
BULLETIN

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DIRECTORY

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131-13-A

43 Cecilia Court, located on Cecilia Court off of Howard Lane., Block 615, Lot(s) 210, Borough of **Staten Island, Community Board: 1**. Proposed construction of family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R2 & R1 (SHPD) district.

132-13-A

47 Cecilia Court, located on Cecilia Court off of Howard Lane., Block 615, Lot(s) 205, Borough of **Staten Island, Community Board: 1**. Proposed construction of family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R2 & R1 (SHPD) district.

133-13-BZ

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135-13-A

18 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0091, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

136-13-A

22 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0092, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

137-13-A

26 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0093, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

138-13-A

30 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0094, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

139-13-A

34 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0095, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

140-13-A

38 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0096, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

141-13-A

42 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0097, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

142-13-A

46 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0098, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

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143-13-A

50 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0099, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

144-13-A

54 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0100, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

145-13-A

58 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0113, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

146-13-A

45 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0102, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

147-13-A

39 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0103, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

148-13-A

35 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0104, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

149-13-A

31 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0105, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

150-13-A

27 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0106, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

151-13-A

23 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0107, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

152-13-A

19 Serena Court, Serena Court on Amboy Road, Block 06523, Lot(s) 0108, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) district.

153-13-BZ

107 South 6th Street, between Berry Street and Bedford Avenue, Block 02456, Lot(s) 0034, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the legalization of a physical culture establishment (Soma Health Club) contrary to §32-10. C4-3 zoning district. C4-3 district.

154-13-BZ

1054-1064 Bergen Avenue, bounded by Bergen Avenue to the north, Avenue K to the east, East 73rd Street to the south, and Ralph Avenue to the west, Block 08341, Lot(s) Tent lot 135, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to allow the construction of a retail building (UG 6), contrary to use regulations (§22-10). R5 zoning district R5 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

JUNE 4, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 4, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

608-70-BZII

APPLICANT – Walter T. Gorman, P.E., P.C., for Neptune Avenue Property LLC, owner. Dunkin Donuts Corporate Office, lessee.

SUBJECT – Application January 22, 2013 – Pursuant to ZR §11-412 and ZR §52-332, an Amendment to convert the previously granted (UG16B) Automotive Service Station to a (UG6) Eating and Drinking Establishment (Dunkin' Donuts) contrary to zoning regulations. R6 zoning district. PREMISES AFFECTED – 351-361 Neptune Avenue, north west corner Brighton 3rd Street, Block 7260, Lot 101, Borough of Brooklyn.

COMMUNITY BOARD #13BK

240-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Lionshead 110 Development LLC, owner; Lionshead 110 Development LLC, lessee.

SUBJECT – Application December 11, 2012 – Extension of term of a Special Permit (§73-36) which permitted a physical culture establishment, located in portions of the first floor and second floor levels in an existing mixed use building, which expired on December 17, 2012. C6-4(LM) zoning district.

PREMISES AFFECTED – 110/23 Church Street, southeast corner of intersection of Church Street and Murray Street, Block 126, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

308-12-A

APPLICANT – Francis R. Angelino, Esq., for LIC Acorn Development LLC, owner.

SUBJECT – Application November 8, 2012 – Request for a determination that the owner of record has obtained a vested right under the common law to continue construction and obtain a Certificate of Occupancy. M1-2/R5D zoning district.

PREMISES AFFECTED – 39-27 29th Street, east side 29th Street, between 39th and 40th Avenues, Block 399, Lot 9, Borough of Queens.

COMMUNITY BOARD #1Q

111-13-BZY thru 119-13-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., lessee.

SUBJECT – Applications April 24, 2013 – Extension of time (§11-332-b) to complete construction of a major development commenced under the prior zoning district regulations in effect on October 2004. R1-2/NA-2 zoning district.

PREMISES AFFECTED –

5031, 5021 Grosvenor Avenue, Lots 50, 60, 70, 5030 Grosvenor Avenue, Block 5830, Lot 3930, 5310 Grosvenor Avenue, Block 5839, Lot 4018, 5300 Grosvenor Avenue, Block 5839, Lot 4025, 5041 Goodridge Avenue, Block 5830, Lot 3940, 5040 Goodridge Avenue, Block 5829, Lot 3635, 5030 Goodridge Avenue, Block 5829, Lot 3630. Borough of Bronx

COMMUNITY BOARD #8BX

ZONING CALENDAR

236-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.

SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office contrary to side yard requirement, ZR §23-45. R2 zoning district.

PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.

COMMUNITY BOARD #2SI

50-13-BZ

APPLICANT – Lewis E. Garfinkel, for Mindy Rebenwurz, owner.

SUBJECT – Application January 29, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yard (ZR 23-461); less than the minimum rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1082 East 24th Street, west side of East 24th Street, 100' north of corner of Avenue K and East 24th Street, Block 7605, Lot 79 Brooklyn.

COMMUNITY BOARD #14BK

57-13-BZ

APPLICANT – Eric Palatnik, P.C., for Lyudmila Kofman, owner.

SUBJECT – Application February 2, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage

CALENDAR

(ZR 23-141); and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #15BK

84-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 184 Kent Avenue Fee LLC, owner; SoulCycle Kent Avenue, LLC, lessee.

SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*) within portions of an existing cellar and seven-story mixed-use building. C2-4(R6) zoning district.

PREMISES AFFECTED – 184 Kent Avenue, northwest corner of intersection of Kent Avenue and North 3rd Street, Block 2348, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #1BK

85-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for St. Matthew's Roman Catholic Church, owner; Blink Utica Avenue, Inc., lessee.

SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within existing building. C4-3/R6 zoning district.

PREMISES AFFECTED – 250 Utica Avenue, northeast corner of intersection of Utica Avenue and Lincoln Place, Block 1384, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #8BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MAY 14, 2013
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

326-02-BZ

APPLICANT – Sheldon Lobel, P.C., for 2230 Church Avenue Realty, LLC, owner; 2228 Church Avenue Fitness Group, LLC, lessee.

SUBJECT – Application November 27, 2012 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of physical culture establishment (*Planet Fitness*) which expires on November 5, 2013; Amendment to allow the extension of use to the building's first floor, and change in ownership. C4-4A zoning district. PREMISES AFFECTED – 2228-2238 Church Avenue, south side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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 to legalize the extension of the PCE to a portion of the building's first floor, to change the operator, to modify the hours of operation, and for an extension of term, which will expire on November 5, 2013; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

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

WHEREAS, the subject site is located on the south side of Church Avenue east of the corner it forms with Flatbush Avenue, and west of Bedford Avenue, within a C4-4A zoning district; and

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

WHEREAS, on November 5, 2003, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the legalization of an existing PCE in the cellar of a one-story commercial building for a term of ten

years, to expire on November 5, 2013; at the time of the grant, the site was located within a C4-2 zoning district, but in 2009, pursuant to the Flatbush Rezoning, the site was rezoned to C4-4A; and

WHEREAS, the applicant now seeks to legalize the extension of the PCE use into a portion of the first floor; and

WHEREAS, specifically, the applicant seeks to legalize the PCE use on 3,898 sq. ft. of floor area on the first floor; the occupancy of 10,157 sq. ft. of floor space in the cellar will remain for a total of 14,055 sq. ft. of floor space; and

WHEREAS, additionally, the applicant seeks to change the operator from Church Avenue Fitness Club to Planet Fitness; 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 applicant also seeks to change its hours of operation from the approved 6:00 a.m. to 11:00 p.m., Monday to Friday, and 8:00 a.m. to 8:00 p.m. Saturday and Sunday to 24 hours of operation, seven days a week; and

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

WHEREAS, at hearing, the Board directed the applicant to revise its sign analysis to reflect the correct amount of signage identified on the proposed elevation drawing; and

WHEREAS, in response, the applicant submitted a revised sign analysis that is consistent with the elevation drawing; and

WHEREAS, based on its review of the record, the Board finds that the proposed legalization, change in operator, change in hours of operation, and ten-year extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated November 5, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the date of this grant, to permit the legalization of interior layout modifications, the change in operator, and the change in the hours of operation; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received February 27, 2013"--(4) sheets; and *on further condition*:

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

THAT this grant will be limited to a term of ten years from the date of this grant, to expire on May 14, 2023;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

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

THAT this approval is limited to the relief granted by

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

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

(DOB Application No. 300130551)

Adopted by the Board of Standards and Appeals, May 14, 2013.

150-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Shun K. and Oi-ye Fung, owners.

