Hoffman & Hoffman, LLC, owner.

SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the legalization of residential units on the second through fourth floors of a mixed use (UG 17 & 2) four-story building, which expired on April 17, 2005; Amendment for minor modification to the approved plans; Waiver of the Rules. M1-2 zoning district.

PREMISES AFFECTED – 252 Norman Avenue, southeast corner of the intersection of Norman Avenue and Monitor Street, Block 2657, Lot 1, Borough Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of time to complete construction and obtain a certificate of occupancy in accordance with a variance, which expired on April 17, 2005, and an amendment to permit minor modifications to the prior approval; and

WHEREAS, a public hearing was held on this application on February 5, 2013, after due notice by publication in *The City Record*, with continued hearings on March 5, 2013, and April 9, 2013, and then to decision on April 23, 2013; and

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the south side of Norman Avenue, between Monitor Street and Kingsland Avenue, within an M1-2 zoning district; and

WHEREAS, the site is currently occupied by a four-story building with a furniture refinishing and repair center on the ground floor, and four dwelling units on each of the second through fourth floors, for a total of 12 dwelling units; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 17, 2001 when, under the subject calendar number, the Board granted a variance to legalize previously constructed residential units (Use Group 2) on the second through fourth floors; the conforming manufacturing use (Use Group 17) on the ground floor was permitted to

remain; and

WHEREAS, as of April 17, 2005 substantial construction had not been completed; accordingly, on that date, per ZR § 72-23, the variance lapsed; and

WHEREAS, as to the proposed modifications to the variance, the applicant seeks to legalize the following as-built deviations from the prior approval: (1) the conversion of the former trash room and adjacent storage room to part of one residential unit; (2) the layout of the kitchens and bathrooms in each unit; (3) the creation of an electrical meter room on the ground floor; (4) the removal of the non-required elevator and conversion of the space to storage at each floor; and (5) the installation of hallway trash rooms at each floor; additionally, the plans have been amended to reflect the correct number of windows, which are original to the building; and

WHEREAS, at hearing, the Board directed the applicant to provide: (1) photographs of the sprinkler and fire alarm systems and the smoke detectors; and (2) a more detailed description of the nature of the manufacturing use at the ground floor, including an explanation of how the spray paint booth is vented and whether air quality has been sufficiently tested; and

WHEREAS, in response, the applicant provided: (1) evidence of the fire and life safety systems; and (2) a sufficiently detailed explanation of the nature of manufacturing use and its impacts on air quality; and

WHEREAS, the Board notes that the residents of the building were notified of this application and did not provide testimony; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 17, 2001, so that as amended this portion of the resolution shall read: “to extend the time to complete construction for a period of two years from April 23, 2013, to expire on April 23, 2015, and to permit the noted modifications to the site; on condition that all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received February 19, 2013- (12) sheets; and on further condition:

THAT construction will be completed and a certificate of occupancy obtained by April 23, 2015;

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

THAT the number of dwelling units, floor area and FAR for the proposed building will be in accordance with the terms of this grant;

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

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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, April 23, 2013.

853-53-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Knapp, LLC, owner; Bolla Management Corp., owners.

SUBJECT – Application January 18, 2013 – Amendment (§11-412) to a previously-granted Automotive Service Station (*Mobil*) (UG 16B), with accessory uses, to enlarge the use and convert service bays to an accessory convenience store. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, southwest corner of Avenue X, Block 7429, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

410-68-BZ

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

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

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

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

718-68-BZ

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

SUBJECT – Application May 31, 2011 – Amendment to a previously-granted Special Permit (§73-211) for an automotive service station. The amendment proposes additional fuel dispensing islands and conversion of existing service bays to an accessory convenience store. C2-2/R5 zoning district.

PREMISES AFFECTED – 71-08 Northern boulevard, South side of Northern Boulevard between 71st and 72nd Street, Block 1244, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for decision, hearing closed.

103-91-BZ

APPLICANT – Davidoff Hatcher & Citron, LLP for 248-18 Sunrise LLC, owner.

SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103’ east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

292-01-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Villa Mosconi Restaurant, owner.

SUBJECT – Application January 17, 2013 – Extension of Term of a previously-granted Variance (§72-21) which permitted the legalization of a new dining room and accessory storage for a UG6 eating and drinking establishment (*Villa Mosconi*), which expired on January 7, 2013. R7-2 zoning district.

PREMISES AFFECTED – 69/71 MacDougal Street, west side of MacDougal Street between Bleecker Street and West Houston Street, Block 526, Lot 33, 34, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

239-02-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.

SUBJECT – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.

PREMISES AFFECTED – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to June 11, 2013, at 10 A.M., for continued hearing.

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197-08-BZ

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

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

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

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for adjourned hearing.

58-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner; Eckford II Realty Corp., lessee.

SUBJECT – Application March 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously-granted Special Permit (§73-36) for a physical culture establishment (*Quick Fitness*), which expired on February 14, 2013. M1-2/R6A zoning district.

PREMISES AFFECTED – 16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

297-12-A

APPLICANT – Law Office of Fredrick A. Becker, for 28-20 Astoria Blvd LLC, owners.

SUBJECT – Application October 17, 2012 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to complete construction commenced under the prior R6 zoning district. R6-A/C1-1 zoning district.

PREMISES AFFECTED – 28-18/20 Astoria Boulevard, south side of Astoria Boulevard, approx. 53.87' west of 29th Street, Block 596, Lot 45, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application requesting a Board determination that the owner of the premises has obtained the right to complete construction of a seven-story mixed residential and commercial building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

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

WHEREAS, the site is located on the south side of Astoria Boulevard, between 28th Street and 29th Street; and
WHEREAS, the site has a lot area of 6,701 sq. ft. and 45.85 feet of frontage along Astoria Boulevard; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed residential and commercial building with an FAR of 3.0, and 28 dwelling units (the “Building”); and

WHEREAS, the subject site is currently located partially within an R6B zoning district and partially within an R6A (C1-3) zoning district, but was formerly located within an R6 (C1-2) zoning district; and

WHEREAS, the Building complies with the former R6 (C1-2) zoning district parameters; specifically with respect to floor area; and

WHEREAS, however, on May 25, 2010 (the “Enactment Date”), the City Council voted to adopt the Astoria Rezoning, which rezoned the site to partially R6B and partially R6A (C1-3), as noted above; and

WHEREAS, as a result of the rezoning, the Building does not comply with the district parameters regarding

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maximum floor area; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Enactment Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, the applicant states that New Building Permit No. 402604669-01-NB (the "Permit") was issued to the owner by the Department of Buildings ("DOB") on February 13, 2008; and

WHEREAS, the applicant notes that ZR § 11-31(c)(1) classifies the construction authorized under the Permit as a "minor development"; and

WHEREAS, the applicant notes that, per ZR §§ 11-331 and 11-332, where all work on foundations for a minor development has been completed prior to the effective date of an applicable amendment to the Zoning Resolution, work may continue for two years, and if after two years, construction has not been completed and a certificate of occupancy has not been issued, the permit shall automatically lapse and the right to continue construction shall terminate; and

WHEREAS, the applicant states that, as of the Enactment Date, the entire foundation for the building was completed; and

WHEREAS, accordingly, the applicant states, DOB recognized the owner's right to continue construction under the Permit for two years until May 25, 2012, pursuant to ZR § 11-331; and

WHEREAS, however, as of May 25, 2012, construction was not complete and a certificate of occupancy had not been issued; therefore, on that date the Permit lapsed by operation of law; and

WHEREAS, by letter dated December 28, 2012, DOB confirmed that the Permit was lawfully issued; 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 applicant states that prior to May 25, 2010, the owner had completed the following work: demolition, excavation, footings and the entire foundation for the building, including foundation bracing and strapping, and underpinning existing foundations; since May 25, 2010, the applicant states that the entire structural steel framework for the building has been completed; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: invoices, concrete delivery slips, construction contracts, plans highlighting the work completed, and photographs of the site showing certain aspects of the completed work; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before and after the Enactment 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 prior to the Enactment Date, the owner expended \$1,539,000, including hard and soft costs and irrevocable commitments, out of \$4,583,000 budgeted for the entire project; and

WHEREAS, the applicant states that since the Enactment Date, the owner has expended \$148,285.45, including \$31,823.54 in soft costs; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 30 percent of the projected total cost; 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 examines 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

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permitted under the new zoning; and

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 (C1-2) zoning, the maximum permitted residential floor area ratio would decrease from the approved 3.0 FAR for the entire lot to 3.0 FAR for the R6A portion of the lot and 2.0 FAR for the R6B portion of the lot, representing a loss of 1,313 sq. ft. of buildable residential floor area in the building; the applicant also notes that while the maximum permitted commercial floor area ratio is the same (2.0 FAR) under the former and current zoning, the maximum permitted community facility floor area ratio has been decreased from 4.8 FAR for the entire lot to 3.0 FAR for the R6A portion of the lot and 2.0 FAR for the R6B portion of the lot; and

WHEREAS, the applicant further states that complying with the current zoning would result in a reduction of dwelling units from 28 to 24, and the elimination of the community facility and commercial spaces at the site; and

WHEREAS, the applicant represents that the 1,313 sq. ft. loss in residential floor area, the loss of four units, and the elimination of the community facility and commercial spaces in the building would reduce the annual rental income from approximately \$884,500 to \$576,000; in addition, such changes to the building decrease its market value from \$10,614,000 to \$6,912,000; and

WHEREAS, the applicant states these decreases in income and market value exceed 30 percent of the original projected income and market value, while the difference in construction costs between completing the building as originally designed and completing the building to comply with the current zoning is only three percent; as such, the applicant asserts, the owner faces a serious financial hardship if a vested right to complete construction is not recognized; and

WHEREAS, the Board agrees that the reduction in the floor area and dwelling units of the building results in a significant loss of income and market value, which constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; the Board also notes that the owner would incur additional costs in redesigning the building to comply with the current zoning; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding 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.

