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AND APPEALS

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10-13-BZ	175 West 89 th Street and 148 West 90 th Street, Manhattan
11-13-BZ	175 West 89 th Street and 148 West 90 th Street, Manhattan

DOCKETS

New Case Filed Up to June 11, 2013

169-13-BZ

227 Clinton Street, East Side of Clinton Street, 100 feet north of the corner formed by the intersection of Congress Street and Clinton Street, Block 297, Lot(s) 5, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-621) to permit the legalization of an enlargement of a two-family residence in an R-6 zoning district which; would allow the floor area on the property to exceed the floor area permitted under the district regulations by no more than 10%; contrary to §23-145. R6 (LH-1) zoning district. R6,LH-1 district.

170-13-BZ

25-10 30th Avenue, bounded by 30th Ave., 29th St.,30th Rd., & Crescent street in the Astoria Queens., Block 576, Lot(s) 12; 9; 34; 35, Borough of **Queens, Community Board: 1**. Variance (§72-21) to allow the expansion of the Mount Sinai Hospital of Queens and the partial renovation of the existing hospital and administration building contrary to § 24-52 (height & Set back, sky exposure plane & initial setback distance); §24-11(maximum corner lot coverage); § 24-36 (Required rear yard); & §§24-382 & 33-283 (required rear yard equivalents zoning resolutions). R6 & C1-3 zoning district. R-6 &C1-3 district.

171-13-BZ

1034 East 26th Street, West side of East 26th Street between Anenue J and Avenue K, Block 7607, Lot(s) 63, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single family home located in an R2 zoning district. R2 district.

172-13-A

175 Ocean Avenue, East side of Ocean Avenue 40' North of Breezy Point Boulevard, Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 41**. GCL35 WAIVER Partialy in the Beof a Mapped Street: the proposed reconstruction of a storm destroyed single family dwelling partiall in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law.Prposed installation of the disposal system partly in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. R4 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

JULY 9, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 9, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

102-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 50 West Realty Company LP, owner; Renegades Associates/dba Splash Bar, lessee.

SUBJECT – Application April 22, 2013 – Extension of Term of a previously granted Special Permit (ZR73-244) for the continued operation of a UG12 Easting/Drinking Establishment (*Splash*) which expired on March 5, 2013 and an Amendment to modify the interior of the establishment. C6-4A zoning district.

PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street between 5th Avenue and 6th Avenue, Block 818, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #5M

45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvetta Street, LLC, owner.

SUBJECT – Application June 10, 2013 – Extension the Time to Complete Construction of a previously granted Variance (§72-21) to construct a new four (4) story, eight-one (81) unit age restricted residential facility which expired on May 19, 2013. M1-1 (Area M), SRD & SGMD zoning district.

PREMISES AFFECTED – 55 Androvetta Street, North side of Androvetta Street at the corner of Manley Street, Block 7407, Lot 1, 80, 82 (tentative 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEALS CALENDAR

29-12-A

APPLICANT – Vincent Brancato, owner

SUBJECT – Application February 8, 2012 – Appeal seeking to overturn DOB Commissioner's padlock order of closure (and underlying OATH report and recommendation) with respect to property, which has applicant contends has a "grandfathered" legal pre-existing (pre-zoning) commercial/industrial use which pre-dated the applicable zoning and should be allowed to continue. R3-2 zoning district.

PREMISES AFFECTED – 159-17 159th Street, Meyer Avenue, east of 159th Street, west of Long Island Railroad,

Block 12178, Lot 82, Borough of Queens.

COMMUNITY BOARD #12Q

75-13-A

APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by Ilya Braz, owner.

SUBJECT – Application February 20, 2013 – Application is filed pursuant to §310(2) of the MDL, to request a variance from the court requirements set forth in MDL Section 26(7) to allow the conversion of an existing commercial building at the subject premises to a transient hotel.

PREMISES AFFECTED – 5 Beekman Street, south side of Beekman Street from Nassau Street to Theater Alley, Block 90, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #1M

172-13-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Margaret & Robert Turner, lessees.

SUBJECT – Application June 11, 2013 – Proposed reconstruction of a storm destroyed single family dwelling and installation of the disposal system partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 175 Ocean Avenue, East side of Ocean Avenue, 40' North of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

ZONING CALENDAR

81-13-BZ

APPLICANT – Nasir J. Khanzada, for Aqeel Klan, owner.

SUBJECT – Application February 28, 2013 – Re-Instatement (§11-411) of a previously approved variance which permitted an automotive service station (UG16B), with accessory uses in a residential district which expired on November 6, 1992; Amendment (§11-413) to permit the change use from automotive service station (UG 16B) to automotive repair (UG 16B) with accessory automotive sales; Waiver of the Rules. R2 zoning district.

PREMISES AFFECTED – 264-12 Hillside Avenue, 265th Street. Block 8794, Lot 22. Borough of Queens.

COMMUNITY BOARD #13Q

CALENDAR

94-13-BZ

APPLICANT – Vinod Tewari, for Peachy Enterprise, LLC, owner.

SUBJECT – Application March 25, 2013 – Special Permit (§73-19) to allow a school contrary to use regulations, ZR 42-00. M1-3 zoning district.

PREMISES AFFECTED – 11-11 40th Avenue aka 38-78 12th Street, Block 473, Lot 473, Borough of Queens.

COMMUNITY BOARD #1Q

96-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Urban Health Plan, Inc., owner.

SUBJECT – Application April 2, 2013 – Variance (§72-21) to permit construction of ambulatory diagnostic treatment health facility (UG4) that does not provide required rear yard pursuant to ZR 23-47. R7-1 and C1-4 zoning districts.

PREMISES AFFECTED – 1054 Simpson Street, 121.83 feet north of intersection of Westchester Avenue, Block 2727, Lot 4, Borough of Bronx.

COMMUNITY BOARD #2BX

108-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for EOP-Retail, owner; Equinox 1095 6th Avenue, Inc, lessee.

SUBJECT – Application April 19, 2013 – Special Permit (§73-36) to permit the operation of a physical Culture Establishment (PCE) (*Equinox*). C5-3, C6-6, C6-7 & C5-2 (Mid)(T) zoning district.

PREMISES AFFECTED – 100/28 West 42nd Street aka 101/31 West 41st Street, West side of 6th Avenue between West 41st Street and West 42nd Street, Block 00994, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 11, 2013
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

799-62-BZ

APPLICANT – Sahn Ward Coschignano & Baker, PLLC,
for 350 Condominium Association, owners.

SUBJECT – Application March 28, 2013 – Extension of
Term permitting the use tenant parking spaces within an
accessory garage for transient parking pursuant to §60 (3) of
the Multiple Dwelling Law (MDL) which expired on
November 9, 2012; Waiver of the Rules. C2-5/R8, R7B
zoning district.

PREMISES AFFECTED – 501 First Avenue aka 350 East
30th Street, below-grade parking garage along the west side
of First Avenue between East 29th Street and 30th Street,
Block 935, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD # 6M

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an extension of the term for a previously granted variance
for a transient parking garage, which expired on November 9,
2012; and

WHEREAS, a public hearing was held on this
application on May 21, 2013, after due notice by publication
in *The City Record*, and then to decision on June 11, 2013;
and

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

WHEREAS, Community Board 6, Manhattan, does
not object to this application; and

WHEREAS, the subject site spans the west side of First
Avenue between East 29th Street and East 30th Street,
partially within an R8 (C2-5) zoning district and partially
within an R7B zoning district; and

WHEREAS, the site is occupied by a six-story
residential building;

WHEREAS, portions of the cellar are occupied by a 68-
space accessory parking garage; and

WHEREAS, on December 11, 1962, under the subject

calendar number, the Board granted a variance pursuant to
Section 60(3) of the Multiple Dwelling Law (“MDL”) to
permit unused and surplus parking spaces to be used for
transient parking for a term of 15 years; and

WHEREAS, the grant was renewed and amended at
various times in subsequent years; and

WHEREAS, most recently, on November 9, 2004, the
Board granted a ten-year extension of term, to expire on
November 9, 2012; and

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

WHEREAS, the applicant submitted a photograph of the
sign posted onsite, which states building residents’ right to
recapture the surplus parking spaces; and

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

Therefore it is Resolved that the Board of Standards and
Appeals *reopens* and *amends* the resolution having been
adopted on December 11, 1962, so that, as amended, this
portion of the resolution shall read: “to permit an extension of
term for an additional ten years from the expiration of the
prior grant, to expire on November 9, 2022; *on condition* that
the use and operation of the site shall substantially conform to
the previously approved plans; and *on further condition*:

THAT this term will expire on November 9, 2022;

THAT a sign stating that the spaces devoted to transient
parking can be recaptured by residential tenants on 30 days’
notice to the owner be located in a conspicuous place within
the garage, permanently affixed to the wall;

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

THAT the layout of the parking lot shall be as approved
by the Department of Buildings;

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

(DOB Application No. 121476376)

Adopted by the Board of Standards and Appeals, June
11, 2013.