SUBJECT – Application January 25, 2013 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to build a new four-story residential building with a retail store and one-car garage, which expired on March 29, 2009; Waiver of the Rules. C6-2G LI (*Special Little Italy*) zoning district.

PREMISES AFFECTED – 129 Elizabeth Street, west side of Elizabeth Street between Broome and Grand Street, Block 470, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

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 and an extension of time to complete construction in accordance with the conditions of a variance; and

WHEREAS, a public hearing was held on this application on A, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

WHEREAS, the site is located on the west side of Elizabeth Street, between Broome Street and Grand Street, within a C6-2G zoning district and the Special Little Italy District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 2005 when, under the subject calendar number, the Board granted a variance for construction of a four-story building, with a retail use and a one-car garage on the ground floor, and residential use on the upper floors, contrary to ZR §§ 23-32 and 109-122; and

WHEREAS, a condition of the grant was that the construction be completed pursuant to ZR § 72-23, which requires substantial completion within four years, by March

29, 2009; and

WHEREAS, the applicant states that construction has been delayed due to a dispute with the adjacent church over the ownership of a portion of the site; the dispute has now been settled and the disputed portion of the site has been conveyed to the church; and

WHEREAS, the applicant states that it and the church are in the process of finalizing updated surveys and deeds with new legal descriptions for each of the affected properties (Lot 16 and Lot 17); and

WHEREAS, the applicant states that once the new metes and bounds of the subject Lot 17 are established, it will file an application at the Board to amend its plans; and

WHEREAS, the applicant now seeks to extend the time to complete construction in accordance with the variance for an additional four years; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 29, 2005, so that as amended this portion of the resolution shall read: “to extend the time to complete construction for a period of four years from May 14, 2013, to expire on May 14, 2017; *on condition* that all work will substantially conform to the approved plans; and *on further condition*:

THAT substantial construction be completed by May 14, 2017;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 103299048)

Adopted by the Board of Standards and Appeals, May 14, 2013.

55-06-BZ

APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.

SUBJECT – Application March 7, 2013 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a three-story with cellar, office building (UG 6B), which expired on January 23, 2011; Waiver of the Rules. C1-1(NA-1) zoning district.

PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot 92, 93, 94, Borough of Staten Island.

COMMUNITY BOARD # 2SI

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to complete construction in accordance with the conditions of a variance; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

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

WHEREAS, the site is located in an R3-2(C1-1) zoning district, within the Special Natural Area District (NA-1), and has a lot area of 17,718 sq. ft.; and

WHEREAS, the applicant notes that the site fronts on Nadine Street, which is a final mapped street that is unopened and not traveled; and

WHEREAS, the applicant also notes that the site is adjacent to and across the street from the mapped but un-built Willowbrook Expressway, which is considered part of the Greenbelt (natural undisturbed woodland) on Staten Island; and

WHEREAS, the site is the subject of several prior municipal actions made by the Board, the City Planning Commission, and other City agencies; and

WHEREAS, most recently, on January 23, 2007, the Board granted (1) a variance for construction of a three-story Use Group 6B office building that does not comply with zoning requirements concerning rear yard, wall height, and maximum number of stories, contrary to ZR §§ 33-26, 33-23 and 33-431; and (2) an application under ZR § 73-44, to permit a decrease in required off-street accessory parking spaces, contrary to ZR § 36-21; and

WHEREAS, a condition of the grant was that the construction be completed pursuant to ZR § 72-23, which requires substantial completion within four years, by January 23, 2011; and

WHEREAS, the applicant states that construction has been delayed due to financing constraints; and

WHEREAS, the applicant now seeks to extend the time to complete construction in accordance with the variance for an additional four years; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on January 23, 2007, so

that as amended this portion of the resolution shall read: “to extend the time to complete construction for a period of four years from May 14, 2013, to expire on May 14, 2017; *on condition* that all work will substantially conform to the approved plans; and *on further condition*:

THAT substantial construction be completed by May 14, 2017;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 500822844)

Adopted by the Board of Standards and Appeals, May 14, 2013.

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 reduction in required parking for a veterinary clinic, dental laboratory and general UG6 office use in a two-story building, 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

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

982-83-BZ

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

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

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

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

APPEALS CALENDAR

103-91-BZ

APPLICANT – Davidoff Hutcher & 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 June 11, 2013, at 10 A.M., for continued hearing.

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 (UG 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

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

341-02-BZ

APPLICANT – Sheldon Lobel, P.C., for 231 East 58th Street Associates LLC, owners.

SUBJECT – Application January 25, 2013 – Extension of Term of a previously approved Variance (§72-21) for the continued UG6 retail use on the first floor of a five-story building, which expired on April 8, 2013. R-8B zoning district.

PREMISES AFFECTED – 231 East 58th Street, northwest corner of the intersection of Second Avenue and East 58th Street, Block 1332, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

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

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

493-73-A

APPLICANT – Sheldon Lobel, P.C., for 83rd Street Associates LLC, owner.

SUBJECT – Application October 4, 2012 – Extension of Term of an approved appeal to Multiple Dwelling Law Section 310 to permit a superintendent's apartment in the cellar, which expired on March 20, 2004, an amendment to eliminate the term, an extension of time to obtain a Certificate of Occupancy, and a waiver of the Rules. R10A /R8B Zoning District.

PREMISES AFFECTED – 328 West 83rd Street, West 83rd Street, approx. 81'-6" east of Riverside Drive, Block 1245, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application to waive the Board’s Rules of Practice and Procedure, eliminate the term of a previously granted variance pursuant to Multiple Dwelling Law (“MDL”) § 310, and extend the time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

WHEREAS, the subject site is located on the south side of West 83rd Street, 83 feet east of Riverside Drive and is partially within an R10A zoning district and partially within an R8B zoning district, within the Riverside-West End Historic District Extension I; and

WHEREAS, the site is occupied by a six-story and cellar residential building with a superintendent’s apartment in the cellar and dwelling units on the upper floors; and

WHEREAS, on October 10, 1972, under BSA Cal. No. 552-72-A, the Board granted a variance pursuant to MDL § 310 to legalize an existing superintendent’s apartment in the cellar of the building; and

WHEREAS, on October 23, 1973, under the subject calendar number, the Board amended the variance to permit the superintendent’s apartment in the cellar for a term of five years to expire on October 23, 1978; and

WHEREAS, the grant has been extended several times; and

WHEREAS, most recently, on August 8, 1995, the Board extended the term for ten years, to expire on March

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20, 2004; and

WHEREAS, the applicant acknowledges that at some point prior to its purchase of the building, the cellar apartment was enlarged to incorporate an additional bedroom and a living room, as shown on the existing cellar plan submitted with the application; and

WHEREAS, the applicant states that it will return the cellar apartment to compliance with the BSA-approved plans by eliminating the partitions that created the additional rooms; and

WHEREAS, the applicant states that it cannot maintain all of the habitable rooms because they are unable to meet light and air requirements; and

WHEREAS, the applicant states that the necessary work to return the apartment to compliance will be performed within 12 months of the date of this grant; and

WHEREAS, specifically, the applicant proposes to obtain DOB approval of the proposed work within three months; bid the project to contractors and pull permits within another three months; relocate the superintendent's family within two months; perform the work within two months; and obtain DOB sign-off within a final two months; and

WHEREAS, the Board directed the applicant to provide information about the fire safety measures in the cellar; and

WHEREAS, in response, the applicant detailed the fire safety measures, including the smoke detectors and fire alarm system; and

WHEREAS, the applicant also seeks to eliminate the term of the variance as the apartment has been occupied by a superintendent for more than 40 years without adverse impact on the subject building or the surrounding area, which is predominantly developed with similar uses; and

WHEREAS, finally, the applicant seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, based on its review of the record, the Board finds that a ten-year extension of term and a two-year extension of time to obtain a certificate of occupancy are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated August 8, 1995, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from the date of this grant and extend the time to obtain a certificate of occupancy for two years; *on condition* that the use shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked previously approved by the Board; and *on further condition*:

THAT the term of the grant will expire on May 14, 2023;

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

THAT a certificate of occupancy be obtained within two years of the date of this grant, by May 14, 2015;

THAT all conditions from prior resolutions not

specifically waived by the Board remain in effect;

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

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

(DOB Application No. 120714520)

Adopted by the Board of Standards and Appeals, May 14, 2013.

265-12-A & 266-12-A

APPLICANT – Jesse Masyr, Watchel Masyr & Missry, LLP, for Related Retail Bruckner LLC.

OWNER OF PREMISES – Ciminello Property Associates.
SUBJECT – Application September 5, 2012 – Appeal challenging Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. M1-2 & R4/C2-1 zoning district.