Therefore it is Resolved that this application made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 402604669, 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, April 23, 2013.

326-12-A thru 337-12-A

APPLICANT – Gibson Dunn, for Contest Promotions-NY LLC by Jessica Cohen

OWNER OF PREMISES: Lily Fong, Michael A. Maidman, Thomas Young, George Aryeh, Lily Fong, Vincent J. Ponte, Hung Ling Yung, David R. Acosta, James B. Luu, Fred G. Eng.

SUBJECT – Applications December 11, 2012 – Appeals challenging the Department of Buildings determination to revoke 12 permits previously issued permitting business accessory signs on the basis that they appear to be advertising signs.

PREMISES AFFECTED –

- 52 Canal Street, Block 294, Lot 22, C6-2 zoning district, Manhattan
- 1560 2nd Avenue, Block 1543, Lot 49, C1-9 zoning district, Manhattan
- 2061 2nd Avenue, Block 1655, Lot 28, R8A zoning district, Manhattan
- 2240 1st Avenue, Block 1709, Lot 1, R7X zoning district, Manhattan
- 160 East 25th Street, Block 880, Lot 50, C2-8 zoning district, Manhattan
- 289 Hudson Street, Block 594, Lot 79, C6-2A zoning district, Manhattan
- 127 Ludlow Street, Block 410, Lot 17, C4-4A zoning district, Manhattan
- 1786 3rd Avenue, Block 1627, Lot 33, R8A zoning district, Manhattan
- 17 Avenue B, Block 385, Lot 1, R7A zoning district, Manhattan
- 173 Bowery, Block 424, Lot 12, C6-1 zoning district, Manhattan
- 240 Sullivan Street, Block 540, Lot 23, R7-2 zoning district, Manhattan
- 361 1st Avenue, Block 927, Lot 25, C1-6A zoning district, Manhattan

COMMUNITY BOARD #2/3/6/8/9/11M

ACTION OF THE BOARD – Appeals Denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, the subject appeals come before the Board in response to the determinations of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated November 14, 2012, to revoke Permit Nos. 120975454, 120993283, 120993363, 120993452, 120993327, 121037939, 120975427, 120993354, 120993345, 120853736, 120993318, and 120993130 for signs at the subject sites (the “Final Determinations”); and

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WHEREAS, the Final Determinations read, in pertinent part:

By letter dated September 12, 2012, the Department of Buildings (the "Department") notified you of its intent to revoke the approval and permit issued for work at the premises in connection with the application referenced above. As of this date, the Department has not received sufficient information to demonstrate that the approval and permit should not be revoked.

Therefore, pursuant to Section 28-104.2.10 and 28-105.10 of the Administrative Code of the City of New York, the APPROVAL AND PERMIT ARE HEREBY REVOKED.

In the event an order to stop work is not currently in effect, you are hereby ordered to STOP ALL WORK IMMEDIATELY AND MAKE THE SITE SAFE; and

WHEREAS, a public hearing was held on this application on March 5, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

WHEREAS, the 12 subject sites are occupied by (1) Newsstand Grocery (52 Canal Street, C6-2 zoning district), (2) formerly Hungarian Meat Market/now Elite Cleaners (1560 Second Avenue, C1-9 zoning district), (3) Triple A Diner (2061 Second Avenue, C1-5 zoning district), (4) Rims Tires and Hub Caps (2240 First Avenue, C1-5 zoning district), (5) Jimmy's House Vietnamese restaurant (160 East 25th Street, C2-8 zoning district), (6) Ellen's Deli & Grocery (289 Hudson Street, C6-2A zoning district), (7) M.A. Grocery (127 Ludlow Street, C4-4A zoning district), (8) Next Evolution Mixed Martial Arts Academy (1786 Third Avenue, C1-5 zoning district), (9) Cornerstone Café (17 Avenue B, C1-5 zoning district), (10) formerly Lighting Craftsman/now vacant (173 Bowery, C6-1 zoning district), (11) J.W. Market grocery store/deli (240 Sullivan Street, C1-5 zoning district), and (12) Dunkin Donuts-Baskin Robbins (361 First Avenue, C1-6A zoning district); and

WHEREAS, each site is also occupied by a sign with the surface area in the range of 80 to 250 sq. ft., which the applicant represents are complying parameters for accessory signs in the respective zoning districts (the "Signs"); and

WHEREAS, the Signs all include a narrow border at the top and bottom with the name and address of the respective business, a solicitation to enter the store to enter the sweepstakes, and arrows in the direction of the store; the main part of the Signs include multiple smaller posters (from three to 18) advertising items such as movies, television shows, music, and clothing stores; and

WHEREAS, accessory signs are permitted for the noted businesses, but advertising signs are not; and

WHEREAS, these appeals are brought on behalf of the

lessee of the Signs, Contest Promotions Incorporated (the "Appellant," "Contest Promotions," or "CPI"); and

WHEREAS, the Appellant seeks a reversal of DOB's determinations that the Signs are advertising signs and therefore not permitted at the subject sites, based on the Appellant's contention that the Signs are accessory to the businesses at the sites; and

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

PROCEDURAL HISTORY

WHEREAS, on March 17, 2010, DOB and the Appellant met in response to Appellant's request to discuss its proposed advertising sign plan and how it believed its signs constituted accessory signs pursuant to the ZR § 12-10 definition of accessory; and

WHEREAS, on March 30, 2010, the Appellant wrote a follow up letter to DOB, which included a rendering of a typical sign with a picture of a large advertisement for Tropicana Orange Juice; at the top of the ad, it said "Roberto's Groceries" and then in smaller type "Enter our Sweepstakes Inside for a Chance to Win These Products;" and at the bottom of the sign in even smaller type "No purchase necessary. Void Where Prohibited. Open to legal residents of 50 U.S. and D.C. 18 and Over. See Store for Official Rules;" and

WHEREAS, on May 18, 2010, DOB responded to CPI's March 30, 2010 letter stating that it was DOB's position that CPI's proposed sign did not qualify as an accessory sign "simply because it depicts a product that is sold or may be won via a raffle contest, on the zoning lot;" the letter noted that the product displayed – orange juice – directed attention to a product that was sold in grocery stores throughout the City, and was not the principal use of the zoning lot and thus was an advertising sign and stated that "It is the Department's well-settled position that a sign may refer primarily to a product rather than the business itself, only where the business at the site is readily identifiable by the product.;" and

WHEREAS, on June 30, 2010, CPI submitted another letter to DOB, with an image of an actual sign at 132 Eldridge Street and sought a final determination about whether the proposed signs qualify as accessory signs; and

WHEREAS, on July 28, 2010, DOB responded that "an accessory sign at a grocery store must direct attention to the name and/or purpose of such store and not to any product sold at the store" and that "a final determination for purposes of an appeal to the Board of Standards and Appeals (BSA) may only be issued in connection with a specific job application" and was directed to forward the request to the Borough Commissioner so that his determination could be appealed to the Board; and

WHEREAS, the Appellant filed eight of the 12 professionally-certified permit applications on March 1, 2012, two on February 10, 2012, and the others on October 13, 2011 and April 16, 2012, respectively; and

WHEREAS, on September 12, 2012, DOB issued letters of intent to revoke the permits; and

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WHEREAS, on November 14, 2012, DOB revoked the permits; the permit revocations serve as the basis for the appeal; and

CONTEST PROMOTIONS LITIGATION

WHEREAS, on September 17, 2010, DOB filed a declaratory judgment action in New York State Supreme Court seeking a ruling that its two signs – its business model – constituted accessory signs, Contest Promotions-NY LLC v. New York City Department of Buildings et al, Index No. 112333/10 (Sup Ct NY Co) (Rakower J) (“CPI I”); and

WHEREAS, on October 15, 2010, after the submission of papers and hearing oral argument, the Court ruled in CPI’s favor and on December 10, 2010 the Court entered a judgment finding that signs consistent with CPI’s business model meet the definition of accessory use and it is unlawful for DOB to reject outright permit applications submitted for any signs consistent with CPI’s business model; and

WHEREAS, DOB appealed the December 10, 2010 decision; and

WHEREAS, on March 6, 2012, the Appellate Division, First Department agreed with DOB’s position and unanimously reversed Justice Rakower’s decision, ruling that “failure to exhaust its administrative remedies precludes judicial review of its nonconstitutional claims” and barred the claim because sign permit applications that are disapproved should be appealed to the Board, Contest Promotions-NY LLC v. NYC DOB et al 93 AD3d 436 (1st Dept 2012); and

WHEREAS, the Appellant asserts that the Appellate Division’s reversal is limited to the narrow issue of exhaustion but that Justice Rakower’s decision still stands in every other way and that Justice Rakower’s original decision upheld its model sign as an accessory sign and that any sign that is consistent with its model must be approved by DOB despite the ruling of the First Department; and

WHEREAS, the decision in CPI I includes the following:

Judgment . . . declaring that signs consistent with petitioner’s business model qualify as ‘accessory’ signs under New York City Zoning Resolution (ZR) §12-10 . . . unanimously reversed on the law, without costs, the judgment vacated, the petition denied, and the proceeding dismissed. Id.; and

WHEREAS, DOB’s position is that no part of Justice Rakower’s January 12, 2011 judgment or October 15, 2010 decision stands and there is no judicial determination that CPI’s model signs are to be considered legal accessory signs; and

WHEREAS, DOB states that if the Appellate Division desired to uphold Justice Rakower’s underlying legal interpretation, it would have stated so in its Decision and Order instead of making a blanket declaration of null and void; and