410-68-BZ

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

SUBJECT – Application May 22, 2012 – Extension of Term
(\$11-411) of approved variance which permitted the
operation of (UG16B) automotive service station (*Citgo*)
with accessory uses, which expired on November 26, 2008;
Extension of Time to obtain a Certificate of Occupancy

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which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.

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

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of an automobile repair shop, which expired on November 26, 2008, and an extension of time to obtain a certificate of occupancy, which expired on January 11, 2008; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in *The City Record*, with continued hearings on February 26, 2013, March 19, 2013, April 23, 2013 and May 21, 2013, and then to decision on June 11, 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 3, Queens, recommends approval of this application, on condition that the applicant: (1) ceases servicing automobiles on the sidewalk and the curb facing 85th Street; (2) ceases all activity relating to the sale of used automobiles; (3) documents any proposed changes to landscaping and provides landscaping at locations where it has been neglected; (4) provides adequate 24-hour lighting for the gasoline canopies, islands, and pump dispensers; (5) prohibits access to the public toilet except by keyed locking device; (6) stores motor oil, waste, and debris in a safe location and free from potential safety hazards to the general public and employees; and (7) addresses all outstanding ECB violations; and

WHEREAS, the subject site spans the full length of the east side of 85th Street between 24th Avenue and Astoria Boulevard, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 24, 1953, when under BSA Cal. No. 676-53-BZ, it granted a variance to permit the construction and operation of a gasoline service station, automobile wash, lubritorium, motor vehicle repair, storage and sale of accessories, and office; the variance also permitted a curb cut nearer to a residence use district than was permitted under the 1916 Zoning Resolution; and

WHEREAS, on November 26, 1968, under the subject calendar number, the Board granted an application to permit the existing automotive service station

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

including a 1968 amendment that permitted the construction of a one-story enlargement to the existing building; and

WHEREAS, most recently, on January 11, 2005, the Board authorized: (1) the conversion of a portion of the service station to an accessory convenience store; (2) the construction of two additional service bays, a service attendant's area, and a customer waiting area; (3) an extension to the existing canopy; (4) the relocation of the pump island; and (5) the addition of one new fuel dispenser; the Board's grant required that a new certificate of occupancy be obtained within one year of the grant; and

WHEREAS, by resolution dated April 11, 2006, the time to complete construction and obtain a certificate of occupancy was extended and was required to be obtained by January 11, 2008; however, to date, a certificate of occupancy has not yet been obtained; in addition, the term of the special permit for the service station expired on November 26, 2008; and

WHEREAS, accordingly, the applicant now requests an additional extension of the term and seeks an extension of time to complete construction and obtain a certificate of occupancy; and

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

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) excessive signage; (2) the presence of graffiti; (3) the existence of a shed at the rear of the building; (4) the inadequate landscaping; and (5) the community board's concerns regarding the sale of motor vehicles at the site, the keyed access of the public toilet and the safe storage and disposal of motor oil waste and debris; and

WHEREAS, in response, the applicant submitted photographs depicting the removal of the excessive signage, the graffiti and the shed, and the installation of landscaping in accordance with the Board's direction; in addition, the applicant submitted an affidavit from the operator of the service station, which indicates that no motor vehicle sales will take place at the site, that the public toilet will remain locked at all times, and that motor oil waste and debris will be stored in a safe location and be inaccessible to the public; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 26, 1968, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the prior expiration, to expire on November 26, 2018; *on condition* that all use and operations shall substantially conform drawings filed with this application marked 'Received November 27, 2012'-(5) sheets and 'May 2, 2013'-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on November

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26, 2018;

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

THAT motor vehicle sales will not take place at the site;

THAT signage will comply with C1 district regulations;

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

THAT a new certificate of occupancy will be obtained by June 11, 2014;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 401856997)

Adopted by the Board of Standards and Appeals, June 11, 2013.

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

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 an extension of time to obtain a certificate of occupancy for Use Group 6 stores and offices, which expired on July 19, 2012; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, with continued hearings on January 8, 2013, February 5, 2013, March 12, 2013, April 9, 2013, and May 14, 2013, and then to decision on June 11, 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 11, Queens, recommends approval of the application; and

WHEREAS, a representative of the Auburndale

Improvement Association, Inc. provided oral and written testimony regarding the application and the conditions at the site; the representative indicated that while his organization did not oppose the application, it was concerned about: (1) the site’s non-compliance with the landscaping requirements of the prior grants; (2) unlawful parking in the alley off of 192nd Street; and (3) gates to the accessory parking lot being left unlocked overnight; and

WHEREAS, the subject site is located at the southwest intersection of Northern Boulevard and 192nd Street, partially within an R3-2 zoning district and partially within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 6, 1984, when under the subject calendar number, it granted a special permit pursuant to ZR § 11-413 to permit the conversion of an existing, one-story Use Group 16 automobile sales and service establishment into Use Group 6 stores and offices for a term of 15 years, to expire on March 6, 1998; and

WHEREAS, on December 7, 1999, the Board extended the term of the grant for ten years, to expire on March 6, 2009; and

WHEREAS, on May 25, 2004, the Board authorized, among other things, the reapportionment of tenant space, construction of walls to increase the number of stores from three to four, and the construction of a canopy; and

WHEREAS, most recently, on July 19, 2011, the Board authorized the increase in the number of stores from four to five, extended the term of the grant for ten years, to expire on March 6, 2019, and extended the time to obtain a new certificate of occupancy until July 19, 2012; however, to date, a certificate of occupancy has not yet been obtained; and

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

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the curb cut along Northern Boulevard; (2) the parking of trucks in the accessory parking lot; (3) the insufficient landscaping; (4) the presence of excess flags and flagpoles where plantings should be; (5) deliveries and the presence of trucks after hours; and (6) general site maintenance and cleanliness; and

WHEREAS, in response, the applicant submitted photographs depicting: (1) the removal of the curb cut; (2) the installation of height bars on the gate to the parking lot (to prevent the entrance of trucks); (3) the installation of evergreen shrubs; (4) the removal of the flagpoles; and (5) the site being properly maintained; in addition, the applicant submitted a letter from the tenant confirming that deliveries will be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday; and finally, the applicant asserts that trees will be planted in accordance with the submitted plans upon the Board’s granting of the application; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and an extension of time

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to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 6, 1984, so that as amended the resolution will state that a new certificate of occupancy will be obtained by June 11, 2014; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked 'Received March 22, 2013'-(2) sheets and 'May 2, 2013'-(1) sheet; and *on further condition*:

THAT deliveries and garbage pickup will only occur between 8:00 a.m. and 5:00 p.m., Monday through Friday;

THAT signage will comply with C1 district regulations;

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

THAT a new certificate of occupancy will be obtained by June 11, 2014;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 401856997)

Adopted by the Board of Standards and Appeals, June 11, 2013.