PREMISES AFFECTED – 980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway, Block 5542, Lot 41, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to two Notices of Sign Registration Rejection from the Bronx Borough Commissioner of the Department of Buildings ("DOB"), dated August 6, 2012, denying registration for the signs at the subject premises (the "Final Determinations"), which read, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. The 1977 ES receipt and application contradict the ownership information provided. In addition, the sign has been used exclusively as an accessory business sign to the Home Depot operating on the lot for at least two years, so any claimed non-conforming advertising sign use was terminated and may not be resumed. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

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WHEREAS a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

WHEREAS, the subject premises (“the Premises”) is located on the southeast corner of Brush Avenue and the Bruckner Expressway/Cross Bronx Expressway partially within an M1-2 zoning district and partially within an R4 (C2-1) zoning district; and

WHEREAS, this appeal is brought on behalf of Related Retail Bruckner, LLC (the “Appellant”); and

WHEREAS, the Premises is occupied by a one-story commercial building containing a hardware store (“The Home Depot”), 451 on-grade parking spaces, and, on the north side of the lot, a double-faced pole sign (“the Signs”) whose current message is for the Home Depot; and

WHEREAS, the Appellant states that the Signs are rectangular signs, each measuring 14 feet in height by 48 feet in length for a surface area of 672 sq. ft., each; and

WHEREAS, the Appellant states that the Signs are located 25 feet from the Bruckner Expressway; and

WHEREAS, the Appellant states that, on or about October 26, 1977, DOB issued a permit in connection with application ES 147/77 for the construction of a double-faced sign containing the copy “Whitestone Indoor Tennis Courts” (“the Permit”); and

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of the registration of the Signs based on DOB’s determination that to the extent a non-conforming advertising sign may have been established at the Premises, the Appellant failed to provide evidence demonstrating that it was not discontinued when the Signs began displaying messages for The Home Depot in July 2009; and

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

REGISTRATION REQUIREMENT

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

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

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

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

- all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear

feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

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

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

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

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

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

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

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

REGISTRATION PROCESS

WHEREAS, on or about June 29, 2011, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted an inventory of outdoor signs under its control and Sign Registration Applications for the Signs, attaching a plot plan and photographs as evidence of establishment of the Signs as non-conforming advertising signs within view of an arterial highway; and

WHEREAS, on March 8, 2012, DOB issued two Notice of Sign Registration Deficiency letters, stating that the Appellant had “fail[ed] to provide proof of legal establishment – 1977 receipt does not state advertising sign (and) [r]ecent photos show accessory sign”; and

WHEREAS, by letter dated May 22, 2012, the Appellant submitted a response to DOB, asserting that the

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Signs were lawfully established as advertising signs and not discontinued; and

WHEREAS, DOB determined that the May 22, 2012 arguments lacked merit, and issued the Final Determinations on August 6, 2012; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 *Definitions*

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

Accessory use, or accessory

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

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

* * *

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and

Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

- (a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
- (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.

- (b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.

- (c) The more restrictive of the following shall apply:

- (1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or
- (2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

* * *

ZR § 52-11 *Continuation of Non-Conforming Uses* General Provisions

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

* * *

ZR § 52-61 *Discontinuance* General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a

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conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

* * *

ZR § 52-81 *Regulations Applying to Non-Conforming Signs*

General Provisions

A #non-conforming sign# shall be subject to all the provisions of this Chapter relating to #non-conforming uses#, except as modified by the provisions of Sections 52-82 (Non-Conforming Signs other than Advertising Signs) and 52-83 (Non-Conforming Advertising Signs).

A change in the subject matter represented on a #sign# shall not be considered a change of #use#; Building Code § 28-502.4 – Reporting Requirement

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

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

* * *

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

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

* * *

RCNY § 49-16 – Non-conforming Signs

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

THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determinations should be reversed because: (1) the Signs are

non-conforming advertising signs protected by ZR § 42-55(c); (2) the change in message on the Signs to a message relating to the “Home Depot” retail use in 2009 did not constitute a change to accessory signs; and (3) even if the Home Depot signs are accessory signs, such a change was a permitted “change in subject matter” under ZR § 52-81 and did not constitute a discontinuance of the non-conforming advertising sign use; and

Establishment of the Signs

WHEREAS, the Appellant asserts that the Signs are non-conforming advertising signs under ZR § 42-55(c) because: they were established as advertising signs between June 1, 1968, and November 1, 1979; they were within 660 feet of the nearest edge of the right-of-way of an arterial highway and contain a message that is visible from such arterial highway; and their surface area is 1,200 sq. ft. or less, their height is 30 feet or less, and their length is 60 feet or less; and

WHEREAS, the Appellant contends that that the Signs were established as advertising signs by the Permit, which authorized the construction of a “double-faced pole sign” for the “Whitestone Indoor Tennis Club” measuring 14 feet in height by 48 feet in length; the Appellant notes that the Permit was signed off by DOB in 1977; and

WHEREAS, the Appellant states that the Signs were constructed on a separately-owned lot from the business to which they directed attention (the Whitestone Indoor Tennis Club), and that such separate ownership of the lots renders: (a) the lots separate “zoning lots,” per ZR § 12-10; and (b) the Signs “advertising signs,” per ZR § 12-10; and

WHEREAS, the Appellant contends that DOB misreads subsections (a) and (b) of the ZR § 12-10 definition of “zoning lot,” which both, in pertinent part, require that a lot of record have existed “on December 15, 1961, or any applicable subsequent amendment thereto,” by looking only to how the lot of record was owned or maintained as of December 15, 1961; and

WHEREAS, the Appellant asserts that because the February 27, 2001 enactment of ZR § 42-55(c) is an *applicable subsequent amendment thereto*, the controlling date for whether the lots in this case satisfy either ZR § 12-10(a) or (b) is not December 15, 1961 (or February 27, 2001), but November 1, 1979, the date by which, according to ZR § 42-55(c), an advertising sign must have been constructed near an arterial highway in order to be eligible for non-conforming use protection; and

WHEREAS, the Appellant asserts that when the Signs were constructed in 1977, the subject zoning lot comprised multiple separately-owned lots of record, and that the Signs were constructed on Lot 151, which was owned by Delma Engineering Corporation, and the Whitestone Indoor Tennis Courts were located directly south of Lot 151 on Lot 149, which was owned by Emmanuel Ciminello; as such, the Appellant states that the lots were separate “zoning lots” and the Signs were “advertising signs” according to ZR § 12-10; and

WHEREAS, the Appellant also asserts that its

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recording of an Exhibit III Zoning Lot Description and Ownership Statement on October 14, 1980 constituted a merger of Lots 151 and 149 and that such merger demonstrates that the lots were separate zoning lots when the Signs were constructed; and

WHEREAS, the Appellant submitted three affidavits to support its claim of establishment, including one from the sign hanger who claims to have hung the sign in 1977; and

WHEREAS, the Appellant contends that the Permit, the separateness of the zoning lots in 1977 and the affidavits are, in the aggregate, sufficient proof under Rule 49 that the Signs existed as advertising signs prior to November 1, 1979, and are therefore protected by ZR § 42-55(c)(2); and

WHEREAS, the Appellant notes even if—as DOB contends—the Permit authorized only the construction of accessory signs, because the Signs were constructed before November 1, 1979 and satisfied the definition of advertising signs, they were established as such and may be maintained as legal non-conforming advertising signs according to ZR § 42-55(c); and

WHEREAS, as to continuous use, the Appellant states that the Signs have been in the same location and have remained the same size since their construction in 1977 and that only the message has changed over the years; and

The Classification of the Home Depot Signs

WHEREAS, the Appellant contends that the change in copy to the “Home Depot” on the Signs did not constitute a change in use, because the Home Depot signs do not satisfy the definition of “accessory use”; and

WHEREAS, in particular, the Appellant asserts that because the copy of the Home Depot “changes from time to time” and because the Home Depot is a national retailer with “at least 20 locations throughout the City,” the Signs are not “clearly incidental to, and customarily found in connection with” the principal use of the lot (the Home Depot store); and

WHEREAS, the Appellant further states that the Home Depot retail use could cease to exist and the Home Depot copy could remain on the Signs and still be relevant to Home Depot retailers in the Bronx, throughout the City and in the Tri-State area; the Appellant also notes that the Signs are visible from the arterials but the Home Depot itself is not; and

WHEREAS, finally, the Appellant states that the Signs are not accessory signs because typical Home Depot accessory signs in the City have a smaller surface area, are shorter than 75 feet in height and solely contain the Home Depot logo with no other symbols or representations; and