WHEREAS, secondly, DOB states that the Appellant is incorrect in its assertion that Justice Rakower finds that any sign that meets the “model” must be accepted as a

legitimate accessory sign even where there has been no demonstration of the actual accessory nature of the sign; and
WHEREAS, DOB asserts that in CPI I, Justice Rakower specifically stated that the legality of each sign was to be determined by itself and that the signs must meet the three-prong test of the Zoning Resolution’s accessory definition; and

WHEREAS, approximately one year after Justice Rakower’s initial decision, but prior to the Appellate Division ruling declaring the initial decision null and void, Justice Rakower ruled on an Order to Show Cause Motion challenging DOB’s issuance of advertising violations and permit revocations to signs following CPI’s model, which CPI alleged DOB violated; Justice Rakower dismissed the motion; and

WHEREAS, on September 21, 2012, Contest Promotions-New York LLC v. NYC DOB et al Index Nos. 112333/10 and 103868/12 (Sup Ct NY Co) (Rakower J) (CPI II) CPI sought a declaration by the court that its signs qualified as accessory signs and asked that DOB be prohibited from rejecting applications for permits for signs that met its model; CPI also challenged four ECB Appeals Board determinations regarding DOB NOV’s for four signs in Brooklyn; and

WHEREAS, initially, the ECB Administrative Law Justice had concluded that he was constrained to follow Justice Rakower’s decision of October 15, 2010 in CPI I; however, after the First Department’s decision in March 2012, the ECB Appeals Board, on August 30, 2012, upheld the DOB NOV’s for these signs, finding them to be advertising; and

WHEREAS, on November 9, 2012, Justice Rakower issued a ruling in CPI II and found the ECB Appeals violations to be arbitrary and capricious; and

WHEREAS, the Appellant asserts that through the ruling in its favor in CPI II, the court approved the model sign; and

WHEREAS, DOB asserts that the court in CPI II was limited to the four ECB determinations and did not have broader application; and

WHEREAS, DOB has appealed the decision in CPI II to the Appellate Division, where it is pending; and

WHEREAS, DOB asserts that in Justice Rakower’s final proceeding on the matter, on November 9, 2012, she evaluated four violations issued under ZR § 32-63, she determined that CPI signs at a pharmacy and a restaurant in Brooklyn were improperly sustained as advertising signs and, contrary to CPI’s allegations, there is currently no judicial determination holding that CPI’s business model is a valid accessory sign which the City is constrained to follow; and

WHEREAS, the Appellant and DOB contest the precedential value of the ongoing Contest Promotions litigation; and

WHEREAS, the Appellant relies heavily on the decisions by and record of Justice Rakower in CPI I and II and asserts that the prior determinations mandate the

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Board's approval of the Signs; and

WHEREAS, DOB asserts that the Appellant mischaracterizes Justice Rakower's decisions; (1) first, the Appellant's assertion that the Appellate Division's decision has no impact on the Board's review of the Signs; (2) the assertion that Justice Rakower determined that CPI's model is a valid accessory sign, which would render the entire administrative process meaningless; and (3) that DOB is flouting Justice Rakower's rulings by issuing advertising sign violations and permit revocations for these purported accessory signs; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 Definitions

Accessory use, or accessory (2/2/11)

An "accessory use":

(a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, #accessory# docks, off-street parking or off-street loading need not be located on the same #zoning lot#; and

(b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and

(c) 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#.

When "accessory" is used in the text, it shall have the same meaning as #accessory use#.

* * *

Sign, advertising (4/8/98)

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

THE APPELLANT'S POSITION

WHEREAS, the Appellant seeks for the Board to issue a ruling that makes clear that signs that meet Contest Promotions' business model—including the 12 at issue—are, in fact, "accessory" signs, providing legal clarity and binding precedent for both Contest Promotions and DOB going forward; and

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) the Signs satisfy all three prongs of the ZR § 12-10 definition of accessory and (2) because they follow the model; and

WHEREAS, the Appellant asserts that DOB's interpretation is contrary to the plain language of the statutory text and is inconsistent with New York State case

law as well as the decisions in CPI I and CPI II with respect to signs that it finds to be identical for all relevant purposes to the Signs at issue in this appeal; and

A. The Signs Relate to the Business on the Same Zoning Lot as the Principal Use

WHEREAS, as to the first prong of the accessory use analysis, the Appellant says that it applies because the requirement is only that an accessory sign be located on "the same zoning lot as the principal use" and the Signs plainly meet this requirement; and

WHEREAS, the Appellant states that DOB imports new requirements into this prong that are nowhere found in the text of the Zoning Resolution, stating that in order to qualify as an accessory sign, "the text of the ads . . . for movies, jeans, concerts, TV shows, a boutique etc." must be "directly related to the principal uses of the zoning lots in question;" and

WHEREAS, the Appellant states that the Zoning Resolution does not require that the "text of the ads" or the "products" relate to the principal use, only that the sign *itself* is located on the same zoning lot as the principal use establishment to which it directs attention; and

WHEREAS, further, the Appellant asserts that even if there were such a requirement, that requirement would be met by Contest Promotions signs because it is the sweepstakes contest itself that is the "product," and that product *is* available at each primary use establishment; and

WHEREAS, additionally, the Appellant asserts that there is no requirement under any prong that the sweepstakes must be the principal use of the zoning lot, and it does not argue that the principal use of the premises is as a "sweepstakes contest store;" rather, the principal uses are, uses like a household appliance store, an eating and drinking establishment, or a newsstand; and

WHEREAS, the Appellant states that the Signs are each related to these principal uses because they direct attention to a sweepstakes that can be entered at the principal use, and they include the name and address of the principal use, arrows pointing towards the principal use facility, and an exhortation to come inside to win prizes; and

B. The Signs are "Clearly Incidental to" and "Customarily Found in Connection with" the Small Businesses Contest Promotions Serves

WHEREAS, as to the second prong, the Appellant asserts that the Supreme Court found that the Contest Promotions model signs on which the Signs at issue here were based satisfy this standard and the Signs at issue here are identical to the model signs the Supreme Court found meet the definition of an "accessory sign" under the Zoning Resolution; and

WHEREAS, the Appellant asserts that the use is "incidental" where it is "subordinate" and has a "reasonable relationship" to the primary use, citing to Gray v. Ward, 74 Misc. 2d 50, 54-55, 343 N.Y.S.2d 749, 753 (Sup Ct Nassau Co 1973); and

WHEREAS, the Appellant asserts that the proper application of the Zoning Resolution results in a conclusion

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that a modest sign, hung on the exterior wall of the building is “subordinate” to the primary use establishment itself and the subordinate nature of the Signs in relation to the primary use is ensured by the fact that the signs conform to the size and height regulations that are applicable in the underlying zoning district—namely, a maximum size of 150-200 sq. ft. See ZR §§ 32-642, 32-655; and

WHEREAS, the Appellant also references the Board’s decision BSA Cal. No. 151-12-A (the “Ham Radio Case”) in which the Board granted an appeal that concluded that a ham radio tower is accessory to the principal use of the residential building; and

WHEREAS, the Appellant cites to the Ham Radio Case for the conclusion that amateur radio towers are “customarily found” in connection with residences and are therefore an accessory use under the Zoning Resolution and that the Board considered evidence submitted of nine ham radio towers maintained throughout the City as “a representative sample” of the radio towers maintained throughout the City, and accepted this evidence as establishing that radio antennas are “customarily found” in connection with the primary use residences, in fulfillment of this second prong of the accessory use test; and

WHEREAS, the Appellant states that the Board noted that the relevant inquiry is not whether the use is a “common accessory use,” but rather whether, “when amateur radio antennas are found, they are customarily found” in connection with the primary use; and

WHEREAS, the Appellant asserts that the Ham Radio Case clarified that the relevant inquiry in this case is not how common signs like the ones at issue are against the totality of possible accessory uses, but rather, whether, when signs that identify an establishment and direct potential customers inside using product images and sweepstakes prizes are found, they are customarily found in connection with the kinds of small storefront locations at issue here; and

WHEREAS, the Appellant states that there is a direct relationship between the Signs and the primary use on the zoning lot as the Signs prominently feature the name of the store, information about the sweepstakes located inside the store, and a depiction of the sweepstakes prize or related item and the Signs expressly direct onlookers to go into the store to enter the sweepstakes; and

WHEREAS, the Appellant asserts that there is not any “proportionality” test to measure the size of a sign against the primary use, only that there be a “reasonable relationship” to the primary use, as set forth in the Zoning Resolution and case law; and

WHEREAS, the Appellant asserts that where the Signs feature the name of the store, information about a sweepstakes located inside the store, a depiction of a sweepstakes prize, and direct onlookers to go inside there is far more than a “reasonable” relationship; and

WHEREAS, the Appellant rejects DOB’s assertion that the proportionality between the copy that “directs attention to the business” and the copy that “directs attention

to products sold” is not consistent with its prior decision on the Fresh Direct sign or in any relevant case law; and

WHEREAS, the Appellant asserts that even if DOB were correct, the sign space is “predominantly devoted to” promoting the primary use establishment, as the copy in the center of the signs “refers to products offered at the store—the sweepstakes;” and

WHEREAS, the Appellant adds that the Signs each include the address and phone number of the store and arrows that direct passersby to the store entrance; the Appellant states that by size, location, and design, the Signs direct and draw customers to the establishment, increasing foot traffic and visibility; and

WHEREAS, the Appellant states that the Supreme Court held twice, and the Board should find that signs such as the ones at issue here are “incidental to” the principal use under the Zoning Resolution and reinstate the Permits; and