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

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 an extension of term for a variance to allow Use Group 6 retail stores on the first story of an existing five-story mixed residential and commercial building, which expired on April 8, 2013; and

WHEREAS, a public hearing was held on this application on April 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 14, 2013, and then to decision on June 11, 2013; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application, on condition that the Board maintains its prior prohibition on eating and drinking establishments and limits the term of the renewal to five years; and

WHEREAS, the site is located on the north side of East 58th Street, between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the site is currently occupied by a five-story mixed residential and commercial building, with two retail stores on the first story, and residences on the second through fifth stories; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 4, 1967 when, under BSA Cal. No. 633-66-BZ, the Board granted a variance to permit the conversion of the first story from residential to Use Group 6 retail stores; the Board granted a 15-year term, to expire on January 4, 1982; and

WHEREAS, the grant expired on January 4, 1982, and was reinstated under the subject calendar number on April 8, 2003; the 2003 grant was for a term of ten years, to expire on April 8, 2013; and

WHEREAS, the applicant seeks a ten-year extension of the term for the Use Group 6 retail stores; the also applicant seeks clarification from the Board that a Use Group 6 eating and drinking establishment is permitted under the prior grants; and

WHEREAS, the applicant asserts that because the prior grants, which authorize "a retail store, Use Group 6," did not contain a condition prohibiting a Use Group 6 eating and drinking establishment, no such condition exists; and

WHEREAS, the Board finds that under the original grant (BSA Cal. No. 633-66-BZ) the Board specifically authorized "a retail store" only, and that under the 2003 reinstatement (under the subject calendar) the Board did not eliminate or waive the restriction; thus, it deliberately limited the kind of Use Group 6 use allowed under the variance; and

WHEREAS, notwithstanding, the "retail store" language of the grant, the applicant asserts that an eating and drinking establishment is appropriate and seeks to expand the potential Use Group 6 uses; and

WHEREAS, at the Board's request, the applicant submitted an area study of all buildings within a 400-foot radius to identify the pattern of uses; the study reflects that there are 23 active eating and drinking establishments in the area; and

WHEREAS, based on the study and on its own observations, the Board notes that there are a significant number of eating and drinking establishments in the area; and

WHEREAS, however, the Board notes that eating and drinking establishments have different impacts on the surrounding neighborhood, particularly on the conforming residential uses, than do retail stores; and

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WHEREAS, further, the applicant has not shown sufficient need to justify the inclusion of eating and drinking establishments in the grant; indeed, the Board notes that stores are currently operating at the site; and

WHEREAS, accordingly, the Board finds that the retention of the restriction is proper, absent evidence from the applicant that the restriction prevents the owner from realizing a reasonable return; and

WHEREAS, the Board notes that the applicant did not submit any evidence that the retail stores were failing to provide a reasonable return; and

WHEREAS, based upon its review of the record, the Board declines to expand the permitted Use Group 6 use to include eating and drinking establishments; nevertheless, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated April 8, 2003, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years, to expire on April 8, 2023; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received January 25, 2013'- (3) sheets; and *on further condition*:

THAT the term of this grant will expire on April 8, 2023;

THAT the only commercial uses permitted will be Use Group 6 retail stores;

THAT eating and drinking establishments will not be permitted;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 121570460)

Adopted by the Board of Standards and Appeals, June 11, 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 continued operation of a veterinary clinic and general UG6 office use in an existing two (2) story building with a reduction of the required parking which expired on November 23, 2012. C2-1/R3-1 zoning district.

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

COMMUNITY BOARD #2SI

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 July 9, 2013, at 10 A.M., for decision, hearing closed.

207-86-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP by Paul Selver, for NYC Industrial Development Agency, owner; Nightingale-Bamford School, lessee.

SUBJECT – Application April 11, 2013 – Amendment of a previously approved variance (§72-21) for a community facility use (*The Nightingale-Bamford School*) to enlarge the zoning lot to permit the school's expansion. C1-5 (R-10) and R8B zoning districts.

PREMISES AFFECTED – 20, 28 & 30 East 92nd Street, northern mid-block portion of block bounded by East 91st and East 92nd Street and Madison and Fifth Avenues, Block 1503, Lot 57, 58, 59, Borough of Manhattan.

COMMUNITY BOARD #8M

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 July 16, 2013, at 10 A.M., for decision, hearing closed.

103-91-BZ

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

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

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

COMMUNITY BOARD #13Q

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 July 9, 2013, at 10 A.M., for decision, hearing closed.

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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

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 July 9, 2013, at 10 A.M., for decision, hearing closed.

239-02-BZ

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

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

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

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to September 24, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

143-11-A thru 146-11-A

APPLICANT – Philip L. Rampulla, for Joseph LiBassi, owner.

SUBJECT – Application September 16, 2011 – Appeal challenging the Fire Department’s determination that the grade of the fire apparatus road shall not exceed 10 percent, per NYC Fire Code Section FC 503.2.7. R2 zoning district.

PREMISES AFFECTED – 20, 25, 35, 40 Harborlights Court, east side of Harborlights Court, east of Howard Avenue, Block 615, Lot 36, 25, 35, 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to August 20, 2013, at 10 A.M., for continued hearing.

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, 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 July 9, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

135-11-BZ/136-11-A

APPLICANT – Eric Palatnik, P.C., for Block 3162 Land LLC, owner.

SUBJECT – Application September 7, 2011 – Variance (§72-21) to allow for the construction of a commercial use (UG6), contrary to use regulations (§22-00).

Proposed construction is also located within a mapped but not built portion of a street (Clove Road and Sheridan Avenue), contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 2080 Clove Road, southwest corner of Clove Road and Giles Place, Block 3162, Lot 22, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, June 11, 2013.

250-12-BZ

CEQR #13-BSA-018K

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

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Avenue S, between East 24th and Bedford Avenue, Block 7303, Lot 4, 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 August 1, 2012, acting on Department of Buildings Application No. 320468061, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed building exceeds the maximum permitted floor area ratio of .50;
2. Proposed plans are contrary to ZR 23-141(b) in that the proposed open space is less than the minimum required open space of 65%;
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage is more than the minimum required lot coverage of 35%;
4. Proposed plans are contrary to ZR 23-461(a) in that the proposed side yard straight-line extension is less than the 5 foot minimum side yard permitted;
5. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet;
6. Proposed plans are contrary to ZR 23-631(b) in that the proposed perimeter wall height is more than the maximum required wall height of 21 feet; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, side yards, rear yard, and maximum permitted wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in *The City Record*, with continued hearings on March 19, 2013, April 16, 2013, and May 14, 2013 and then to decision on June 11, 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 south side of Avenue S, between East 24th Street and Bedford Avenue, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of

7,500 sq. ft. and is occupied by a single-family home with a floor area of 2,529 sq. ft. (0.34 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 of 2,529 sq. ft. (0.34 FAR) to 7,526 sq. ft. (1.01 FAR); the maximum permitted floor area is 3,750 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes an open space of 40.4 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant proposes a lot coverage of 59.6 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard, which has width of 3'-8½" and reduce the complying side yard width from 30'-8½" to 9'-3½"; 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 to increase the depth of the non-complying rear yard from 12'-8" to 17'-0"; the minimum required rear yard depth is 30 feet; and

WHEREAS, the applicant proposes to increase the perimeter wall height from 10'-6" to 23'-0"; the maximum permitted perimeter wall height is 21'-0"; and

WHEREAS, the Board notes that ZR § 73-622(3) allows the Board to waive the perimeter wall height only in instances where the proposed perimeter wall height is equal to or less than the height of the adjacent building's non-complying perimeter wall facing the street; and

WHEREAS, the applicant represents that the proposed perimeter wall height (23'-0") is less than the height of both adjacent buildings' non-complying perimeter walls facing the street (23'-9" and 23'-2"), and the applicant submitted a survey in support of this representation; and

WHEREAS, at hearing, the Board requested additional evidence confirming the lawfulness of the existing condition of the building; and

WHEREAS, in response, the applicant submitted historic Sanborn maps, as well as an explanation of the history of development, which the Board found satisfactory; and

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

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

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

WHEREAS, the Board finds that, under the conditions

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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 under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, rear yard, and maximum permitted wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; *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 August 13, 2012"- (8) sheets, "January 22, 2013"-(1) sheet, and "March 13, 2013"-(4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 7,526 sq. ft. (1.01 FAR), a minimum open space ratio of 40.4 percent, a maximum lot coverage of 59.6 percent, side yards with minimum widths of 3'-8½" and 9'-3½", a rear yard with a minimum depth of 17'-0", and a maximum perimeter wall height of 23'-0", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 11, 2013.