WHEREAS, accordingly, the Appellant contends that the change to Home Depot messaging on the Signs continued the non-conforming advertising sign use that was established pursuant to ZR § 42-55(c); and

The Interpretation of ZR § 52-81

WHEREAS, the Appellant states that the Signs’ current message for the Home Depot is a permitted change in advertising sign copy under ZR §§ 52-81 and 52-83; and

WHEREAS, the Appellant contends that the phrase, “a

change in the subject matter represented on a sign shall not be considered a change of use” as it is used in ZR § 52-81, allows any non-conforming advertising sign to interchangeably display advertising, accessory or non-commercial copy without changing the use of such sign; and

WHEREAS, the Appellant asserts that DOB’s explanation of the phrase (“the purpose of this last sentence is to clarify that the writing, pictorial representation or emblem on a non-conforming advertising sign may change to different advertising sign copy without triggering [Zoning Resolution] provisions regulating changes in non-conforming sign use”) is an import of new language into ZR § 52-81, which is not supported by the text and contrary to case law; and

WHEREAS, the Appellant states that ZR § 52-81 operates as an exception to any provisions of the Zoning Resolution that could be read to prohibit the display of accessory signage on a non-conforming advertising sign; and

WHEREAS, the Appellant states that the non-conforming signage regulations are “completely different” from the signage provisions set forth in ZR §§ 22-30, 32-60 and 42-50; in essence, the Appellant contends that ZR §§ 52-81 and 52-83 stand alone, mean what they say, and are not properly interpreted in the context of all Zoning Resolution provisions regulating signs, including the definitions set forth in ZR § 12-10; and

WHEREAS, the Appellant contends that if the Zoning Resolution sought to differentiate accessory copy from advertising copy, it could have done so, just as it separates the provisions applying to non-conforming accessory signs in ZR § 52-82 from non-conforming advertising signs in ZR § 52-83; and

WHEREAS, the Appellant states that the Signs retain their non-conforming status, because they comply with all provisions of the Zoning Resolution applicable to non-conforming advertising signs; namely, the Signs have remained in the same location and position and not increased their degree of non-conformity with respect to surface area or illumination, per ZR § 52-83, and have merely undergone permitted changes to “subject matter” in accordance with ZR § 52-81; and

WHEREAS, accordingly, the Appellant states that DOB’s Final Determinations rejecting the Signs from registration as non-conforming accessory signs, should be reversed; and

DOB’S POSITION

WHEREAS, DOB asserts that it correctly rejected registration of the Signs as non-conforming advertising signs, in that: (1) non-conforming advertising signs were never established pursuant to ZR § 42-55(c); and (2) even if non-conforming advertising signs were established, they were replaced by accessory signs in 2009 and the advertising sign use was discontinued, per ZR § 52-61; and

Establishment of the Signs

WHEREAS, DOB states that the Appellant has not submitted sufficient evidence to demonstrate that the Signs were established as advertising signs; rather, DOB contends

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that the evidence supports a finding that a single-faced, accessory sign was constructed in 1977 and existed as of November 1, 1979, as required by ZR § 42-55(c); and

WHEREAS, DOB notes that as of June 28, 1940, advertising signs were prohibited at the site; however, any advertising sign measuring less than 1,200 square feet and within 660 feet and within view of an arterial highway is non-conforming to the extent of its size existing on November 1, 1979; and

WHEREAS, DOB states that acceptable proof that an advertising sign existed on November 1, 1979 includes permits and sign-offs; a permit for an accessory sign may be submitted as evidence of a non-conforming advertising sign on November 1, 1979 provided sufficient proof demonstrates that the sign was used, albeit contrary to the accessory sign permit, to direct attention to a use or commodity on another zoning lot consistent with the Zoning Resolution definition of “advertising sign”; and

WHEREAS, DOB states that the Appellant seeks to register the double-faced sign as a non-conforming advertising sign existing on November 1, 1979 pursuant to ZR § 42-55(c) but fails to meet the standard of proof that is required by Rule 49; and

WHEREAS, DOB notes that Rule 49 identifies the following as acceptable evidence that a non-conforming advertising sign existed to establish its lawful status: “permits, sign-offs of applications after completion, photographs and leases demonstrating the non-conforming use existed prior to the relevant date”; and DOB notes that Rule 49 also states that “affidavits, Department cashier’s receipts and permit applications, without other supporting documentation, are not sufficient to establish the non-conforming status of a sign”; and

WHEREAS, DOB contends that the Permit was for a single-faced 14’ x 48’ illuminated sign displaying the copy: “Whitestone Indoor Tennis Courts” and DOB notes that the Permit was signed-off on December 21, 1977; and

WHEREAS, DOB asserts that the Appellant’s reliance on an October 26, 1977 Cashier’s Receipt as evidence of the construction of a double-faced advertising sign is misplaced; at most, it demonstrates an intent to erect a double-faced sign, but it does not demonstrate that the sign was for an advertising sign; and

WHEREAS, DOB states that the Permit could not have authorized an advertising sign because advertising signs were prohibited near arterial highways since 1940; and

WHEREAS, DOB contends that the Appellant’s remaining evidence of establishment of the Signs, which is three affidavits, is insufficient because the affiants do not state that they observed a double-faced advertising sign on November 1, 1979; and

WHEREAS, DOB states that to the extent the Signs existed on November 1, 1979 that read “Whitestone Indoor Tennis Courts,” the Appellant has submitted insufficient information about the zoning lot to support the conclusion that the Signs meet the Zoning Resolution definition of an “advertising sign”; and

WHEREAS, DOB disagrees with the Appellant’s assertion that since the Signs were located on Lot 151 and the tennis courts for the Whitestone Indoor Tennis Courts were located on Lot 149 and each lot was separately owned, the two parcels were on separate zoning lots; and

WHEREAS, DOB asserts that the definition of “zoning lot” provides that a zoning lot may or may not coincide with a tax lot; and

WHEREAS, DOB states that to determine the zoning lot in 1979, it is necessary to examine the facts against the text of the “zoning lot” definition; and

WHEREAS, DOB asserts that the Appellant has failed to adequately demonstrate that Lots 149 and 151 were not a single zoning lot under the applicable subsections of the definition; specifically, DOB states that the Appellant has not established: (1) whether Lots 149 and 151 were a single tax lot on December 15, 1961, and therefore a ZR § 12-10(a) zoning lot; (2) whether the Lots were a tract of land in single ownership on December 15, 1961 and developed or used together in a manner necessary to be deemed a ZR § 12-10(b) zoning lot; or (3) whether a permit was filed and obtained to use the Lots together prior to August 17, 1977 and while the property was in single ownership, and therefore a zoning lot under the former ZR § 12-10(c) definition; and

WHEREAS, as to the Appellant’s assertion that the Lots were separately owned when the Signs were constructed, DOB states that it is inconclusive evidence of the separateness of the Lots because the December 29, 1976 deed that conveyed the tennis courts parcel from Delma Engineering Corporation to Emanuel Ciminello, Jr. failed to identify the parcels by tax lot number and the historical tax map does not clearly indicate the tax lot boundaries during the relevant years; and

WHEREAS, DOB also contends that the Appellant incorrectly claims that the recording of an Exhibit III Zoning Lot Description and Ownership Statement on October 14, 1980 merged Lots 151 and 149 into one zoning lot, and that such recordation proves that the Signs and the tennis courts were on separate zoning lots prior to that date; and

WHEREAS, DOB states that an Exhibit III Zoning Lot Description and Ownership Statement describing the zoning lot metes and bounds, tax lot number, block number and ownership of the zoning lot must be recorded prior to issuance of any permit for a development or enlargement pursuant to the last paragraph of the Zoning Resolution “zoning lot” definition; however, an Exhibit III does not merge zoning lots; the only way to have merged two zoning lots not under single ownership is by recording an Exhibit IV Zoning Lot Declaration, and Exhibit V Waivers if necessary, signed by the owners and all other parties in interest pursuant to the ZR § 12-10(d) definition of “zoning lot”; and

WHEREAS, in addition, DOB contends that, contrary to the Appellant’s assertion, the recording of an Exhibit III without accompanying zoning lot documents required by ZR § 12-10(d) does not show that the parcels were separate

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zoning lots before the Exhibit III was recorded; instead, as the sole recorded zoning lot document at the time, the Exhibit III indicates that the sign and tennis courts parcels were *already* located on an existing zoning lot; and

WHEREAS, thus, DOB states that based on evidence in the record, the Appellant has failed to demonstrate that the Signs were established as non-conforming advertising signs in accordance with ZR § 42-55(c); and