WHEREAS, the Appellant states that it is equally clear that accessory signs containing the name of an establishment and directing potential customers into the establishment using product images and sweepstakes prizes, are “customarily” found “in connection with” such stores; and

WHEREAS, the Appellant asserts that Signs such as the ones used by businesses working with Contest Promotions can be found in every borough of the City in connection with small retailers such as the proprietors here, as the examples submitted with Contest Promotions’ two Article 78 petitions—both historical and contemporary—reflect; and

WHEREAS, the Appellant distinguishes the case law on which DOB relies, finding that in Mazza v. Avena, Index No. 14304/97 (Sup Ct Queens Co 1998), the sign at issue was classified as an advertising sign rather than an accessory sign because of “the *size* of the sign, because the sign *does not promote business* for the store on the premises, does not direct attention to the premises, and the sign *faces only an arterial highway* and is *not visible to those in the immediate vicinity* of the premises.” No. 14304/97 (Sup Ct Queens Co 1998), *aff’d*, 261 A.D.2d 546, 687 N.Y.S.2d 909 (2d Dept 1999) (emphases added) and in NYP Realty Corp. v. Chin, Index No. 119194/99 (Sup Ct NY Co 2000), the sign was more than 1,200 sq. ft., had “no direct connection to the subject premises,” and did not “direct attention to a use on the subject lot;” and

WHEREAS, the Appellant states that its Signs are between 88 and 240 sq. ft. in surface area, explicitly promote and direct attention to the business, and are easily seen by passersby; and

WHEREAS, the Appellant cites to the examples it submitted in court of storefront sweepstakes and Lotto signs, as well as signs containing logos and name brands as a means of drawing customers into a store to support its assertion that the Signs are customarily found; and

WHEREAS, the Appellant states that for the Signs, the representative evidence submitted by Appellant and credited by the Supreme Court—as well as the notice taken of Lotto and other similar signs throughout the City—easily

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establishes that signs displaying the name of a store along with images and/or contests that seek to drive customers into the store are “customarily found” in connection with such primary use establishments; and

WHEREAS, the Appellant distinguishes Fresh Direct in that the Signs are all similarly proximate to the sweepstakes located inside the site while Fresh Direct is an online retailer, and the Fresh Direct sign sits atop a distribution center, not a retail site and, thus, it cannot drive customers into the physical location on the zoning lot as Contest Promotions’ signs do; and

WHEREAS, the Appellant states that DOB must rely on its determination that the Fresh Direct sign is accessory; and

WHEREAS, the Appellant states that if the Fresh Direct sign is an accessory sign even though it does not and cannot exhort the onlooker to go into the primary use establishment, even though no products or services are available to the general public at the primary use, and even though the only connection between the sign and the primary use is that the sign sometimes includes products that are sold by, or a logo of, the business that owns the primary use food processing plant, then Contest Promotions signs must be accessory signs too.

WHEREAS, the Appellant compares its signs to McDonald’s promotional Monopoly sweepstakes and the Lotto and does not see any relevant distinction between those two kinds of campaigns and its own Signs; and

WHEREAS, the Appellant asserts that Lotto signs are not all within windows or otherwise exempt from signage regulations; and

WHEREAS, the Appellant offers 7-11 sweepstakes and instant win campaigns as other examples of such enterprises; in the contest, the winners received 7-11 products, which the Appellant says did not relate to the principal use of the establishment; and

WHEREAS, the Appellant cites to other examples retail stores in New York – Lacoste, Murray’s Cheese, Modell’s Sporting Goods, and 7-11, where customers have had a chance to win shopping sprees or other prizes related to the business hosting the prize, to support the assertion that the Signs are customarily found; and

C. The Signs Are Substantially for the Benefit of the Stores’ Owners, Employees, Customers, and Visitors

WHEREAS, as to the third prong, the Appellant states that the Signs satisfy the requirement in that they are “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 Appellant asserts that its affidavits from business owners establish that the Signs are for the benefit of business owners, occupants, employees or customers; and

WHEREAS, the Appellant asserts that it is the Signs that must benefit the owners or their customers and not the

movies, television shows, concerts or clothing being advertised; and

WHEREAS, the Appellant identifies the benefits as including driving customers into the store and for the customers winning prizes; and

WHEREAS, the Appellant states that it is not simply that the owners benefit through rental payments; and

WHEREAS, further, the Appellant asserts that there is no requirement under the Zoning Resolution that the business owner benefits equally to or more than the building owner; and

WHEREAS, the Appellant asserts that business owners benefit from increased visibility and foot traffic and from satisfied customers and they benefit from the remuneration received in exchange for hosting the contests; and

WHEREAS, the Appellant states that in reaching this conclusion in 2010, the Court credited the affidavit of a business owner who discussed “what the Contest Promotions sign has done for his business and how he sees the benefit is so substantial to him to have people brought into the store in this way;” and

WHEREAS, the Appellant asserts that definitive proof of these benefits is that business owners voluntarily enter into agreements with Contest Promotions to host such signs and sweepstakes and if these arrangements were not “substantially for” the store owners’ and occupants’ “benefit,” they would not enter into them; and

WHEREAS, the Appellant concludes that the Signs, like the signs approved by Justice Rakower in CPI II, each mirror the Contest Promotions business model and plainly satisfy the Zoning Resolution’s “accessory sign” definition; thus, DOB’s determinations revoking these permits are arbitrary, capricious, and contrary to law, and must be reversed; and

DOB’S POSITION

WHEREAS, as to the classification of the Signs, DOB asserts that the ZR § 12-10 definitions of advertising sign and accessory use establish the necessary distinctions between the two classifications of signs; and

WHEREAS, first, DOB notes that all 12 permit applications were filed pursuant to AC § 28-104.2.1, meaning that DOB accepted the applications and issued permits based not on its own examinations of the applications, but rather on the job applicants’ professional certification that the applications complied with all applicable laws; and

WHEREAS, DOB states that it revoked the 12 sign permits that had been issued through professional certification process 12 signs that were not accessory at the time of permit, and are not currently accessory to any principal use at the premises; and

WHEREAS, DOB asserts that the determination of whether each of these 12 signs is an accessory sign must be made on an individual basis because the definition of an “accessory use” requires a site-specific analysis; and

WHEREAS, specifically, DOB asserts that the facts

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are different for each case, so it is necessary to review them individually; and

WHEREAS, DOB notes that an accessory sign must, (1) relate to a use conducted on the same zoning lot, (2) be clearly incidental to and customarily found in conjunction with the principal use of the zoning lot, and (3) be in the same ownership as the principal lot or maintained on the same zoning lot substantially for the benefit of the owner of the principal use; and

WHEREAS, DOB notes that the accessory sign definition is conjunctive and each of its three prongs must be independently satisfied for a sign to be considered an accessory sign; and

A. The Signs are not Related to the Principal Use on the Zoning Lots

WHEREAS, DOB asserts that the first prong of the Zoning Resolution's accessory use definition requires that the sign's copy be directly related to the principal use on the zoning lot; and

WHEREAS, DOB asserts that one of the locations - 173 Bowery - Manhattan, is associated with a business, the Lighting Craftsman, that was closed on May 4, 2012 just two weeks after the Appellant self-certified an application for an accessory sign and a second location - 1560 Second Avenue - was occupied by the Hungarian Meat Market which was destroyed by fire and is now occupied by Elite Cleaners; and

WHEREAS, accordingly, DOB asserts that it is impossible to have a contest take place at a store that has closed and that the Signs cannot meet the ZR § 12-10 "accessory use" definition if they do not relate to a use located on the zoning lot; and

WHEREAS, DOB notes that the other ten locations are occupied by (1) a martial arts academy, (2) a tire and hubcap store, (3) a Dunkin Donuts/Baskin Robbins, (4) three diner/cafes/restaurants - Triple A Diner, Jimmy's House (Vietnamese restaurant) and Cornerstone Café, and (5) four of the "mom and pop" newsstands or small groceries which the Appellant alleges are the stores it aims to help attract customers; and

WHEREAS, DOB states that at the time of the permit submissions, ten of the signs advertised movies - eight "Wrath of the Titans", one "The Thing" and one "Dark Shadows"; one ad is for "True Religion" brand jeans and another ad is for "Celine" a boutique on Madison Avenue; and

WHEREAS, DOB notes that, however, none of the locations feature movies; none of the ten signs that direct attention to movies could be considered an accessory sign; and likewise, the sign that directed attention to a boutique was at a newsstand and was not accessory to it, and the sign for jeans was not accessory to the grocery where it was displayed; and

WHEREAS, DOB cites to Operations Policy and Procedure Notice (OPPN) #10/99 of December 30, 1999 Sign Applications and Permits" states that in seeking a permit for an Accessory Sign "the applicant must establish

the accessory relationship between the proposed sign and the use on the zoning lot on which the sign is being erected (the 'principal use'.)"; and

WHEREAS, DOB adds that pursuant to the OPPN, the documentation required is the "name of the owner of the principal use (i.e. the name of the business owner)" and a "lease demonstrating the amount of space leased at the zoning lot by the owner of the principal use and how the space is to be used" and the OPPN goes on to note that the "proposed sign is [must be] clearly incidental to the principal use;" and

WHEREAS, accordingly, DOB states that the OPPN is consistent with the Zoning Resolution requirement that an accessory sign have an accessory relationship with the principal use; and

WHEREAS, DOB asserts that the Signs do not have the required relationship with the principal use of the zoning lots because the products being advertised have no relationship to the principal use and the contest noted on the sign border is one of many products available on the particular zoning lot in question - it is not the principal use of the zoning lot; and