324-12-BZ

CEQR #13-BSA-064K

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....5

THE RESOLUTION –

WHEREAS, the decisions of the Brooklyn Borough Commissioner, dated November 23, 2012, February 6, 2013, and March 18, 2013, acting on Department of Buildings Application No. 320386346, read in pertinent part:

Proposed floor area contrary to maximum permitted under ZR Section 23-141(b) and requires a special permit from BSA; and

Proposed side yard non-compliance is not permitted pursuant to ZR Section 23-461 and requires a special permit from BSA; and

Proposed perimeter wall height is non-compliant and is not permitted pursuant to ZR Section 23-631(b) and requires a special permit from BSA; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district within the Special Bay Ridge District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, side yards and perimeter wall height, contrary to ZR §§ 23-141, 23-461, and 23-631; and

WHEREAS, a public hearing was held on this application on March 12, 2013 after due notice by publication in *The City Record*, with continued hearings on April 16, 2013 and May 14, 2013, and then to decision on June 11, 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 10, Brooklyn, recommends disapproval of this application, citing concerns about configuration of the roofline and total height and the size of the rear enlargement, which it finds objectionable and not in keeping with the character of the block; and

WHEREAS, Councilmember Vincent J. Gentile, provided testimony in opposition to the application, citing

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the same concerns as the Community Board; and

WHEREAS, the district manager for Community Board 10, a representative of the Bay Ridge Conservancy and certain members of the surrounding community provided testimony in opposition to the application, citing the same concerns as the Community Board; and

WHEREAS, a member of the community provided testimony in support of the application; and

WHEREAS, the subject site is located on the north side of 76th Street, between Narrows Avenue and Colonial Road, within an R3-1 zoning district within the Special Bay Ridge District; and

WHEREAS, the subject site has a total lot area of 2,379.2 sq. ft. and is occupied by a single-family home with a floor area of 1,271.62 sq. ft. (0.53 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 1,271.62 sq. ft. (0.53 FAR) to 1,926.76 sq. ft. (0.81 FAR); the maximum permitted floor area is 1,427.52 sq. ft. (0.60 FAR); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yards, which have widths of 3'-9½" and 3'-6"; 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 to maintain the existing perimeter wall height of 22'-3½" and increase the building height from 28'-¾" to 35'-0"; the maximum permitted perimeter wall height is 21'-0" and the maximum permitted building height is 35'-0"; and

WHEREAS, the Board notes that ZR § 73-622(3) allows the Board to waive the perimeter wall height only in instances where the proposed perimeter wall height is equal to or less than the height of the adjacent building's non-complying perimeter wall facing the street; and

WHEREAS, the applicant represents that the proposed perimeter wall height, 22'-3½", is existing and is less than the height of the adjacent building's non-complying perimeter wall facing the street, which is 22'-3¾"; the applicant submitted a survey in support of this representation; and

WHEREAS, the applicant also notes that it is providing a rear yard depth of more than 38 feet, which is eight feet more than the minimum required depth of 30 feet and nearly twice the depth (20 feet) permitted by the special permit under ZR § 73-622 and routinely approved by the Board; 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, in response to the community's concerns that the enlargement is out of character with the neighborhood, the applicant asserts that the requested waivers are modest and the proposed building is compatible with the character of the neighborhood; and

WHEREAS, specifically, the applicant notes that: (1)

the floor area is consistent with the neighborhood character; (2) the side yard dimensions are existing non-compliances that are being maintained; and (3) the perimeter wall height is an existing non-compliance that is being maintained and matches the adjacent building's perimeter wall height; and

WHEREAS, as to floor area, the applicant submitted an area study of the 172 buildings within 600 feet of the site; based on the study, 127 buildings have an FAR in excess of the maximum permitted in the district (0.60 FAR), and 59 buildings have an FAR in excess of the FAR proposed under the subject application (0.81 FAR); and

WHEREAS, the Board notes that during the hearing process, the applicant amended the proposal to create a more harmonious curbside appearance with the immediately adjacent homes; specifically, the attic was set back three feet from the street wall, additional plantings were included, and the entranceway was modified; in addition, the applicant submitted a streetscape plan that demonstrates that the proposal is compatible with the surrounding neighborhood; and

WHEREAS, the Board has reviewed the applicant's area study and has visited the site and concludes that the revised proposal is well within the parameters permitted under the special permit and that the height and rear enlargement which seem to be of greatest concern to the community are actually within the as-of-right building envelope and do not require any waiver from the Board, except for the extension of the existing, non-complying yard and perimeter wall conditions; and

WHEREAS, additionally, the Board notes that of the three required waivers only the floor area increase is not associated with an existing, non-complying condition; and

WHEREAS, the Board has noted that the special permit is available in the subject community district and it contemplates greater degrees of waiver; and

WHEREAS, during the hearing process, the Board acknowledged that although the special permit may not be popular among certain members of the community, it is established in the Zoning Resolution subject to the Board making the required findings; 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

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and Appeals issues a Type II 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 within the Special Bay Ridge District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, side yards and perimeter wall height, contrary to ZR §§ 23-141, 23-461, and 23-631; *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 May 28, 2013"- (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,926.76 sq. ft. (0.81 FAR), side yards with minimum widths of 3'-9½" and 3'-6", a rear yard with a minimum depth of 38'-3 1/8", and a maximum perimeter wall height of 22'-3½", 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, June 11, 2013.

325-12-BZ

CEQR #13-BSA-065M

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 – 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 Department of Buildings' Executive Zoning Specialist, dated November 29, 2012, acting on Department of Buildings Application No. 121325137, reads in pertinent part:

1. Proposed Floor Area Ratio (FAR) exceeds that permitted by ZR section 24-11.
2. Proposed Lot Coverage for corner lot portion exceeds maximum permitted; contrary to ZR section 24-11.
3. Proposed Lot Coverage for interior and through lot portions exceed maximum permitted; contrary to ZR 24-11.
4. Required Rear Yard for interior lot portion beyond 100' of corner is not provided; contrary to ZR section 24-36.
5. Required Rear Yard equivalent for through lot portion beyond 100' of corner is not provided; contrary to ZR 24-382.
6. Proposed height of front wall, front setback and sky exposure plane for both narrow and wide street exceed maximum permitted; contrary to ZR section 24-522(a).
7. Required rear setback is not provided; contrary to ZR 24-522(a).
8. Proposed accessory off-street parking spaces for ambulatory care facility portion exceeds maximum permitted; contrary to ZR section 13-133; and

WHEREAS, this is an application under ZR § 72-21, to permit, within R8, R9, and R10 zoning districts, the construction of a 15-story ambulatory care center and maternity hospital for New York Presbyterian Hospital-Cornell Medical Center (the "NYPH") that does not comply with zoning regulations for floor area ratio, lot coverage, front

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setback, rear setback, rear yard, and rear yard equivalent, and parking, contrary to ZR §§ 24-11, 24-36, 24-382, 24-522, and 13-133; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in the *City Record*, with a continued hearing on March 5, 2013, and then to decision on June 11, 2013; and

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

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

WHEREAS, the application is brought on behalf of NYPH, a non-profit educational institution and hospital; and

WHEREAS, the subject L-shaped lot is located on the west side of York Avenue between East 68th and East 69th Streets; and

WHEREAS, the site has a lot area of 42,677 sq. ft. with 275 feet of frontage on East 69th Street, 200.83 feet of full-block frontage on York Avenue, and 150 feet of frontage on East 68th Street; and

WHEREAS, the site is within three zoning districts: an R10 for the first 100 feet of depth along York Avenue (20,083 sq. ft. of lot area); an R9 for 50 feet of the remaining frontage along East 68th Street (5,021 sq. ft. of lot area); and an R8 for the remaining 175 feet of frontage along East 69th Street (17,573.5 square feet of lot area); and

WHEREAS, the site is currently occupied by two 12-story apartment buildings, constructed prior to 1961, with ambulatory care facilities on the first and second, which will be demolished; and

WHEREAS, on December 1, 1969, under BSA Cal. No. 414-59-BZ, the Board granted a zoning variance and a Multiple Dwelling Law waiver to allow transient parking in the cellar and first floor accessory garage to a multiple dwelling located at 1285 York Avenue; because the building is proposed to be demolished as part of the subject application, the prior grant is rendered moot; and

WHEREAS, the site is directly across York Avenue from the NYPH-Weill Cornell Campus superblock that spans from East 68th Street to East 71st Street on the east side of York Avenue to the FDR Drive (the "Main Campus"); the Main Campus is home to NYPH's 850-bed inpatient hospital, emergency room, outpatient services, diagnostic and treatment services, support services, (collectively, the "Main Hospital") administration and central plant; and to Weill Cornell Medical College's (WCMC) medical education and research programs; and

WHEREAS, the applicant proposes to construct: a 15-story ambulatory care center ("ACC") and maternity hospital ("MH"), (collectively the "Building"); the Building will have a total floor area of 568,801 sq. ft. (13.33 FAR) with 344,412 sq. ft. devoted to the ACC and 224,389 sq. ft. devoted to the MH; and