The Classification of the Home Depot Signs

WHEREAS, DOB states that even if the Signs were established as non-conforming advertising signs as of November 1, 1979, ZR § 52-61 requires the use of the Signs to terminate because the advertising use was discontinued for a period of two or more years; and

WHEREAS, specifically, DOB states that, according to photographs obtained from “Pictometry” (an online aerial oblique imaging and mapping service), the Signs have been accessory to a Home Depot store for more than two years; and

WHEREAS, DOB asserts that while displaying messages for the Home Depot, the Signs satisfy the ZR § 12-10 definition of “accessory” in that the Signs are: on the same zoning lot as the Home Depot store; clearly incidental to and customarily found in connection with Home Depot stores; and 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 DOB notes that the existence of multiple Home Depot stores throughout the City does not alter this conclusion; and

WHEREAS, DOB contends that, contrary to the Appellant’s assertion, the change in message on the Signs from advertising to accessory is a change of use; and

WHEREAS, DOB states that accessory signs and advertising signs must be recognized as different uses in accordance with the ZR § 12-10 definitions of “advertising signs” and “use,” because included in the definition of an advertising sign is that it “is not accessory to a use located on the zoning lot”; and

WHEREAS, DOB contends that whereas an advertising sign is designed, intended and maintained for the purpose of directing attention elsewhere than upon the same zoning lot and is not classified within any Zoning Resolution use group, an accessory sign use is incidental to and customarily found in connection with the principal use and is classified under the Use Group assigned to the principal use; and

WHEREAS, DOB asserts that the Board recognized that accessory signs and advertising signs are different uses in BSA Cal No. 154-11-A (23-10 Queens Plaza South, Queens); and

WHEREAS, DOB states that, in that case, the Board rejected the appellant’s claim that the sign could be both advertising and accessory because the ZR §12-10 definition of “advertising sign” is clear that the two classifications of signs, advertising and accessory, are mutually exclusive; and

WHEREAS, DOB notes that advertising signs have

been prohibited at the site since June 28, 1940 per 1916 Zoning Resolution § 21-B, and continue to be prohibited per ZR § 42-53 (effective December 15, 1961) and ZR § 42-55 (superseding ZR § 42-53 on February 27, 2001); in contrast, accessory signs are allowed at the premises, but as of February 27, 2001 they cannot exceed 500 square feet of surface area; and

WHEREAS, accordingly, DOB contends that a change from a non-conforming advertising sign to an accessory sign for more than two consecutive years is a discontinuance of the non-conforming advertising sign use and the use is required to terminate under ZR § 52-61; and

The Interpretation of ZR § 52-81

WHEREAS, DOB disagrees with the Appellant that ZR § 52-81 authorizes a non-conforming advertising sign to change to an accessory sign; and

WHEREAS, DOB asserts that ZR § 52-81 allows a non-conforming sign to change its copy, but does not authorize a change from non-conforming advertising sign use to accessory sign use; and

WHEREAS, DOB states that the plain meaning of the term “subject matter” in ZR § 52-81’s phrase “a change in subject matter represented on a sign shall not be considered a change of use” is understood to be the sign’s writing, pictorial representation or emblem; and

WHEREAS, DOB asserts that, had the drafters intended “subject matter” to refer to the nature of the use as advertising or accessory, the text would have used defined terms: “a change from an accessory sign to an advertising sign, or an advertising sign to an accessory sign, shall not be considered a change in use”; and

WHEREAS, DOB contends that the Appellant’s interpretation of ZR § 52-81 as allowing non-conforming advertising signs to be changed to accessory signs without limitation is not consistent with the Zoning Resolution’s scheme of regulating both conforming and non-conforming advertising and accessory signs differently based on size, illumination, projection, height, zoning district and distance from an arterial; specifically, DOB states that the Appellant’s interpretation directly contradicts the ZR § 12-10 definitions of “accessory use” and “advertising sign”; and

WHEREAS, DOB asserts that ZR § 52-81 does not operate as an exception, but must be read consistently with all other provisions relating to advertising signs and accessory signs; specifically, DOB states that, per ZR § 52-81, non-conforming signs are subject to the provisions of Article V Chapter 2 including the ZR § 52-31 general provisions which state that “a change in use is a change to another use listed in the same or any other Use Group”; and

WHEREAS, DOB asserts that, in this case, the alleged non-conforming advertising sign use—a use not listed in any particular Use Group—is changed to an accessory sign use, which is classified under Use Group 6, (the same Use Group as the principal use of the Home Depot store); therefore, ZR § 52-81 cannot be read to authorize changes between advertising signs and accessory signs as mere “change[s] in subject matter” because such changes are, per ZR § 52-31,

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changes in use; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determinations denying the registration of the Signs; and

CONCLUSION

WHEREAS, the Board finds that DOB properly denied the registration of the Signs because: (1) the Appellant has not met its burden of demonstrating that the Signs were established as non-conforming advertising signs prior to November 1, 1979; and (2) even if the Board were to accept that the Signs were established as non-conforming advertising signs, the display of the Home Depot message constituted a change of use, which was not authorized by ZR § 52-81 and resulted in a discontinuance pursuant to ZR § 52-61 after the Home Depot message was displayed for more than two consecutive years; and

WHEREAS, the Board finds that based on the evidence submitted: (1) the Permit authorized an accessory sign; and (2) the Signs were constructed on a single zoning lot and were accessory signs for the principal use on the lot; and

WHEREAS, the Board finds that the Permit authorized the construction of an accessory sign for the Whitestone Indoor Tennis Center; and

WHEREAS, the Board finds that, based on the evidence in the record, the Signs were constructed on the same zoning lot as the Whitestone Indoor Tennis Center; and

WHEREAS, specifically, the Board finds that: (1) Lots 149 and 151 were under the same ownership before October 31, 1973; (2) the permit DOB issued for the Signs was for accessory signs rather than advertising signs; (3) the definition of “advertising sign” was substantially the same when the Permit was issued – it required then, as now, that the sign display a message for a use on a different zoning lot, and, as noted above, an advertising sign has not been permitted as-of-right at the site since 1940; (4) the construction of a sign on one tax lot with message relating to a use on an adjacent lot is an indication that the parcels are being developed together; and (5) the recordation of an Exhibit III without the accompanying Exhibits IV and V suggests that the lot had historically been treated as a single zoning lot; accordingly, the Board finds that Lots 149 and 151 appear to have been a single zoning lot when the Permit was issued and on November 1, 1979; and

WHEREAS, therefore, the Signs were not established as non-conforming advertising signs prior to November 1, 1979, and are not protected under ZR § 42-55(c); and

WHEREAS, although the Board has determined that the Signs constructed at the site before November 1, 1979 were accessory signs, even if it were to accept the Appellant’s assertion that the Signs *were* established as non-conforming advertising signs, the Signs have been used as accessory signs since 2009, which constitutes a discontinuance pursuant to ZR § 52-61; and

WHEREAS, the Board finds that the Signs have been accessory signs for the Home Depot because they are, per the ZR § 12-10 definition of “accessory,” located on the same

zoning lot as the Home Depot, clearly incidental to and customarily found in connection with Home Depot, and operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the Home Depot; and

WHEREAS, the Board disagrees with the Appellant that the Home Depot signs’ size, proximity to arterial highways or elaborateness in comparison to other accessory Home Depot signs makes the Signs any less accessory to the Home Depot; the Board rejected such arguments in BSA Cal. No. 154-11-A; likewise, that Home Depot is a national brand with multiple locations throughout the City is not relevant to whether the Signs are properly classified under the Zoning Resolution as “accessory”; and

WHEREAS, the Board agrees with DOB that the change of the Signs from advertising to accessory would constitute a change in use because an accessory sign has the same use group as the principal use and an advertising sign is not classified in a use group; indeed, part of the definition of “advertising sign” is that the sign is “not accessory to a use located on the zoning lot”; this text can only be reasonably interpreted to mean that an advertising sign is a different use than an accessory sign; and

WHEREAS, as to whether, as the Appellant states, ZR § 52-81 permits a non-conforming advertising sign to change to an accessory sign, as a “change in subject matter” on the sign, the Board agrees with DOB: such an interpretation is contrary to the plain meaning of the statute and disregards the definitions of “advertising sign” and “accessory”; and

WHEREAS, in particular, the Board finds that the term “subject matter” in the phrase, “a change in subject matter represented on a sign shall not be considered a change of use” in ZR § 52-81 refers to changes in the sign’s writing, pictorial representation or emblem, rather than a change from advertising to accessory (or non-commercial, for that matter); and

WHEREAS, the Board also agrees with DOB that the Appellant’s interpretation of ZR § 52-81 as allowing non-conforming advertising signs to be changed to accessory signs without limitation is not consistent with the Zoning Resolution’s scheme of regulating advertising signs and accessory signs differently based on size, illumination, projection, height, zoning district and distance from an arterial; and

WHEREAS, the Board finds that ZR § 52-81 does not operate as an exception, but must be read consistently with all other provisions relating to advertising signs and accessory signs; and

WHEREAS, therefore, the Board finds that even if non-conforming advertising signs had been established at the site, they were discontinued when the accessory Home Depot signs were maintained at the site for two consecutive years in 2011; and

WHEREAS, based on the foregoing, the Board finds that DOB properly rejected the Appellant’s registration of the Signs.