B. The Signs are not Clearly Incidental to and Customarily Found in Connection with the Uses on these Zoning Lots

WHEREAS, DOB asserts that the second prong of the Zoning Resolution's accessory sign definition requires that the sign be "clearly incidental to" and "customarily found in connection with" the principal use and the Signs fail to meet the requirement; and

WHEREAS, DOB asserts that the Signs are meant to, and do, primarily promote movies, TV shows, concerts, a boutique and jeans -- not the principal use of these zoning lots, such as a lighting store, a diner, martial arts academy, or a Dunkin Donuts; and

WHEREAS, DOB says that the purpose is apparent because the sign space is predominantly devoted to these products, while the copy concerning the various stores is not the central focus of the Signs and is less noticeable to a passerby; and

WHEREAS, DOB states that here, the principal use and over-all character of the properties in issue is that of various Use Group 6 uses; the accessory use in question - a sign for a contest - is not clearly incidental to and customarily found in connection with those uses; and

WHEREAS, DOB cites to Matter of 7-11 Tours v. BZA of Town of Smithtown 90 AD2d 486 (2d Dept 1982) in which the Court found that a travel agency was not customary nor incidental to the primary use of the premises as a motel; in so doing it set forth general definitions for "incidental" and "customary:"

Incidental when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant. To ignore this latter aspect of 'incidental' would be to permit any use

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which is not primary, no matter how unrelated it is to the primary use Id at 486; and

WHEREAS, DOB states that the Appellant ignores this latter aspect of the definition of “accessory” by insisting that the sweepstakes use is incidental even though it is completely unrelated to the primary use of the premises; and

WHEREAS, DOB cites to the 7-11 Tours court’s definition of “customarily”:

Courts have often held that the use of the word ‘customarily’ places a duty on the board or court to determine whether it is usual to maintain the use in connection with the primary use ... The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use. Id at 488; and

WHEREAS, DOB states that CPI alleges that its signage refers to products offered at the store – a sweepstakes, but it cannot be said that sweepstakes have commonly, habitually and by long practice been established as reasonably associated with any of the uses at issue in the matters before the Board--a Dunkin Donuts store, a martial arts academy, a lighting store, a meat market, a tire store, a diner or a Vietnamese restaurant; consequently, the sweepstakes signs in question are not accessory to the principal use of the zoning lots at issue; and

WHEREAS, additionally, DOB asserts that it is not customary for a true accessory sign to change its text as frequently as once a month; and

WHEREAS, DOB asserts that the fact that in CPI II Justice Rakower reversed the four ECB determinations on the issue of “clearly incidental to” and “customarily found in connection with” has no precedential effect herein, the City is appealing this ruling and it nevertheless remains the case that Justice Rakower was explicit in her decision that her ruling was narrowly limited to four ECB determinations at two locations in Brooklyn; and

WHEREAS, as far as the Lotto, DOB states that the Appellant makes much of the fact that there are newsstands and delis which have ads for Lotto in their windows; and

WHEREAS, DOB asserts that the distinctions between the Signs and Lotto signs are significant including that Lotto signs often appear in windows which is a specifically legislated exemption and, otherwise are non-commercial signs (because the State created the Lotto a revenue-generating enterprise to help fund educational purposes) entitled to greater First Amendment protection; on the contrary, Contest Promotions signs are never in the window and are commercial signs controlled by a private entity with advertising sign permits separate and apart from the advertising profits made at the sweepstakes locations; and

WHEREAS, further, DOB asserts that if Contest Promotions signs were truly similar to Lotto signs, the Contest Promotions logo of crossed and checkered flags would be used to announce a sweepstakes; instead, that logo is nowhere to be found on any CPI sign or location nor are the words “Contest Promotions” anywhere on the Signs

before the Board; and

WHEREAS, DOB notes that the Appellant has not argued or offered evidence that Lotto or any other contests are commonly found or incidental to the eight zoning lots before the Board which are not convenience stores – such as a martial arts academy, a tire store, a Baskin Robbins, or a meat market other than to say that Lotto logos are ubiquitous; and

WHEREAS, DOB also distinguishes the Appellant’s McDonald’s Monopoly example as in those cases, the sign is not advertising the “Monopoly” board game, but a game that occurs in McDonald’s and, in fact, McDonald’s gives its customers a custom-tailored version of the game which results “mostly in food prizes” that can be used at the McDonald’s where the Monopoly game piece is offered; and

WHEREAS, DOB asserts that it is common for convenience stores to have signs for products such as magazines and cigarettes in their store windows; however, these are not signs within the ZR §12-10 (c) definition of “sign”: “A sign shall include writing, representation or other figures of similar character, within a building, only when illuminated and located in a window;” thus, any non-illuminated writing in a store window is not a sign under the Zoning Resolution; and

WHEREAS, DOB asserts that its position in the subject appeal is consistent with its position in Fresh Direct, which it distinguishes on its facts; and

WHEREAS, specifically, DOB states that the Fresh Direct sign is a non-conforming use located on the same zoning lot as Fresh Direct’s food processing and supply plant; and

WHEREAS, DOB asserts that it is clear that the sign is accessory to a legitimate principal use, specifically a Use Group 17 food processing plant and that its permit application contains no references to off-premises products or services and does not offer a sweepstakes; and

WHEREAS, DOB cites to Fresh Direct’s statements that “the entire surface area of the Sign has been devoted to copy and images relating to Fresh Direct, products available on the Premises, and public service announcements...the Sign has not been used to display copy and images relating to products which are not sold on the Premises;” and

C. CPI Does not Own the Zoning Lots and its Signs Are not Substantially for the Benefit or Convenience of Those Tied to the Principal Use of the Zoning Lot

WHEREAS, DOB notes that the third prong of the accessory sign definition requires that the Signs be in the same ownership or operated substantially for the benefit or convenience of owners, occupants, employees, customers or visitors of the principal use of the zoning lot; and

WHEREAS, first, DOB notes that the Signs are not under the same ownership or control as the zoning lots; the Signs are under the ownership and control of CPI; and

WHEREAS, DOB notes that instead of promoting a specific business or entertainment conducted on the zoning lot, the signs promote products available for purchase at

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sites other than the zoning lot and there has been no demonstration that the movies, TV shows, concerts or jeans being advertised substantially benefit the owners of these establishments or their customers; and

WHEREAS, DOB notes that CPI has submitted affidavits from several business owners who concede that they benefit by being paid by CPI to display CPI's signs at their stores; DOB asserts that mere rental payment is not the type of "benefit" to the zoning lot contemplated by the ZR; and

WHEREAS, DOB asserts that the building owner, not the business owner/lessee disproportionately benefits from the contract with CPI and this makes sense since the sign is on the side of the building controlled by the building owner not the lessee; and

WHEREAS, DOB asserts that the building owners earn many times more income for the Signs than do the proprietors, some of whom do not receive any payment; and

D. The Signs Meet the Advertising Sign Definition

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

WHEREAS, DOB states that consistent with the Appellant's model, each of the Signs, are large wall signs that direct attention to a product off the zoning lot; specifically, ten of the permits authorized signs that direct attention to a movie shown in theaters on other zoning lots, (including eight for the same movie "Wrath of the Titans"), one permit directs attention to "Tru Religion" brand jeans not even sold at the premises and one directs attention to a boutique located at a significant distance away on the Upper East Side; and

WHEREAS, DOB asserts that even if posters of the movies, or the particular brand of jeans, were sold at the on-site stores, the court in Mazza & Avena ruled that a sign that directs attention to one product within the store does not make the sign an accessory sign; and

WHEREAS, DOB asserts that not only does it offend the Zoning Resolution, but it offends common sense and logic to conclude that "Wrath of the Titans" signs are accessory to the noted businesses or that the Celine clothing sign, which specifically directs the passerby to a boutique by repeating the address "870 Madison Avenue" three times could also be accessory to any of the noted businesses; and

WHEREAS, DOB states that in contrast, examples of accessory signs include those on awnings located above the entrance to the premises for the convenience of those visiting the establishment; furthermore, the names of the businesses appear prominently on the signs in bright clear letters, with fonts, symbols and logos unique to type of business the accessory sign is referring to, not in miniscule, generic, faded, and dirty yellow font like the Appellant's signs and, they are not dominated by advertising posters for

off-premises offerings like the Signs; and

WHEREAS, DOB concedes that a very small edge of the Signs indicates the principal use occupying the premises along with language of a purported "sweepstakes contest" offered there, the dominant portion of the sign is directing attention to a use off the zoning lot, which takes the Signs outside the realm of accessory signage and into the realm of advertising signage; and

WHEREAS, DOB concludes that, at best, the limited perimeter of the Signs is accessory to an accessory use on the zoning lot; and

SUPPLEMENTAL ARGUMENTS

WHEREAS, in addition to the effect of the CPI litigation on the subject appeal and the application of the accessory use definition, the Appellant and DOB present opposing positions on several other issues including primarily whether CPI is a legitimate business or a sham and whether its sweepstakes practices comply with New York State Law; and

WHEREAS, CPI presented evidence regarding its business practices including affidavits from representatives of the businesses and employees of CPI and accounting for the contests all of which DOB called into question; and

WHEREAS, the Board does not find it necessary to address the facts and evidence associated with CPI's business practices as those can be addressed in another forum and are not relevant to an analysis of the Signs' content and relationship with the associated businesses; and

CONCLUSION

WHEREAS, the Board agrees with DOB and finds that the Signs do not satisfy any of the three prongs set forth in the ZR § 12-10 definition of accessory use; and

WHEREAS, specifically, the Board finds that the Signs (1) are not related to the principal use on the zoning lots (ZR § 12-10(a)); (2) are not clearly incidental to and customarily found in connection with the principal uses (ZR § 12-10(b)); and (3) are not in the same ownership as or operated for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal uses (ZR § 12-10(c)); and