WHEREAS, the Building will contain (1) parking for 224 vehicles at the cellar and sub-cellar; (2) staff and

ambulette drop-off between East 69th Street and East 68th Street, a loading dock on East 69th Street, a multi-purpose conference center, accessory food services and main lobby on York Avenue at the first floor and second floors; (3) radiation oncology and infusion services on the third floor for cancer treatment; (4) interventional radiology and diagnostic imaging services on the fourth floor; (5) ambulatory surgery on the fifth floor; (6) central sterile processing, pre-admission testing and staff support on the sixth floor; (7) endoscopy services on the seventh floor; (8) specialty clinics for digestive diseases on the eighth floor; (9) mechanical on the ninth and ninth mezzanine floors; (10) support for the maternity hospital and mechanical on the tenth floor; (11) labor and delivery on the 11th floor; (12) neonatal intensive care on the 12th floor; (13) post-partum/ante-partum flex beds and maternal fetal medicine on the 13th floor; and (14) post-partum beds on the 14th and 15th floors; and

WHEREAS, the applicant states that the construction of the Building will result in a total floor area of 568,801 sq. ft. (13.33 FAR); the maximum permitted FAR for a community facility across the site is 8.56; the R10 and R9 districts permit up to 10 FAR of community facility use and up to 12 FAR for residential use that employs an Inclusionary Housing floor area bonus in the R10, while the R8 district permits up to 6.5 FAR for community facility use; applying the 10 FAR in the R9 and R10 and a 6.5 FAR in the R8, the site would have an adjusted maximum FAR of 8.56 and a total allowable of 365,319.4 sq. ft. for community facility use; and

WHEREAS, the proposed construction will create the following additional non-compliances on the site: front setbacks in districts where front yards are not required and rear yard setback as it reaches a height of 341.46 feet without setback (in all three zoning districts, for the portion of the building fronting East 68th and 69th Streets, the building may rise to a height of 85 feet above curb level, but then must set back 20 feet and follow a rise to run sky exposure plane of 2.7:1; on the York Avenue frontage, the building must set back 15 feet and follow a sky exposure plane of 5.6:1; and at the rear yard line located 30 feet from the rear lot line on the East 69th Street interior lot, the building may rise to 125 feet, but then must set back 20 feet); and

WHEREAS, the proposal does not include a rear yard or equivalent (a 30-ft. rear yard is required along the southern rear lot line of the East 69th Street portion of the Site and a rear yard equivalent is required for the 50-ft.-wide through-lot portion that runs from East 68th to East 69th Street) (either a 60 foot deep open area at the center of the through lot or a total of 60 feet of open area distributed along the front lot lines of both East 68th and East 69th Streets is required); and

WHEREAS, further, the proposal reflects full lot coverage (in all three districts the maximum lot coverage is 65 percent for interior and through lots with an adjusted maximum area of lot coverage of 14,686.43 sq. ft.) and 75 percent for corner lots (allowing a total at the corner of 15,062.25 sq. ft. of lot coverage); and

WHEREAS, finally, the applicant proposes a non-

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complying 224 parking spaces (186 parking spaces are the maximum permitted accessory parking for community facility use); and

WHEREAS, the applicant states that the waivers are required so that it may construct a building that accommodates NYPH's programmatic need to locate the ACC and the MH on the same site in close proximity to other NYPH buildings and the subject site was the only available site suitable for the Building; and

WHEREAS, co-locating the two facilities allows for greater efficiency as it eliminates the need for certain services to be duplicated; and

WHEREAS, the applicant articulated the following primary programmatic needs: (1) a sufficient number of up-to-date operating and procedure rooms, private inpatient rooms, observation units for post-procedure patients, and attendant spaces to satisfy increased patient volumes and current medical standards for its ambulatory care and maternity services; (2) hospital floor plates that are highly flexible and repetitive; (3) relocation of its existing ambulatory surgical and interventional services from the Main Campus to the site; (4) moving selected services to an ambulatory care setting in the proposed Building, to provide state-of-the-art technology, enhance the ambulatory patient care experience, increase operational efficiencies, and improve outcomes and timely access for outpatients; (5) in addition, by relocating the ambulatory care services from the Main Campus, inpatients will be better accommodated in the Main Hospital; and (6) to add private rooms for post-natal recovery; and

WHEREAS, the applicant describes in detail additional programmatic objectives, which include: (1) improving the patient environment and movement through the facility; (2) providing efficient surgical suites that include all operating/procedure rooms adjacent to patient preparatory and recovery areas and support services, separate from public circulation areas and all on a single floor; (3) modern operating rooms measuring between 600-650 sq. ft. that include imaging functions to allow caregivers to access real time information during complex procedures; (4) ideally situated preparatory and recovery rooms on the same floor as associated operating rooms to help minimize the patient's exposure to pre-and post-operative infection caused by travel in corridors and elevators and to maximize staff efficiency; (5) promoting efficient circulation patterns to improve access to the patient and equipment by staff and also minimize the risk of infection by separating patient traffic from staff and service traffic; (6) sufficient mechanical space to allow for redundant systems to permit essential backup in case of failure; (7) 20-ft. floor-to-floor heights to allow for the necessary supporting steel, the installation of essential equipment and mechanical systems and to allow for new technological improvements in the ceiling; and (8) providing onsite parking for outpatients, staff, and visitors; and

WHEREAS, the applicant states that its floor design allows for functional and efficient care, minimizes the need

for duplicative staff, and reduces travel distances for patients and staff; one method to achieve its goal of efficient floor design is providing the central clean core workspace that allows staff easy access to essential equipment and case carts, while a perimeter race track corridor is intended for the movement of patients and staff only and for quick removal of soiled material from the procedure rooms; and

WHEREAS, the applicant states that locating the mechanical room in the middle of the building reduces the run of pipes, ductwork and chases and the size of the equipment necessary as opposed to if the mechanicals were all on an upper or lower floor; and

WHEREAS, as far as the services in the new ACC, the applicant states that NYPH will focus on the outpatient treatment procedures of (1) infusion and radiation oncology (12 infusion rooms or patient cancer therapies located on the same floor as the radiation oncology area); (2) interventional imaging and diagnostic imaging; (3) ambulatory surgery; (4) endoscopy (12 procedure rooms and 36 prep/recovery rooms); (5) gastroenterology (including 32 exam rooms and 20 physician offices); (6) central sterile processing; (7) preadmission testing (12 exam rooms and an additional ten for multidisciplinary clinic visits); and (8) perioperative and other support services; and

WHEREAS, the applicant states that the existing operating rooms on the Main Campus, which service both ambulatory and inpatient surgeries, are at or nearly at capacity, limiting further growth of outpatient procedure areas as well as state-of-the-art inpatient surgery; and

WHEREAS, the applicant states that dedicated outpatient facilities in the ACC will (1) provide additional capacity to meet the demand for ambulatory surgery, (2) create a more patient-centric and operationally efficient setting for ambulatory procedures in state-of-the-art operating rooms of dimensions adequate to support the latest technologies, and (3) decompress the operating rooms in the Main Campus, resulting in more capacity for inpatient surgery; and

WHEREAS, additionally, the new facilities will allow the development of adequate preparatory and recovery area capacity in the ACC, free up prep/recovery area capacity at the Main Hospital and thereby increase productivity of the operating rooms and operational efficiencies there; and

WHEREAS, the applicant states that following a detailed analysis of patient loads on the operating rooms in the Main Hospital, it was determined that the proposed ambulatory surgery suite in the ACC should include 12 operating rooms and 36 preparation and recovery rooms which will accommodate the growing amount of outpatient surgery volumes; and

WHEREAS, the applicant states that after accounting for equipment requirements and the movement of patients and staff, a typical operating room measures 24 feet wide by 27 feet long; the operating rooms surround a double-loaded clean corridor containing clean surgical supplies and equipment, and staff support space in a sterile environment as required by code; in addition, flexibility zones to

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accommodate changing technological and procedural requirements should also be provided; and

WHEREAS, the applicant states that a typical prep/recovery room measures 11 feet wide by 13 feet long, which is sized to accommodate both the patient and visitors during their stay and it is more efficient to aggregate prep/recovery rooms in multiples of six to optimize staffing ratios and cross coverage while minimizing the distance most patients will have to travel to the operating room; and

WHEREAS, the applicant states that based on industry standards for similar programs, the space requirements for the ambulatory surgery department is 37,200 departmental gross sq. ft., and 48,360 building gross sq. ft., including a 1.3 multiplier for building envelope and essential mechanical systems; and