Therefore it is Resolved that this appeal, challenging

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Final Determinations issued on August 6, 2012, is denied.

Adopted by the Board of Standards and Appeals, May 14, 2013.

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 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

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

56-12-BZ

CEQR #12-BSA-089K

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 22, 2012, acting on Department of Buildings Application No. 320419560, reads in pertinent part:

- Floor area shall comply with ZR 23-141
- Side yards shall comply with ZR 23-461
- Rear yard has to comply with ZR 23-47
- Lot coverage and minimum required open space shall comply with ZR 23-141; and

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

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in *The City Record*, with continued hearings on February 13, 2013, March 5, 2013, March 19, 2013, and April 16, 2013, and then to decision on May 14, 2013; and

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

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

WHEREAS, the subject site is located on the west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 2,873.5 sq. ft., and is occupied by a single-family home with a floor area of 1,742 sq. ft. (0.60 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,742 sq. ft. (0.60 FAR) to 2,865 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,436.75 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes an open space ratio of 0.52; the minimum permitted open space ratio is 0.65; and

WHEREAS, the applicant proposes a lot coverage of 48 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant proposes to maintain one existing non-complying side yard measuring 1’-4” and maintain the other existing non-complying side yard measuring 2’-4” in the rear of the building and enlarge it in the front to 3’-9”; side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each are required; and

WHEREAS, the applicant proposes to maintain the existing non-complying rear yard, which has a depth of 26’-¾”; the minimum required rear yard depth is 30 feet; and

WHEREAS, the applicant proposes to increase the building height from 24’-8” to 34’-6”; the maximum permitted height is 35 feet; and

WHEREAS, the applicant proposes to decrease the front yard depth from 23’-1” to 19’-1”; the minimum required front yard depth is 15 feet; and

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

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter

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the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards and rear yard contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 22, 2013"- (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,865 sq. ft. (1.01 FAR), a maximum lot coverage of 48 percent, a minimum open space ratio of 0.52, one side yard measuring 1'-4", one side yard measuring 2'-4" in the rear of the building and 3'-9" in the front of the building, a rear yard with a minimum depth of 26'-¾", a maximum building height of 34'-6", and a front yard with a minimum depth of 19'-1", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 14, 2013.

139-12-BZ

CEQR #12-BSA-128Q

APPLICANT – Gerald J. Caliendo, RA, AIA, PC, for Alvan Bisnoff/Georgetown Realty Corp., owner.

SUBJECT – Application April 30, 2012 – Special Permit (§73-53) to allow the enlargement of an existing non-conforming manufacturing building, contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 34-10 12th Street, southwest corner of 34th Avenue and 12th Street, Block 326, Lot 29, 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, the decision of the Queens Borough Commissioner, dated March 30, 2012, acting on Department of Buildings Application No. 420520635, reads in pertinent part:

Proposed enlargement of a legal, non-conforming manufacturing building: warehouse (UG 16) and factory (UG 17) within an R5 residential zoning district is contrary to 22-00. A special permit is required pursuant to 73-53 ZR. Refer to Board of Standards and Appeals; and

WHEREAS, this is an application made pursuant to ZR §§ 73-53 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a non-conforming mixed-use warehouse (Use Group 16) and factory (Use Group 17) building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on April 9, 2013 after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

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

WHEREAS, the subject site is located on the west side of 12th Street, between 34th Avenue and 35th Avenue, within an R5 zoning district; and

WHEREAS, the site has 140.94 feet of frontage along 12th Street, three feet of frontage along 34th Avenue, and a total lot area of 4,795 sq. ft.; and

WHEREAS, the site is occupied by a one-story warehouse (Use Group 16) and factory (Use Group 17) building, with 4,416 sq. ft. of floor area (0.92 FAR), and a building height of 14 feet; and

WHEREAS, the applicant notes that construction of the existing building was authorized by permit issued prior to the adoption of the Zoning Resolution on December 15, 1961, when the site was located in a Manufacturing Use

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District; the Board, under BSA Cal. No. 598-63-BZY, granted an application to vest the permit and the building was completed and a final certificate of occupancy was issued on February 17, 1964; and

WHEREAS, the applicant states that the building is occupied by New Yorker Bagels, a wholesale bakery; and

WHEREAS, the proposed enlargement will add a second story, increase the building height to 27 feet, and increase the floor area to 6,707 sq. ft. (1.39 FAR); and

WHEREAS, the enlargement would result in two new non-compliances in an M1-1 zoning district: (1) FAR, because 1.39 FAR is proposed and, per ZR § 43-12, the maximum permitted commercial or manufacturing FAR is 1.0; and (2) floor area, because 6,707 sq. ft. of floor area is proposed and, per ZR § 43-12, the maximum permitted commercial or manufacturing floor area 4,795 sq. ft.; and

WHEREAS, the applicant notes that neither parking spaces nor a loading berth are required in connection with the proposed enlargement; and

WHEREAS, as to the prerequisites for the subject special permit, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the use of the premises is not subject to termination pursuant to ZR § 52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use where the existing manufacturing floor area is located during the past five years; the subject building has not received an enlargement pursuant to ZR §§ 11-412, 43-121 or 72-21; and that the subject uses are listed in Use Group 16 and Use Group 17, not Use Group 18; and

WHEREAS, the permitted enlargement may be the greater of 45 percent of the floor area occupied by the use on December 17, 1987 or 2,500 sq. ft.; and

WHEREAS, the applicant proposes to enlarge the building by 2,291 sq. ft., in compliance with the limitation; and

WHEREAS, the applicant represents that the enlargement is an entirely enclosed building, and that all activities generated by the enlargement (accessory offices, storage and processing) shall be within the building; and

WHEREAS, the applicant states that the accessory offices in the enlarged portion of the building shall conform to all performance standards applicable in an M1 zoning district located at the boundary of a residence district; and

WHEREAS, the applicant states that no open uses of any kind are proposed within 30 feet of a rear lot line that is located within a residence district; and

WHEREAS, the applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within 30 feet of a rear lot line that coincides with a rear lot line of a zoning lot in a residence district; and

WHEREAS, the applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within eight feet of a side lot line that coincides with a rear lot line of a zoning lot in a residence district; and

WHEREAS, the applicant states that no open uses of

any kind are proposed within eight feet of the side lot line that coincides with a rear lot line of a zoning lot in a residence district; and

WHEREAS, the applicant states that no portion of the proposed enlargement is proposed within eight feet of the lot line that coincides with a side lot line of a zoning lot in the subject R5 district; and

WHEREAS, additionally, the proposed plans reflect that the enlargement will provide for a rear yard with a depth of 30 feet and a side yard with a width of eight feet above the first floor; and

WHEREAS, the applicant represents that the enlargement may result in the hiring of one new employee, which will not generate a significant increase in vehicular or pedestrian traffic; and

WHEREAS, as to potential parking impacts, the applicant states there will be adequate parking to accommodate the facility's needs and the proposed enlargement will not introduce any new traffic generators; and

WHEREAS, the applicant also notes that although New Yorker Bagels operates 24 hours per day, seven days per week, Fridays and Saturdays are much slower days with fewer employees; and

WHEREAS, the applicant states that the pickup and delivery schedule is as follows: ingredient deliveries and charitable donation pickups on Sundays and Thursdays between 9:00 a.m. and 2:00 p.m. and trash pickups six days per week at 5:00 a.m., and that these arrangements will not be altered by the proposed enlargements; the applicant also demonstrated that there is extensive signage to remind truck drivers to turn off their engines and headlights, turn down their radios and generally minimize noise; and

WHEREAS, during the hearing process, the Board raised concerns about garbage storage on the sidewalk; and

WHEREAS, in response to such concerns, the applicant represents that garbage will be stored inside the facility rather than on the sidewalk; and

WHEREAS, accordingly, the record indicates and the Board finds that the subject enlargement will not generate significant increases in vehicular or pedestrian traffic, nor cause congestion in the surrounding area, and that there is adequate parking for the vehicles generated by the enlargement; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the applicant states that the immediate area is characterized by numerous manufacturing uses, including the adjacent one-story manufacturing building at Lot 30 and several one- and two-story manufacturing buildings on the neighboring block (Block 325); and

WHEREAS, accordingly, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board notes that the grant of the special permit will facilitate the enlargement of a viable,

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locally-owned business with 25 employees on a site where such use is appropriate and legal; and

WHEREAS, based upon the above, 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 are outweighed by the advantages to be derived by the community; and

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§ 73-53 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA128Q dated March 5, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 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 each and every one of the required findings under ZR §§ 73-53 and 73-03 to permit, within an R5 zoning district, the proposed enlargement of a non-conforming mixed-use warehouse (Use Group 16) and factory (Use Group 17) building, contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application marked "Received May 13, 2013"– five (5) sheets; and *on further condition*;

THAT the maximum permitted total floor area is 6,707 sq. ft. (1.39 FAR) and the yards will be as reflected on the BSA-approved plans;

THAT, garbage will be stored inside the facility;

THAT all applicable fire safety measure will be complied with;

THAT all egress and staircases will be as approved by DOB;

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

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

THAT substantial construction 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals May 14, 2013.