WHEREAS, the Board finds that the Signs are not accessory signs; they are advertising signs and fit squarely into the ZR § 12-10 definition of an advertising sign that directs attention to a "business,...commodity, service or entertainment conducted, sold, or offered elsewhere" and "is not accessory to a use located on the zoning lot;" and

WHEREAS, as far as ZR § 12-10-(a), the Board finds that the Appellant's focus on the mere coexistence of the principal use and the sign on the same zoning lot is misplaced as the location on the same zoning lot is meaningless without the second requirement of the first prong that the uses be related; and

WHEREAS, the Board notes that accessory business signs are allowed in many more zoning districts than advertising signs and are subject to numerous restrictions; those restrictions include, significantly, the content, per the ZR § 12-10 definition; and

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WHEREAS, the Board finds that an essential element of an accessory sign is that it is related to the principal use; in fact, the sign must be a part of the business and be indistinguishable from it; and

WHEREAS, the Board cites to Matter of 7-11 Tours Inc. v. Board of Zoning Appeals of the Town of Smithtown, 90 A.D.2d 486 (2d Dept 1982) citing Lawrence v. Zoning Bd. of Appeals of Town of North Branford, 158 Conn. 509, 512-513 (1969) for the principle that an accessory use must not be just subordinate to the primary use but also concomitant; and

WHEREAS, the Board finds that the cases Mazza and NYP Realty strongly support its conclusion that the Signs are advertising rather than accessory; specifically, in Mazza (the Newport case), the sign directed attention to a product (Newport cigarettes) generally sold throughout the City, even though the product was also sold at the business on the zoning lot, it was deemed to be advertising because the sign must be designed so that it is clear that it is “accessory” to and directing attention to the business on the zoning lot as opposed to the sale of the product generally; and

WHEREAS, the Board further notes that in its underlying review in Mazza, DOB considered a variety of factors in determining that the large Newport advertising sign was not accessory to the convenience store including that it was not satisfied that such a sign was “customarily found” in connection with a comparable type of retail store; additionally, the Board agreed with DOB’s interpretation “that a sign may refer to a product rather than a business name, where the business at the site is readily identified by the product;” such a conclusion was not possible in the Newport example for a store which sold many products; and

WHEREAS, the Board finds the NYP Realty case to be directly on point as the New York Post sought to have the sign recognized as an accessory business sign since it referenced the newspaper which was published in the subject building but DOB determined that it was an advertising sign because the citation to the New York Post was not the focus of the sign; and

WHEREAS, the Board notes that in the New York Post example, the sign’s primary purpose was to advertise the New York Life Company (and was not directly related to the principal newspaper business on the site), a business and product available elsewhere than the zoning lot and that the mention of the New York Post at the bottom of the sign did not suffice to extinguish the advertising nature of the sign, within the ZR § 12-10 definition; and

WHEREAS, the Board finds that proportionality is a relevant element in the analysis because the relationship between principal and accessory use is inherently about proportions in some form; and

WHEREAS, the Board notes that the NYP Realty court has recognized that proportionality is relevant in its holding that a mere writing of a business name or address is not sufficient; and

WHEREAS, the Board finds that the presence of the business’ name on the Signs’, if it serves any purpose at all,

cannot alone tip the scale of the analysis to it being accessory; and

WHEREAS, as to ZR § 12-10(b), the Board again agrees with DOB that the Signs are not clearly incidental to or customarily found in connection with the principal uses; and

WHEREAS, the Board finds that the Appellant is disingenuous at best to say that a sign with posters for television programs, movies, other entertainment, and clothing companies are incidental to, customarily found in connection with, or have any other relationship to a martial arts studio, tire store, lighting store, or Vietnamese restaurant, most obviously, or even to small grocery stores/newsstands; and

WHEREAS, as to ZR § 12-10(c), the Board rejects the Appellant’s broad reading of the concepts of ownership and benefit; and

WHEREAS, specifically, the Board finds that the Signs are not in the same ownership as the businesses and the Appellant has failed to demonstrate that they are for the benefit of any of the named parties at ZR § 12-10(c); and

WHEREAS, the Board finds that even if the Signs were related to the business, the Appellant is incorrect that a benefit to the building owner satisfies the condition because the building as a whole and the landlord have no connection to the business and are not part of the analysis for whether it is accessory; and

WHEREAS, further, the Board notes that the question is not whether the Signs are accessory to the building; the Appellant is unpersuasive to say that the sign must be on the same zoning lot as the business and related, incidental, and customarily found *with the business* and then to say that it does not have to benefit the business and can benefit some unknown independent building owner; all three prongs must be rooted in the same enterprise, either the building or the business; and

WHEREAS, the Board notes that the only affidavits are from representatives of the businesses, who are potentially biased since they have relationships with the building owners; affidavits from unbiased customers of the businesses about the function of the Signs might tell a different story; and

WHEREAS, the Board rejects the Appellant’s analogy to Lotto signs and to other contests; and

WHEREAS, the Board finds that the Lotto signs reflect logos that in most cases do not even qualify as signs because they are within windows and, further, are non-commercial; and

WHEREAS, also, the Lotto signs do not depict other products or entertainment, therefore, they would not enter into the realm of being unrelated to the principal commercial use; and

WHEREAS, the Board notes that the Appellant’s examples of store promotions (Lacoste, Murray’s Cheese, Modell’s Sporting Goods, McDonald’s, and 7-11) involved prizes of store merchandise or other direct connections to the business’ products so, again, there was a clear

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relationship to the principal use; and

WHEREAS, the Board finds that the question is not whether the small business can advertise sweepstakes or businesses of any size can conduct or advertise their own prize offerings, but rather whether a sweepstakes company's advertisement of its prizes, completely unrelated to the host business, goes beyond being accessory and actually advertises those products independent from the host business or the participation in a sweepstakes; and

WHEREAS, the Board distinguishes the Ham Radio Case in that in the Ham Radio case, it recognized ham radio antennas may not be commonly found but, when they are found, they are consistent with the conditions of other ham radio antennas; and

WHEREAS, in contrast, the Board notes that even if sweepstakes contests like CPI's were customarily found at the subject businesses, the Signs – posters reflecting entertainment and clothing companies - are not consistent with accessory signs; and

WHEREAS, the Board also distinguishes the Fresh Direct sign which bears a clear relationship to the Fresh Direct warehouse on the zoning lot; and

WHEREAS, the Board agrees with DOB's characterization of the CPI I and II litigation and concludes that the Appellate Division vacated the CPI I decision and the CPI II decision had narrow applicability to the four signs at issue there; and

WHEREAS, additionally, the Board finds that there would be no utility in and it would be an inefficient use of judicial resources for the Appellate Division to require that the Appellant seek an appeal to the Board and then not allow the Board to exercise its expertise in reviewing a question of zoning interpretation by restricting it to the Supreme Court's recent holding on the matter; and

WHEREAS, finally, the Board does not find it necessary to consider whether CPI is a sham or to otherwise evaluate its business practices because the Appellant's arguments fail regardless of how genuine its business practices are; however, the Board agrees that DOB's inquiry casts certain doubts on the business; and

WHEREAS, therefore, the Board finds that DOB properly revoked the Signs' permits because they are advertising signs.

Therefore it is resolved that the subject appeals, seeking a reversal of the Final Determinations of the Department of Buildings, dated November 14, 2012, are hereby denied.

Adopted by the Board of Standards and Appeals, April 23, 2013.

89-07-A

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

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for adjourned hearing.

92-07-A thru 94-07-A

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

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

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for adjourned hearing.

95-07-A

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

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

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 4, 2013, at 10 A.M., for adjourned hearing.

144-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f). R8B zoning district.

PREMISES AFFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Off Calendar.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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ZONING CALENDAR

153-12-BZ

CEQR #12-BSA-135K

APPLICANT – Harold Weinberg, for Ralph Bajone, owner.
SUBJECT – Application May 10, 2012 – Special Permit (§73-36) to legalize a physical culture establishment (*Fight Factory Gym*). M1-1/OP zoning district.

PREMISES AFFECTED – 23/34 Cobek Court, south side, 182.0' west of Shell Road, between Shell Road and West 3rd Street, Block 7212, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 23, 2012, acting on Department of Buildings Application No. 320269482, reads in pertinent part:

The use of the premises as a physical culture establishment (gymnasium) in an M1-1 district . . . 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 an M1-1 zoning district within the Special Ocean Parkway District, the operation of a physical culture establishment (“PCE”) on the first story and mezzanine level of a one-story manufacturing building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on February 12, 2013, after due notice by publication in *The City Record*, with a continued hearing March 19, 2013 on and then to decision on April 23, 2013; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a one-story manufacturing building located on Cobek Court between Shell Road and West Third Street, with 118.92 feet of frontage on Cobek Court; and

WHEREAS, the subject site has 11,892 sq. ft. of lot area and the building has 13,401 sq. ft. of floor area (FAR 1.13) on the first story and mezzanine level; and

WHEREAS, the applicant notes that on February 23, 1966, under BSA Cal. No. 1041-65-BZ, the Board granted a special permit pursuant to ZR § 73-50, authorizing the construction of the building “encroaching on the required rear yard along the district boundary”; and

WHEREAS, the PCE will be operated as Fight Factory Gym; and

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

WHEREAS, the hours of operation for the PCE will be Saturday and Sunday, from 7:00 a.m. to 10:00 p.m.; and

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

WHEREAS, the 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 Board notes that the PCE has been in operation since December 2010, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between December 2010 and the date of this grant; 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.12BSA135K, dated May 10, 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

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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 an M1-1 zoning district within the Special Ocean Parkway District, the operation of a physical culture establishment (“PCE”) on the first story and mezzanine level of a one-story manufacturing building, contrary to ZR § 42-10; *on condition* that all work will substantially conform to drawings filed with this application marked “Received March 13, 2013” – Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on December 1, 2020;

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 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, April 23, 2013.