WHEREAS, as far as the services in the new MH, the applicant states that NYPH will focus on (1) improving the labor and delivery facilities to include 18 all-private labor, delivery and recovery rooms; (2) the neonatal intensive care unit will include 65 bassinets; and (3) obstetric beds and maternal fetal medicine will include 81 obstetric beds, including 15 antepartum and 6 postpartum/flex beds and 60 postpartum beds and all private room configuration is industry standard and supports family-centered care for patients, allowing the newborn to “room-in” with the family; and

WHEREAS, in addition to the programmatic needs, the applicant states that the building design is constrained by the following unique conditions of the site: (1) the L-shaped lot and (2) subsurface conditions; and

WHEREAS, the applicant states that the L-shaped lot containing only 42,677.5 sq. ft. of lot area in total, is not large enough to allow for the ideal 50,000 sq. ft. floor plates; the applicant submitted an analysis demonstrating the impact of the L-configuration on the ideal in the interventional and diagnostic imaging, ambulatory surgery, endoscopy and GI floors, with shortfalls in floor area on these procedural floors ranging between 2,400 and 4,400 sq. ft.; and

WHEREAS, the applicant asserts that in total, between 2,400 to 4,400 sq. ft. of desired program space had to be either relocated or eliminated from the procedural floors to accommodate the L-shaped lot; modifications to the ideal had to be made to accommodate the proposal including (1) elimination of zones of flexibility, (2) relocation of certain support functions, including staff locker rooms and perioperative administrative functions, which had to be moved off of the procedural floors onto a separate support floor, and (3) loss of efficiency due to less direct relationships among prep/recovery rooms and procedure rooms; and

WHEREAS, the applicant asserts that the ideal depth of a typical procedural floor with an operating suite is 115 feet deep by 200 feet long; to achieve a 12-operating-room suite as is desirable, a minimum 200 feet long by 115 feet deep floor plate is needed; and

WHEREAS, the applicant represents that based on industry standards for an operating suite, an average of

3,100 sq. ft. per operating room or 37,200 sq. ft. for 12 operating rooms was determined to be ideal; this figure excludes public areas and elevator/stair cores that account for an additional approximately 30 percent (11,160 sq. ft.), totaling at least 48,360 sq. ft. per floor; and

WHEREAS, as noted, a floor plate of 50,000 sq. ft. is an ideal generic module for a procedural floor and this typical module meets the space needs of each of the surgical, endoscopy and interventional radiology clinical floors, allowing for adjustments to the module that are specific to each specialty and permitting all related support services to be co-located on each procedural floor; and

WHEREAS, the applicant asserts that applying the model to the ideal stacking plan, each procedural floor would be vertically stacked along common mechanical, electrical and plumbing chases, ducts, and pre-operative clean and post-operative soiled service elevators and, accordingly, a 50,000 sq. ft., 200 feet deep by 250 feet wide simple rectangular floor plate, would accommodate all of the programmatic needs; and

WHEREAS, the applicant asserts that the program is packed tightly into the 42,677 square feet L-shaped lot; on procedural floors this has resulted in the loss of flexibility and some program spaces; and

WHEREAS, further, the applicant asserts that the relationships between departments and services, and the industry standards that drive the dimensional and functional requirements in each department, allow little or no room for setbacks that would reduce the floor plates below these essential minimums; the requested modifications of the rear yard, lot coverage, setback and floor area regulations result in large part from the site’s L-shaped configuration that reduces the floor plates below acceptable standards, thus creating practical difficulties and unnecessary hardship in strictly complying with the applicable bulk regulations; and

WHEREAS, as to the subsurface conditions, the applicant states that construction is constrained due to: (1) the presence within FEMA flood plain zone C, with groundwater levels ranging from El. 1 to El. 14; (2) the subsurface soil consists of layers of sand fill and natural sand to El. 4 to El.14 along the eastern boundaries of the site; and (3) bedrock was encountered within about 3 feet below the level of the cellar slabs of the existing buildings on the site (El. 21 and El. 27), except at two points along the eastern boundary of the site where bedrock depth was detected at approximately 18 to 25 feet below the existing cellar slabs; and

WHEREAS, the applicant states that as a result of these conditions, its engineer determined that in order to accommodate construction of the cellar and sub-cellar down to El. 0.0, approximately 27 feet of rock will need to be excavated, in addition to deeper excavation at footing locations; additionally, the applicant asserts that the site is uniquely burdened by the adjacent Memorial Sloan-Kettering (“MSK”) building, the cellar of which is located at a depth of El. -26, which requires that any foundations that are located adjacent to and within 20 feet of the MSK

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building on the western edges of the site must be extended below El. -26, with column loads supported on caisson piles with rock sockets, whereas columns located beyond 20 feet of the property line can be supported on footings bearing on rock sub-grade; and

WHEREAS, further, the applicant asserts that dewatering will be required during construction and to address the presence of groundwater on the exterior foundation walls and beneath the sub-cellar slabs, pressure slabs with a sub-slab waterproofing system or an under-drained slab will be required; foundation walls must also be waterproofed; and

WHEREAS, the applicant represents that there are significant premium costs that lead to almost \$19 million for excavation and foundations at the site taking into account the need for dewatering, caissons, and related below-grade conditions; and

WHEREAS, the applicant represents that the sub-surface conditions preclude the ability of constructing any level below a single sub-cellar; and

WHEREAS, the applicant represents that hospitals generally have multiple sub-cellars and such a design would allow NYPH to reduce the degree of waivers by locating additional program space below grade, however the cost associated with additional sub-cellar levels are in the range of \$15 million to \$27 million per level; and

WHEREAS, the applicant states that the requested modifications of the rear yard, lot coverage, setback, and floor area regulations result in part from the soil, bedrock and groundwater conditions found at the site that strictly limit below-grade construction, thus creating practical difficulties and unnecessary hardship in strictly complying with the applicable bulk regulations; and

WHEREAS, the applicant studied as-of-right alternatives which considered a complying development scheme that proposed to locate three procedural floors (infusion and radiation oncology, interventional and diagnostic imaging, and endoscopy) in sub-cellars three through five but, even if the cost to remove bedrock and provide the structure necessary to withstand water pressure on slabs and foundations at 100 feet below curb level were not prohibitive, sub-grade procedural floors are undesirable for quality of care reasons; and

WHEREAS, the applicant states that due to the specific programmatic requirements of the NYPH, and in particular the needs of the MH, it is not possible to develop the project in conformance with the 8.56 adjusted maximum FAR and in order to accommodate the ACC in above grade floors that provide the necessary adjacencies between procedural floors and support services, allow access to daylight for an enhanced patient experience, and avoid costly excavation for multiple sub-cellars; and

WHEREAS, the applicant states that neither the option to provide significant sub-grade space, due to its cost and failure to provide desirable space, nor the option to construct an as-of-right building without multiple cellar levels would serve NYPH's programmatic needs; in the latter alternative,

the MH could not be accommodated at all as approximately 8.07 FAR or 344,412 above grade sq. ft. would be required to be devoted to the ACC, including lobbies and building-wide general services, which would leave only .49 FAR for the MH; and

WHEREAS, consequently, the applicant states that in order to facilitate development of the 5.26 FAR, 224,389 sq. ft. MH, a variance to allow 13.33 FAR, or an increase over the allowable of 4.77 FAR is requested; and

WHEREAS, as to lot coverage, the applicant states that due to the requirements of the procedural floors in the ACC, a departmental gross floor area of approximately 33,000 sq. ft. is necessary; applying a 1.3 multiplier to the departmental gross to allow for vertical and horizontal circulation, mechanical and building envelope, a building gross floor area equal to approximately the area of the site is the minimum workable floor plate for the proposal; thus, in order to facilitate the development, a variance to allow 100 percent lot coverage is requested; and

WHEREAS, as to required setbacks and rear yards, the applicant states that due to the programmatic requirements of NYPH, and in particular the requirements of the procedural floors in the ACC, a building gross floor area equal to approximately the area of the site is the minimum workable floor plate for the proposal; thus, in order to facilitate development of the Building, variances to allow penetrations of the front and rear setback requirements are requested; and

WHEREAS, the applicant asserts that the requested parking excess of 38 spaces is required to help satisfy the demand; and

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

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the site, when considered in conjunction with the programmatic needs of NYPH, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since NYPH is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate

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use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed building would be in keeping with the character of the surrounding neighborhood, which is defined by numerous medical and other institutional uses; and

WHEREAS, the applicant states that the area bounded by the East River, First Avenue, East 71st Street, and East 65th Street is almost entirely institutional in character, home to medical, educational and research institutions of world-class quality and renown and located on large superblock campuses; and