9-13-BZ

CEQR #13-BSA-082M

APPLICANT – Slater & Beckerman PC, for Broadway Metro Associates LP and Ariel East Condominium, owners; Alamo Drafthouse Cinemas, lessees.

SUBJECT – Application January 18, 2013 – Special Permit (§73-201) to allow a Use Group 8 motion picture theater (*Alamo Drafthouse Cinema*), contrary to use regulations (§32-17). R9A/C1-5 zoning district.

PREMISES AFFECTED – 2626-2628 Broadway, east side of Broadway between West 99th Street and West 100th Streets, Block 1871, Lot 22 and 44, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated December 19, 2012, acting on Department of Buildings (“DOB”) Application No. 121328330 reads, in pertinent part:

Proposed Use Group 8 is not permitted in a C1-5 district, contrary to ZR 32-17; and

WHEREAS, this is an application made pursuant to ZR §§ 73-201 and 73-03, to permit, on a site partially within a C1-5 (R9A) zoning district, partially within an R8B zoning district, and partially within a C1-5 (R8B) zoning district, within a Special Enhanced Commercial District, a motion picture theater (Use Group 8), contrary to ZR § 32-17; and

WHEREAS, a public hearing was held on this application on March 19, 2013 after due notice by publication in *The City Record*, with a continued hearing on April 16, 2013, and then to decision on May 14, 2013; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and

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Commissioner Ottley-Brown; and

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

WHEREAS, the Chair of Community Board 7 appeared at the hearing and provided testimony in support of this application; and

WHEREAS, the subject site is an irregularly shaped zoning lot consisting of Tax Lots 22 and 7502 and located on the block bounded by Broadway, West 99th Street, Amsterdam Avenue, and West 100th Street; the site is occupied by a building formerly used as a motion picture theater (the "Theater Building"), a 34-story residential condominium tower, and community facility uses, including the St. Michael's Protestant Episcopal Church; and

WHEREAS, the site has 104.17 feet of frontage along Broadway, 225 feet of frontage along West 99th Street, 201.84 feet of frontage along Amsterdam Avenue, 101.87 feet of frontage along West 100th Street, and a total lot area 49,047.sq. ft.; and

WHEREAS, within 100 feet of Broadway, the site is zoned C1-5 (R9A); mid-block between West 99th Street and West 100th Street, the site is zoned R8B; and within 100 feet of Amsterdam Avenue, the site is zoned C1-5 (R8B); and

WHEREAS, the Theater Building, known as the Metro Theater, was constructed in the Art Deco style and was designated as an individual landmark by the New York City Landmarks Preservation Commission in 1989; the Metro Theater operated from 1933 until 2007, when a permit was obtained to convert the space to retail use; and

WHEREAS, this application is brought on behalf of Alamo Drafthouse Cinema ("the applicant"); and

WHEREAS, the applicant states that the proposed theater will be located entirely within the C1-5 (R9A) portion of the site, occupy the entire Theater Building (Lot 22) and a portion of the ground floor of the condominium building (Lot 7502), and operate as an Alamo Drafthouse Cinema ("the Alamo"); and

WHEREAS, the applicant states that the Alamo will occupy 10,270 sq. ft. in the cellar, first and second stories, and mezzanine of the Theater Building and 1,769 sq. ft. of floor area at the ground floor of the condominium building, for a total floor area of 12,039 sq. ft.; and

WHEREAS, the Alamo will have five movie screens, a total seating capacity of 378 seats, and an accessory eating and drinking establishment; and

WHEREAS, the grant of a special permit pursuant to ZR § 73-201 requires a finding that a proposed theater has a minimum of four square feet per seat of waiting area either within an enclosed lobby or in an open area that is protected during inclement weather; and

WHEREAS, the applicant states that 1,512 sq. ft. of waiting area is required by the proposed 378 seats, and that 1,566 sq. ft. of waiting area is proposed, with 1,460 sq. ft. of waiting area in the lobby area of the ground floor and 105.97 sq. ft. of waiting area on the second story; and

WHEREAS, ZR § 73-201 states that the waiting area

shall not include space occupied by stairs, or located within ten feet of a refreshment stand or an entrance to a public restroom; and

WHEREAS, the plans provided by the applicant indicate that the proposed waiting area is located in an enclosed interior space that includes no space occupied by stairs or within ten feet of a refreshment stand or an entrance to a public restroom; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the applicant states that the Alamo will occupy the former Metro Theater, which existed as motion picture theater in the neighborhood for 74 years; the applicant also notes the predominantly commercial character of this portion of Broadway on the Upper West Side; and

WHEREAS, the applicant represents that the proposed expansion will not increase the bulk or height of the existing building and that there are no changes proposed to the building envelope; and

WHEREAS, the applicant states that the Special Enhanced Commercial Zoning District does not prohibit or place restrictions on the proposed Use Group 8 theater use; however, the applicant notes that, pursuant to ZR §§ 132-21(b), 132-24, and 132-30, Special Enhanced Commercial District 3 imposes transparency requirements on "developments" and "enlarged" buildings on the ground floor level; and

WHEREAS, the applicant represents that because the proposed theater use will not involve "development" or "enlargement" of the site as defined in ZR §12-10, the transparency regulations and maximum street wall width restrictions of the Special Enhanced Commercial District will not apply; and

WHEREAS, at hearing, the Board raised concerns regarding the sufficiency and usability of the proposed waiting areas; and

WHEREAS, in response to such concerns, the applicant submitted revised drawings that clearly indicated that the waiting area requirements were met; and

WHEREAS, accordingly, the Board finds that the proposed expansion will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission, dated April 16, 2013, approving the proposed alterations under its jurisdiction; and

WHEREAS, based upon the above, 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 are outweighed by the advantages to be derived by the community; and

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§ 73-201 and 73-03; and

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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 (EAS) CEQR No. 13BSA082M, dated January 17, 2013; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration 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 each and every one of the required findings under ZR §§ 73-201 and 73-03, to permit, on a site partially within a C1-5 (R9A) zoning district, partially within an R8B zoning district, and partially within a C1-5 (R8B) zoning district, within a Special Enhanced Commercial District, a motion picture theater (Use Group 8), contrary to ZR § 32-17, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application marked "Received January 18, 2013"- twelve (12) sheet; and *on further condition*;

THAT all waiting areas will be provided as shown on the BSA-approved plans and not diminished without prior approval from the Board;

THAT all applicable fire safety requirements will be met;

THAT all egress will be as approved by DOB;

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

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

THAT construction will be completed pursuant to 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals May

14, 2013.

12-13-BZ

CEQR #13-BSA-084K

APPLICANT – Law Office of Fredrick A. Becker, for Rosette Zeitoune and David Zeitoune, owners.

SUBJECT – Application January 22, 2013 – Special Permit (§73-622) for the enlargement of a single family home, contrary to side yards (§23-461) and rear yard (§23-47) regulations. R5/Ocean Parkway Special zoning district.