295-12-BZ

CEQR #13-BSA-045Q

APPLICANT – Sheldon Lobel, P.C., for Laura Danoff and Scott Danoff, owners.

SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district. PREMISES AFFECTED – 49-33 Little Neck Parkway, Block 8263, Lot 110, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 13, 2012, acting on Department of Buildings Application No. 420463698, reads in pertinent part:

No structural alterations (ZR 52-22) shall be made in a building or other structure substantially occupied by a non-conforming use (ZR 22-14), except to accommodate a conforming use. The degree of non-conformity on the zoning lot shall not be increased; and

WHEREAS, this is an application under ZR § 72-21, to permit the enlargement of an existing, non-conforming Use Group 4 dentist's office located within a one-story and cellar building in an R1-2 zoning district, contrary to ZR §§ 22-14 and 52-22; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in the *City Record*, with continued hearings on February 26, 2013, and March 19, 2013, and then to decision on April 23, 2013; and

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

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

WHEREAS, Councilmember Daniel J. Halloran, III (19th District, Queens), recommends approval of this application; and

WHEREAS, the Little Neck Pines Civic Association, Inc., a not-for-profit civic organization, recommends approval of this application; and

WHEREAS, the site is a rectangular interior lot located on the north side of Little Neck Parkway between Bates Road and Annadale Lane, within an R1-2 zoning district; and

WHEREAS, the site has 100 feet of frontage along Little Neck Parkway and a total lot area of 7,949 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story dentist's office (Use Group 4) containing approximately 1,596 sq. ft. of floor area (0.20 FAR); the applicant notes that the maximum permitted community facility FAR in an R1-2 district is 3,975 sq. ft (0.50 FAR), per ZR § 24-111(a); and

WHEREAS, the applicant states that the building's existing side yards with widths of 8'-2" and 16'-6" comply with the requirements for community facilities in R1-2 districts (two 8'-0" side yards are required, per ZR § 24-35); that the front yard is complying for the portion of the lot in front of the dentist's office (21'-6") but non-complying for the portion of the lot in front of the garage (18'-5") (a 20'-0" front yard is required, per ZR § 24-35); that the rear yard is non-complying (27'-11") (a 30'-0" rear yard is required, per ZR § 24-36); and that the existing open space ratio of 369 percent is

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complying (150 percent is required, per ZR § 23-141); and

WHEREAS, the applicant states that the subject building was originally constructed as a single-family dwelling with an accessory garage around 1950; that on January 13, 1993, it was converted to a dentist's office; and that, on September 9, 2004, the dentist's office became non-conforming due to an amendment to the Zoning Resolution that prohibited certain community facilities in R1 districts as-of-right; and

WHEREAS, the applicant proposes to: (1) demolish the existing garage; (2) extend the dentist's office into the area formerly occupied by the garage and into the existing concrete patio at the rear of the building; and (3) extend the cellar to match the footprint of the proposed first story; and

WHEREAS, the applicant represents that the proposal would increase the floor area of the building from 1,596 sq. ft. (0.20 FAR) to 2,171 sq. ft. (0.27 FAR), decrease the open space ratio from 369 percent to 255 percent, comply with side and front yard requirements, and maintain the degree of non-compliance with respect to the rear yard; however, the proposed demolition, reconstruction, and enlargement of this building is contrary to ZR § 52-22 (Structural Alterations), because, as noted above, the building is substantially occupied by a non-conforming use; accordingly, the applicant requests the subject variance; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the history of development at the site; (2) the underdevelopment of the site; and (3) the obsolescence of the building for its current lawful use; and

WHEREAS, as to the history of development at the site, the dentist's office use has existed at the site for the past 20 years and was conforming when commenced, but became non-conforming in 2004; accordingly, the building cannot be structurally altered or enlarged, which prohibits meaningful development of the lot and prevents the owner from modernizing his practice; and

WHEREAS, as to the underdeveloped nature of the site, the existing floor area of the building, 1,596 sq. ft. (0.20 FAR), is less than half of the 0.50 FAR permitted for community facilities that are allowed as-of-right in R1-2 districts; and

WHEREAS, the underdevelopment nature is distinctive in that, according to a study submitted by the applicant, there are four dentist's or doctor's offices along Little Neck Parkway with significantly greater FAR than the subject building's 0.20; these offices have FARs of 0.34, 0.39, 0.52 and 1.40; and

WHEREAS, in addition, the applicant represents that utilizing the building's existing floor area by converting the attached former garage in accordance with the certificate of occupancy to usable dental office space is not feasible; and

WHEREAS, specifically, such a conversion would require elevating the garage floor 4'-5" to match the floor of

the office, elevating the garage roof plane three feet to provide adequate headroom, replacing the existing garage overhead door with a masonry wall, and installing insulation, HVAC and windows; such work would be cost prohibitive and only yield an additional 411 sq. ft. of floor area; and

WHEREAS, likewise, an as-of-right development on the underdeveloped site—either conversion and enlargement of the existing building or construction of a new residence—while resulting in a floor area of 3,638 sq. ft (0.46 FAR) would be infeasible due to the premium costs of demolition and construction associated with removing the existing legal community facility space, and/or reinforcing the existing structure; and

WHEREAS, as to the obsolescence of the building for its current lawful use, the one-story building is unsuitable to accommodate the large equipment required for a modern dental facility, which the applicant represents is necessary for the practice to remain attractive to current and prospective patients; and

WHEREAS, based upon the above, the Board finds that, in the aggregate, the noted conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant analyzed the feasibility of three conforming scenarios: (1) maintaining the building as-is; (2) converting the building to a one-family residence and enlarging it; and (3) converting the existing attached garage space to dental office use without any enlargement; and

WHEREAS, the applicant also considered whether a lesser variance was feasible; namely, the applicant examined a scenario in which the owner obtained a use variance and constructed a two-family residence on the site (the subject R1-2 district does not allow a two-family residence as-of-right); and

WHEREAS, the applicant represents that none of these four scenarios would provide a reasonable rate of return; and

WHEREAS, the applicant asserts that only the proposal results in an acceptable rate of return; and

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

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

WHEREAS, the applicant states that the dentist's office has existed in the neighborhood for the past 20 years, and that four non-conforming Use Group 4 facilities exist within a 600-foot radius of the subject lot; and

WHEREAS, as to bulk, the applicant states that the proposal is modest and well within the requirements for permitted community facilities in R1-2 district, in that: (1) the proposed increase in floor area from 1,596 sq. ft. (0.20 FAR) to 2,171 sq. ft. (0.27 FAR) results in an FAR that is

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approximately half of the maximum FAR permitted in the district (0.50 FAR); (2) the proposed decrease in open space ratio from 369 percent to 255 percent, provides over 100 percent more open space than is required (150 percent); and (3) the proposed changes to the footprint of the building will maintain compliance with the side yard requirements, bring the lot into compliance with the front yard requirement, and maintain the existing non-complying rear yard; and

WHEREAS, the applicant notes that construction under the subject variance would leave the appearance of the building—i.e. its residential façade and building envelope, which are harmonious with the other buildings on the predominantly residential street—practically unchanged; and

WHEREAS, the applicant represents that, based on a study of existing patient patterns, even if the proposal resulted in a doubling of the number of patients in the practice, the maximum number of patients visiting the office at any given time would be only eight; and

WHEREAS, in addition, the applicant provided a parking survey, which indicated that there were always at least seven available parking spaces (with an average of 15 available) on the portion of Little Neck Parkway directly in front of the site during regular business hours; and

WHEREAS, the applicant also notes that the site fronts on Little Neck Parkway, a 80'-0" wide, busy thoroughfare that can reasonably accommodate any increase in vehicular and pedestrian traffic that would result from the proposal; and

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

WHEREAS, the applicant states that the hardship was not created by the owner or a predecessor in title, but is the result of the use becoming non-conforming in 2004; and

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

WHEREAS, the applicant states that the proposal is the minimum variance necessary to afford relief, in that it seeks to add only 575 sq. ft. (FAR 0.07), reduce the non-compliance of the front yard, and in all other respects comply with the bulk regulations applicable to community facilities that are allowed in R1-2 districts; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA045Q dated December 21, 2012; and

WHEREAS, the EAS documents that the project as

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit the enlargement of an existing, non-conforming Use Group 4 dentist's office located within a one-story and cellar building in an R1-2 zoning district, contrary to ZR §§ 22-14 and 52-22; *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 March 26, 2013"—eight (8) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: 2,171 sq. ft. (0.27 FAR), a minimum rear yard depth of 27'-11", a minimum front yard depth of 20'-0", two side yards with a minimum width of 8'-0"; and a total height of 23'-0", as indicated on the BSA-approved plans;

THAT all signage at the site shall be in accordance with the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 23, 2013.

323-12-BZ CEQR #13-BSA-063M

APPLICANT – Sheldon Lobel, P.C., for 25 Broadway Office Properties, LLC, owner; 25 Broadway Fitness Group LLC, lessees.

SUBJECT – Application December 7, 2012 – Special Permit (§73-36) to allow a proposed physical culture establishment (*Planet Fitness*). C5-5LM zoning district.