WHEREAS, as to the FAR context, the applicant notes that nearby there is a 40-story 16.94 FAR residential tower located at 400 East 70th Street on the corner of First Avenue and East 70th Street, and the 15-story 11.4 FAR WCMC Weill Greenberg building; and

WHEREAS, the applicant cites to other buildings in the vicinity including the Belfer Biomedical Research Building located to the north on East 69th Street, approved pursuant to a Board approval (BSA Cal. No. 170-08-BZ), with 12.71 FAR and six sub-cellar, in the R8 zoning district, and the adjacent MSK Zuckerman Research Center, which was the subject of a zoning map amendment that changed the zoning district from R8 to R9 and a City Planning special permit to modify height and setback requirements as well as a variance (BSA Cal No. 130-01 BZ) to facilitate construction of an 11.24 FAR, 23-story building; and

WHEREAS, the applicant provided a diagram of the building massing in the area that reflects that the proposed height at 341.46 feet above site average mean curb level to the top of the parapet and at elevation 375 feet above Manhattan Datum, is within the range of height and massing of the buildings surrounding it; and

WHEREAS, specifically, the MSK Zuckerman Research Center located to the immediate south and west of the site and sharing property lines with it, rises to elevation 443.09 feet above Manhattan Datum; the Belfer Research Building across from the site on East 69th Street rises to elevation 335.50; the Weill Greenberg Center rises along York Avenue to elevation 267.66; the Main Campus buildings at the east side of York Avenue, rise to 26 stories and elevation 395.50; the Helmsley Medical Building rises on York Avenue at 70th Street to 39 floors and elevation 423.91; and the Payson House across the street rises to elevation 332; and

WHEREAS, the applicant states that with respect to the East 68th Street, East 69th Street, and York Avenue street walls, the as-of-right building would set back 12 feet from York Avenue and 15 feet from East 68th and 69th Streets, disrupting the street wall continuity established on both sides of the streets and on York Avenue to comply with the alternate setback requirements of ZR § 24-53; and

WHEREAS, in contrast, the applicant asserts that the Building will conform well to the neighborhood institutional context of street walls that rise without setback and to

buildings of similar massing and height as the proposed street wall condition, which rises to the full height of the building without setback, is more similar in character to the existing conditions in the area: the Memorial Hospital building to the south on York Avenue rises to 19 stories and approximately 275 feet without setback; the MSK Zuckerman Research Center rises without setback on East 68th and 69th Streets to 443 feet; the Belfer Research Building rises without setback on East 69th Street to approximately 335 feet; and Weill Greenberg Center rises without setback at the corner of East 70th Street and York Avenue to 267 feet; and

WHEREAS, the applicant notes that the area's residential zoning does not reflect the actual built conditions of so many educational and health-related institutions and, consequently, the vast majority of institutional buildings developed on these sites have relied on discretionary approvals from the Board or the City Planning Commission ("CPC") in order to meet their programmatic needs; such approvals have included relief for lot coverage, rear yard, height and setback and floor area regulations; and

WHEREAS, in addition to NYPH's Main Campus that spans from the east side of York Avenue to East 68th and East 71st Streets, Weill Cornell Medical School, the Hospital for Special Surgery, Memorial Sloan Kettering and Rockefeller University occupy nearly every lot with institutional buildings; and

WHEREAS, specifically, the applicant notes that the superblock east of York Avenue and bounded by East 68th Street to the south and East 71st Street to the north includes the main hospital campus for NYPH and a portion of the WCMC; at 1320 York Avenue at 70th Street, the Helmsley Medical Tower provides guest facilities for patients and their families, apartments for staff, and offices; east of the Helmsley Medical Tower and the NYPH Annex building is the Hospital for Special Surgery; west of the Helmsley Medical Tower across York Avenue is the Stich Radiation Oncology Center; the WCMC Weill Greenberg Center at 1305 York Avenue at East 70th Street; to the north of the site on East 69th Street, WCMC is constructing the Belfer Research Building; Memorial Hospital is located directly south of the site across East 68th Street; Memorial Hospital and other buildings that are part of the MSK Cancer Center occupy the entire block bounded by East 67th and 68th Streets and York and First Avenues; and at 415-417 East 68th Street is MSK's Zuckerman Research Center; and

WHEREAS, the applicant asserts that it is critical that institutions need to be in close proximity to each other to enable collaborative efforts leading to development of cutting-edge medical technologies, education, clinical support, and patient care and that such collaboration and advancement also demands that these institutions be able to enlarge and adapt their facilities to continue to meet changing technological and care models, even in the face of limited availability of development sites within these geographical boundaries; and

WHEREAS, with respect to lot coverage and rear yard

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requirements, in the R10 portion of the lot, a residential building designed according to the Quality Housing regulations would be permitted to occupy 100 percent of the corner lot; the adjacent seven-story wing of the Zuckerman Research Center on East 68th Street contains an auditorium and laboratories located along the rear of the building and set back 30 feet from the rear property line and no residential uses, community facility uses containing sleeping rooms, or hospital bedrooms are located in this portion of the Zuckerman Research Center; and

WHEREAS, accordingly, the applicant asserts that the proposal will be consistent with rear yard conditions on the block and will not deprive residential uses or community facilities with sleeping accommodations of required light and air; and

WHEREAS, further, the only property immediately adjacent to the site is the Zuckerman Research Center to the west and south; all other properties are located across East 68th Street, East 69th Street, or York Avenue; and

WHEREAS, the applicant notes that the proposed height is permitted as-of-right, and asserts that the proposed increase in FAR to 13.33 would have no effect on the use and development of the Research Center and the 38 car increase in the number of permitted parking spaces on the site would be irrelevant to the use and development of the Research Center; and

WHEREAS, the applicant concludes that the building envelope conforms to the size and massing of the other buildings within this institutional geographical area, NYPH's proposal will develop the site with an institutional project that makes the best use of the Site's constraints, will supply its patients and the NYPH community with essential maternity hospital, ambulatory care services, and translational medicine environment, and will facilitate improvement of outdated facilities on the Main Campus; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of NYPH could occur on the existing site; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow NYPH to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under

ZR § 72-21; and

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13BSA065M, dated June 10, 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; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

WHEREAS, DEP reviewed and accepted the April 2013 Remedial Action Work Plan and site-specific Construction Health and Safety Plan; and

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

WHEREAS, DEP reviewed the applicant's May 2013 air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts based on the conditions below; and

WHEREAS, the noise monitoring results in the EAS determined that window-wall noise attenuation and an alternate means of ventilation (central air conditioning) should be provided in the proposed building in order to achieve an interior noise level of 50 dBA or lower in the ACC and 45 dBA or lower in the MH; 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, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within R8, R9, and R10 zoning districts, the construction of a 15-story ambulatory care center and maternity hospital for New York Presbyterian Hospital-Weill Cornell Medical Center that does not comply with zoning

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regulations for floor area ratio, lot coverage, front setback, rear setback, rear yard, rear yard equivalent, and parking, contrary to ZR §§ 24-11, 24-36, 24-382, 24-522, and 13-133, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 5, 2013" – twenty-six (26) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building will be in accordance with the approved plans and be limited to 568,801 sq. ft. of floor area (13.33 FAR); a maximum height of 341.46 feet; and 224 parking space, as reflected on the BSA-approved plans;

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

THAT the sound attenuation measures in the proposed building will be maintained as reflected on the BSA-approved plans;

THAT the boiler exhaust stack be located 10 feet above the proposed rooftop on the northeast area of the building;

THAT the boilers utilize low NOx burners of 30 ppm or less;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 11, 2013.