PREMISES AFFECTED – 2057 Ocean Parkway, east side of Ocean Parkway between Avenue T and Avenue U, Block 7109, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 14, 2013, acting on Department of Buildings Application No. 320696984 reads, in pertinent part:

The proposed enlargement of the existing one-family residence in an R5 zoning district:

1. Creates non-compliance with respect to the side yard by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
2. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district in the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of Ocean Parkway, between Avenue T and Avenue U; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 3,015 sq. ft. (0.60 FAR); and

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

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available; and

WHEREAS, the applicant seeks an increase in the floor area from 3,015 sq. ft. (0.60 FAR), to 6,083 sq. ft. (1.22 FAR); the maximum floor area permitted is 6,250 sq. ft. (1.25 FAR); and

WHEREAS, the applicant proposes to increase the width of the non-complying side yard from 1'-3 1/4" to 2'-3" along the north lot line and provide a side yard with a width of 8'-0" along the south lot line; the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each; and

WHEREAS, the applicant proposes a rear yard with a depth of 20 feet; the minimum required rear yard depth is 30 feet; and

WHEREAS, additionally, the applicant proposes to maintain the existing non-complying front yard depth of 22'-1 1/4"; a front yard with a minimum depth of 30'-0" is required pursuant to the Special Ocean Parkway District regulations; and

WHEREAS, the Board directed the applicant to establish that the front yard depth is a pre-existing non-complying condition in the Special Ocean Parkway District; and

WHEREAS, in response, the applicant provided a 1930 Sanborn map which reflects that the front yard pre-dates the Zoning Resolution and the establishment of the Special Ocean Parkway District on January 20, 1977; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, within an R5 zoning district in the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 29, 2013"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 6,083 sq. ft. (1.22 FAR) a side yard with a minimum width of 2'-3" along the north lot line, a side yard with a minimum width of 8'-0" along the south lot line, and a rear yard with a minimum depth of 20 feet, as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 14, 2013.

52-13-BZ

CEQR #13-BSA-087M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for LF Greenwich LLC c/o Centaur Properties LLC., owner; SoulCycle 609 Greenwich Street, LLC, lessee.

SUBJECT – Application January 31, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*) within a portion of an existing building. M1-5 zoning district.

PREMISES AFFECTED – 126 Leroy Street, southeast corner of intersection of Leroy Street and Greenwich Street, Block 601, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #2M

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 Executive Zoning Specialist, dated January 29, 2013, acting on Department of Buildings Application No. 121326537-02, reads in pertinent part:

Proposed physical culture establishment is not permitted as of right in an M1-5 district; contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-5 zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and first floor of an existing nine-story commercial building, contrary to ZR §

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42-10; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, and then to decision on May 14, 2013; and

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

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

WHEREAS, the subject site is located at the southeast corner of Leroy Street and Greenwich Street; and

WHEREAS, the site has approximately 13,157 sq. ft. of lot area; and

WHEREAS, the proposed PCE will occupy a total of 3,334 sq. ft. of floor area on the first floor and 2,584 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as SoulCycle; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; the applicant states that massages will not be performed at the PCE; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, 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 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. 13BSA087M, dated January 29, 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 an M1-5 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first floor of an existing nine-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 2, 2013” – Four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on May 14, 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 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, May 14, 2013.

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50-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.

PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

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 June 18, 2013, at 10 A.M., for continued hearing.

250-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Carla Zeitouny and Raymond Zeitouny, owners.

SUBJECT – Application August 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461); less than the required rear yard (§23-47) and perimeter wall height (§23-631). R3-2 zoning district.

PREMISES AFFECTED – 2410 Avenue S, south side of Avenue S, between East 24th and Bedford Avenue, Block 7303, Lot 4, 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 June 11, 2013, at 10 A.M., for decision, hearing closed.

293-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mr. and Mrs. Angelo Colantuono, owners.

SUBJECT – Application October 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(a)) regulations. R3X zoning district.

PREMISES AFFECTED – 1245 83rd Street, north side of 83rd Street, between 12th Avenue and 13th Avenue, Block 6302, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

324-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Taxiarnis Davanelos, Georgia Davanelos, Andy Mastoros, owners.

SUBJECT – Application December 7, 2012 – Special permit (§73-622) for the enlargement of an existing single family home, contrary to floor area regulations (23-141(b)). R3-1 zoning district.

PREMISES AFFECTED – 45 76th Street, north side of 76th Street between Narrows Avenue and Colonial Road, Block 5937, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #10BK

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 11, 2013, at 10 A.M., for decision, hearing closed.

325-12-BZ

APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Royal Charter Properties, Inc., for New York Presbyterian Hospital, owner.

SUBJECT – Application December 10, 2012 – Variance (§72-21) to permit a new Use Group 4 maternity hospital and ambulatory diagnostic or treatment health care facility (*New York Presbyterian Hospital*), contrary to modification of height and setback, lot coverage, rear yard, floor area and parking. R10/R9/R8 zoning districts.

PREMISES AFFECTED – 1273-1285 York Avenue, west side of York Avenue bounded by East 68th and 69th Streets, Block 1463, Lot 21, 31, Borough of Manhattan.

COMMUNITY BOARD #8M

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

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54-13-BZ

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

SUBJECT – Application January 31, 2013 – Variance (§72-21) for the enlargement of existing single-family residence, contrary to lot coverage and open space (§23-141), minimum required side yards (§113-543), and side yards (§23-461a) regulations. 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

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

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 allow the legalization 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

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 11, 2013, at 10 A.M., for decision, hearing closed.

62-13-BZ

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

SUBJECT – Application February 7, 2013 – Special Permit (§73-243) to legalize the existing eating and drinking establishment (*Wendy's*) with an accessory drive-through facility. 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 Avenue to the southwest, Block 4076, Lot 12, Borough of Bronx.

COMMUNITY BOARD #10BX

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

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 Spa*) 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

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 11, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on January 29, 2013, under Calendar No. 548-69-BZ and printed in Volume 98, Bulletin Nos. 4-5, is hereby corrected to read as follows:

548-69-BZ

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

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

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

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – 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 of a prior grant for an automotive service station, which expired on May 25, 2011; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, with continued hearings on September 25, 2013, October 30, 2012 and January 8, 2013, and then to decision on January 29, 2013; and

WHEREAS, Community Board 3, Queens, recommends approval of this application with the following conditions: (1) the surface mounted refueling caps on the underground gasoline storage tanks be lowered to minimize scraping to the underside of cars and possible tripping hazards; and (2) curb cuts and sidewalk flags at 108th Street be repaired and resurfaced; and

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

WHEREAS, the subject site is an irregularly-shaped corner through lot bounded by 107th Street to the west, Astoria Boulevard to the north, and 108th Street to the east, within an R3-2 zoning district; and

WHEREAS, the site is occupied by a one-story automotive service station with an accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 25, 1971 when, under the subject calendar number, the Board granted a variance to permit the construction of an automotive service station with accessory

signs restricted to the pumping of gasoline, which omitted automotive service and repair, for a term of ten years; and

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

WHEREAS, most recently, on August 12, 2003, the Board granted a ten-year extension of term and an amendment to legalize a change of use from an accessory storage building to an accessory convenience store, to expire on May 25, 2011; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping on the site, replace the slatted fencing, clean the dumpster area, remove the ice box, and relocate the shed so it is not visible; and

WHEREAS, in response, the applicant submitted photographs reflecting that landscaping has been planted on the site, the fence has been repaired, the dumpster area has been cleaned, and the ice box has been removed; and

WHEREAS, as to the Board’s request to relocate the shed from the northeast corner of the site, the applicant states that the 10’-0” by 10’-0” shed is currently located in the most concealed position possible and it cannot be placed behind the convenience store, as requested, because there is only 8’-0” separating it from the fencing along the rear lot line; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted a letter from the project manager stating that (1) it is essential that the gas tanks remain elevated in order to prevent water from seeping into the tank manways, and (2) the change in grade at the 108th Street exit is necessary for on-site draining and that it acts as traffic control (like a speed bump) to ensure drivers do not “shoot out” of the site which could be potentially dangerous due to the close proximity of the curb cut to the intersection; and

WHEREAS, the Board accepts the applicant’s explanations in response to the conditions proposed by the Community Board, and agrees that the shed on the site is not significantly visible from the street due to the topography on that portion of the site; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on May 25, 1971, as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on May 25, 2021; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received October 18, 2013’– (3) sheets, and *on further condition*:

THAT the term of this grant will be for ten years from the expiration of the prior grant, to expire on May 25, 2021;

THAT landscaping will be maintained in accordance

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with the BSA-approved plans;

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

THAT signage will comply with C1 district regulations;

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

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

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

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

(DOB Application No. 420508114)

Adopted by the Board of Standards and Appeals, January 29, 2013.

***The resolution has been revised to correct the DOB Application No. which read: “DOB Application No. 401636510” now reads: “DOB Application No. 420508114”. Corrected in Bulletin No. 20, Vol. 98, dated May 22, 2013.**