PREMISES AFFECTED – 25 Broadway, southwest corner

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of the intersection formed by Broadway and Morris Street, Block 13, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 13, 2012, acting on Department of Buildings Application No. 121414193, reads in pertinent part:

Proposed change of use to a physical culture establishment . . . is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-5 zoning district within the Special Lower Manhattan District, the operation of a physical culture establishment (“PCE”) in the sub-cellar, basement and first story of a 23-story mixed-use commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 12, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

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

WHEREAS, the subject site is a 23-story mixed-use commercial and residential building located on Broadway between Morris Street and Battery Place, with 203 feet of frontage on Broadway, 248 feet of frontage on Morris Street, and 231 feet of frontage on Greenwich Street; and

WHEREAS, the subject site has 48,071 sq. ft. of lot area and the building has 809,100 sq. ft. of floor area; and

WHEREAS, the building, known as the Cunard Building, was constructed in 1921; the applicant notes that it was designated as an individual landmark by the Landmarks Preservation Commission (“LPC”) in 1995; and

WHEREAS, the PCE is located in the sub-cellar, basement, and first story of the building, and occupies a total of 20,575 sq. ft. of floor space, with 10,105 sq. ft. of floor space in the sub-cellar, 10,055 sq. ft. of floor area in the basement, and 415 sq. ft. of floor area on the first story; and

WHEREAS, the PCE will be operated as Planet Fitness; and

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

WHEREAS, the hours of operation for the PCE will be 24 hours per day, seven days per week; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, dated September 6, 2012, approving the proposed interior alterations at the sub-cellar, basement and first story; in addition, on March 22, 2013, LPC issued a permit for the proposed signage at the site; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA063M, dated December 6, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I 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

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findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C5-5 zoning district within the Special Lower Manhattan District, the operation of a physical culture establishment (“PCE”) in the sub-cellar, basement and first story of a 23-story mixed-use commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 26, 2013” – Seven (7) sheets and “Received April 19, 2013” – One (1) sheet and *on further condition*:

THAT the term of this grant will expire on April 23, 2023;

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 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, April 23, 2013.

1-13-BZ

CEQR #13-BSA-074M

APPLICANT – Sheldon Lobel, P.C., for Dryland Properties, LLC, owner; Reebok CrossFit 5th Avenue, L.P., lessee.

SUBJECT – Application January 7, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Reebok Crossfit*) at the cellar of an existing building, C5-3 zoning district.

PREMISES AFFECTED – 420 Fifth Avenue, aka 408 Fifth Avenue, between West 37th Street and West 38th Street, Block 839, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD # 5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 7, 2012, acting on Department of Buildings Application No. 121400876, reads in pertinent part:

Proposed change of use to a physical culture establishment . . . is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-3 zoning district within the Special Midtown District, the operation of a physical culture establishment (“PCE”) on the cellar level of a 30-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

WHEREAS, Community Board 5, Manhattan, has no objection to the approval of this application; and

WHEREAS, the subject site is a 30-story commercial retail and office building located on Fifth Avenue between West 37th Street and West 38th Street, with 197.5 feet of frontage on Fifth Avenue, 145 feet of frontage on West 37th Street and 145 feet of frontage on West 38th Street; and

WHEREAS, the subject site has 28,638 sq. ft. of lot area and the building has 686,415 sq. ft. of floor area; and

WHEREAS, the PCE is located in the cellar level and occupies a total of 9,173 sq. ft. of floor space; and

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

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

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:00 a.m. to 9:00 p.m. and Saturday, from 9:00 a.m. to 12:00 p.m.; the PCE will be closed on Sunday; and

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

WHEREAS, the 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

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

WHEREAS, the Board also finds that the PCE use is consistent with the Special Midtown District purposes and provisions pursuant to ZR § 81-13, in that the PCE is: (1) located within an existing building's cellar; (2) accessed from Fifth Avenue by an existing stairwell; and (3) does not utilize any Fifth Avenue ground level retail space; 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.13BSA074M, dated March 5, 2013; 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 C5-3 zoning district within the Special Midtown District, the operation of a physical culture establishment ("PCE") on the cellar level of a 30-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 7, 2013" – One (1) sheet and "Received April 10, 2013" – Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on April 23, 2023;

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 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, April 23, 2013.

7-13-BZ

CEQR #13-BSA-080K

APPLICANT – Law Office of Fredrick A. Becker, for Sharon Sofer and Daniel Sofer, owners.

SUBJECT – Application January 15, 2013 – Special Permit (§73-621) for the enlargement of a single-family home, contrary to floor area, open space and lot coverage (§23-141). R3-2 zoning district.

PREMISES AFFECTED – 1644 Madison Place, south side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 14, 2012, acting on Department of Buildings Application No. 320583695, reads, in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required;
3. Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the

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maximum permitted; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space and lot coverage, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, and then to decision on April 23, 2013; and

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of Madison Place, between Avenue P and Quentin Road; and

WHEREAS, the subject site has a total lot area of 3,100 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,437 sq. ft. (0.46 FAR); and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the cellar, first and second stories at the rear of the building; and

WHEREAS, the applicant seeks an increase in the floor area from 1,437 sq. ft. (0.46 FAR), to 2,000 sq. ft. (0.65 FAR); the maximum floor area permitted is 1,860 sq. ft. (0.60 FAR); and

WHEREAS, the applicant represents that the proposed floor area exceeds the maximum permitted floor area by 8.33 percent; and

WHEREAS, the applicant seeks a decrease in the open space ratio from 73 percent to 62.4 percent; 65 percent is the minimum required; and

WHEREAS, the applicant represents that the proposed open space ratio is not less than 90 percent of the minimum required; and

WHEREAS, the applicant seeks an increase in lot coverage from 27 percent to 37.6 percent; 35 percent is the maximum permitted; and

WHEREAS, the applicant represents that the proposed lot coverage does not exceed 110 percent of the maximum permitted; and

WHEREAS, as a threshold matter, in R3-2 zoning districts, ZR § 73-621 is only available to enlarge homes that existed on June 30, 1989; and

WHEREAS, the applicant represents, and the Board accepts, that the building existed in its pre-enlarged state prior to June 30, 1989; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed floor area ratio

does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant represents that the proposed reduction in the open space ratio results in an open space ratio that is 90 percent of the minimum required; and

WHEREAS, as to the lot coverage, the applicant represents that the proposed increase in lot coverage results in a lot coverage that does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the floor area ratio, the applicant represents that the proposed floor area is 108.33 percent of the maximum permitted; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; 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 §§ 73-621 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 R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space and lot coverage, contrary to ZR § 23-141; *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 January 14, 2013"–(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,000 sq. ft. (0.65 FAR), a minimum open space ratio of 62.4 percent, and a maximum lot coverage of 37.6 percent, as illustrated on the BSA-approved plans;

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

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

MINUTES

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, April 23, 2013.

35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 4, 2013, at 1:30 P.M., for adjourned hearing.

16-12-BZ

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

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

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

COMMUNITY BOARD #4BK

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 June 4, 2013, at 10 A.M., for decision, hearing closed.

199-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.

SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.

PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

238-12-BZ

APPLICANT – Harold Weinberg, for Stuart Ditchek, owner.

SUBJECT – Application August 1, 2012 – Special Permit (§73-622) for the enlargement of single family home contrary floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1713 East 23rd Street, between Quentin Road and Avenue R, Block 6806, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 May 21, 2013, at 10 A.M., for decision, hearing closed.

315-12-BZ

APPLICANT – Akerman Senterfitt, LLP, for Pali Realty LLC, owner.

SUBJECT – Application November 20, 2012 – Special Permit (§73-50) to allow for a community facility building, contrary to rear yard requirements (§33-29). C4-3 zoning district.

PREMISES AFFECTED – 23-25 31st Street, east side of 31st Street, between 23rd Avenue and 23rd Road, Block 835, Lot 27 & 31, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 21, 2013, at 10 A.M., for decision, hearing closed.

8-13-BZ

APPLICANT – Lewis E. Garfinkel, for Jerry Rozenberg, owner.

SUBJECT – Application January 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141(a)); and side yard (§23-461) regulations. R2 zoning district.

PREMISES AFFECTED – 2523 Avenue N, corner formed by the intersection of the north side of Avenue N and west of East 28th Street, Block 7661, Lot 1, Borough of Brooklyn.

MINUTES

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 21,
2013, at 10 A.M., for decision, hearing closed.

2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

10-13-BZ & 11-13-BZ

APPLICANT – Friedman & Gotbaum LLP, by Shelly
Friedman, Esq., for Stephen Gaynor School and Cocodrilo
Development Corporation, owners.

SUBJECT – Application January 18, 2013 – Variance (§72-
21) to permit an enlargement to an existing school (*Stephen
Gaynor School*), contrary to lot coverage (§24-11), rear yard
(§24-36/33-26), and height and setback (§24-522)
regulations. C1-9 & R7-2 zoning districts.

PREMISES AFFECTED – 175 West 89th Street (South
Building) and 148 West 90th Street (North Building),
between West 89th Street and West 90th Street, 80ft easterly
from the corner formed by the intersection of the northerly
side of West 89th Street and the easterly side of Amsterdam
Avenue, Block 1220, Lots 5 and 7506, Borough of
Manhattan.

COMMUNITY BOARD #7M

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 May 21,
2013, at 10 A.M., for decision, hearing closed.

53-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Walker Memorial
Baptist Church, Inc., owner; Grand Concourse Academy
Charter School, lessee.

SUBJECT – Application January 31, 2013 – Variance (§72-
21) to permit the enlargement of an existing UG 3 school
(*Grand Concourse Academy Charter School*), contrary to
rear yard regulations (§§24-36 and 24-33(b)). R8 zoning
district.

PREMISES AFFECTED – 116-118 East 169th Street,
corner of Walton Avenue and East 169th Street with approx.
198.7' of frontage along East 169th Street and 145.7' along
Walton Avenue, Block 2466, Lots 11, 16, & 17, Borough of
Bronx.

COMMUNITY BOARD #4BX

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 May 21,