56-13-BZ

CEQR #13-BSA-091M

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 23, 2013, acting on Department of Buildings Application No. 120956439, reads in pertinent part:

Proposed change of use to Physical Culture Establishment is not permitted as-of-right in C6-6, C5-2, C1-9 zoning district . . . contrary to Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C6-6 zoning district, partially within a C5-2 zoning district, and partially within a C1-9 zoning district, the legalization of an existing physical culture establishment ("PCE") in a portion of the second story of a 19-story mixed commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 14, 2013, after due notice by publication in *The City Record*, and then to decision on June 11, 2013; and

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

WHEREAS, Community Board 6, Manhattan, has no objection this application; and

WHEREAS, the subject site spans the full length of the east side of Third Avenue between East 56th Street and East 57th Street, partially within a C6-6 zoning district, partially within a C5-2 zoning district, and partially within a C1-9 zoning district; and

WHEREAS, the site has 200.83 feet of frontage along Third Avenue, 160 feet of frontage along East 56th Street, 135 feet of frontage along East 57th Street, and a total lot area of approximately 29,675 sq. ft.; and

WHEREAS, the site is occupied by a 19-story mixed commercial and residential building; and

WHEREAS, the PCE occupies 3,585 sq. ft. of floor area (FAR 0.12) on the second story; and

WHEREAS, the PCE is operated as InForm Fitness; and

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

WHEREAS, the applicant states that the PCE has been in operation since August 1999; and

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, from 1:00 p.m. to 5:00 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

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satisfactory; and

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

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

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

WHEREAS, the project is classified as a 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. 13BSA091M, dated January 28, 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 partially within a C6-6 zoning district, partially within a C5-2 zoning district, and partially within a C1-9 zoning district, the legalization of an existing physical culture establishment (“PCE”) in a portion of the second story of a 19-story mixed commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 30, 2013” – One (1) sheet and “Received June 6, 2013” – Two (2) sheets and *on further condition*:

THAT the term of this grant will expire on June 11, 2023;

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

THAT all massages must be performed by New York

State licensed massage therapists;

THAT the hours of operation will not exceed Monday through Friday, from 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, from 1:00 p.m. to 5:00 p.m.;

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, June 11, 2013.

72-13-BZ

CEQR #13-BSA-098Q

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

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 January 15, 2013, acting on Department of Buildings Application No. 420781773, reads in pertinent part:

Physical Culture Establishment use is not permitted in an M1-1 zoning district per ZR Sec. 42-10 and therefore requires a ZR Sec. 73-36 special permit from the Board of Standards and Appeals; and

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WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within an M1-1 zoning district and partially within a C4-2A zoning district, the legalization of an existing physical culture establishment (“PCE”) on a portion of the ground floor and mezzanine levels of a one-story commercial and manufacturing building, contrary to ZR §§ 32-10 and 42-10; and

WHEREAS, a public hearing was held on this application on May 14, 2013, after due notice by publication in *The City Record*, and then to decision on June 11, 2013; and

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

WHEREAS, Community Board 1, Queens, recommended disapproval of the application because the mezzanine is inaccessible to persons with certain physical disabilities; and

WHEREAS, the subject site is a zoning lot that comprises Tax Lots 5 and 7; Lot 5 has 75.37 feet of frontage along Northern Boulevard and 75 feet of frontage along 38th Street; Lot 7 has 63.08 feet of frontage along Northern Boulevard, 57.33 feet of frontage along Steinway Street, and 39.73 feet of frontage along 38th Street; and

WHEREAS, the site has a total lot area of 22,500 sq. ft.; Lot 5 is occupied by a one-story commercial and manufacturing building with 10,825 sq. ft. of floor area (0.48 FAR); Lot 7 is an open parking lot for the subject site and the adjacent supermarket; and

WHEREAS, the PCE occupies approximately 2,475 sq. ft. of floor area on the ground floor and 3,245 sq. ft. on the mezzanine, for a total PCE floor area of approximately 5,720 sq. ft. (0.25 FAR); the applicant notes that a portion of the ground floor is also used as an automotive laundry and maintenance facility; and

WHEREAS, the PCE is operated as Euphora Health Medi-Spa and Salon (“Euphora”); the applicant states that Euphora has been in operation since June 2010; and

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

WHEREAS, the applicant notes that the Board previously granted a special permit for the operation of a PCE at the site on July 16, 1996, under BSA Cal. No. 108-95-BZ; the term of that grant was for ten years and expired on July 16, 2006; and

WHEREAS, the hours of operation for the PCE are Tuesday through Saturday, from 9:00 a.m. to 8:00 p.m., and closed Sunday and Monday; 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. 13BSA098Q, dated February 13, 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 partially within an M1-1 zoning district and partially within a C4-2A zoning district, the legalization of an existing physical culture establishment (“PCE”) on a portion of the ground floor and mezzanine levels of a one-story commercial and manufacturing building, contrary to ZR §§ 32-10 and 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 31, 2013” – Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on June 11, 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;

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THAT the hours of operation will not exceed Tuesday through Saturday, from 9:00 a.m. to 8:00 p.m., and closed Sunday and Monday;

THAT all massages must be performed by New York State licensed massage therapists;

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

THAT Local Law 58/87 compliance, which may include a waiver from the Mayor's Office for People with Disabilities, 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, June 11, 2013.

59-12-BZ/60-12-A

APPLICANT – Mitchell S. Ross, Esq., for Ian Schindler, owner.

SUBJECT – Application March 15, 2012 – Variance (§72-21) to allow the enlargement of an existing home, contrary to front yard (§23-45) regulations.

Proposed construction is also located within a mapped but unbuilt portion of a street, contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue, Block 8103, Lot 25, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for deferred decision.

113-12-BZ

APPLICANT – Mitchell S. Ross, Esq., for St. Paul CongHa-Sang R.C. Church, owners.

SUBJECT – Application April 23, 2012 – Variance (§72-21) to permit a proposed church (*St. Paul's Church*), contrary to front wall height (§§24-521 & 24-51). R2A zoning district.

PREMISES AFFECTED – 32-05 Parsons Boulevard, northeast corner of Parsons Boulevard and 32nd Avenue, Block 4789, Lot 14, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to July 9, 2013, at 10 A.M., for continued hearing.

242-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Toldos Yehuda*), contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.

PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to July 23, 2013, at 10 A.M., for deferred decision.

263-12-BZ & 264-12-A

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00).

Variance (Appendix G, Section BC G107, NYC Administrative Code) to permit construction in a flood hazard area which does not comply with Appendix G, Section G304.1.2 of the Building Code. M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

COMMUNITY BOARD #10 & 13BX

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

282-12-BZ

APPLICANT – Eric Palatnik, P.C., for Izhak Lati, owner.

SUBJECT – Application September 24, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard requirements (§23-461), and a variance (§72-21), contrary to front yard requirements (§23-45). R5 zoning district.

PREMISES AFFECTED – 1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to August 13, 2013, at 10 A.M., for continued hearing.

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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

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 July 16, 2013, at 10 A.M., for decision, hearing closed.

Negative:.....0

ACTION OF THE BOARD – Laid over to July 16, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

91-13-BZ

APPLICANT – Eric Palatnik, P.C., for ELAD LLC, owner; Spa Castle Premier 57, Inc., lessee.

SUBJECT – Application March 19, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Spa Castle*) to be located in a 57-story mixed use building. C5-3,C5-2.5(MiD) zoning district.

PREMISES AFFECTED – 115 East 57th Street, north side, between Park and Lexington Avenues, Block 1312, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 16, 2013, at 10 A.M., for decision, hearing closed.

104-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Gates Avenue Properties, LLC, owner; Blink Gates, Inc., lessee.

SUBJECT – Application April 16, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink*) within a portion of an existing five-story commercial building. C2-4 (R6A) zoning district.

PREMISES AFFECTED – 1002 Gates Avenue, 62' east of intersection of Ralph Avenue and Gates Avenue, Block 1480, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

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

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*CORRECTION

This resolution adopted on May 21 2013, under Calendar No. 63-12-BZ and printed in Volume 98, Bulletin No. 21, is hereby corrected to read as follows:

63-12-BZ

CEQR #12-BSA-095K

APPLICANT – Sheldon Lobel, P.C., for Khal Bnei Avrohom Yaakov Building Fund Inc., owner.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.

PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27th Street and Avenue N. Block 7663, Lot 6. 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, the decision of the Executive Zoning Specialist, dated February 17, 2012, acting on Department of Buildings Application No. 320373449 reads, in pertinent part:

1. Proposed Floor Area Ratio(FAR) exceeds that permitted by ZR Section 24-11.
2. Proposed lot coverage is contrary to ZR Section 24-11.
3. Proposed minimum required front yards is contrary to ZR Section 24-34.
4. Proposed minimum required side yards are contrary to ZR Section 24-35(a).
5. Proposed maximum height of front wall and required front setback is contrary to ZR Section 24-521.
6. Required parking is not being provided; contrary to ZR Section 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R2 zoning district, the construction of a two-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for floor area ratio, lot coverage, front yards, side yards, height, setback, and parking, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521, and 25-31; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, with continued hearings on January 8, 2013, February 26, 2013, and April 9, 2013, and then to decision on May 21, 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 14, Brooklyn, recommends approval of the application on condition that the simcha hall use be reserved for use only by the members of the Synagogue; and

WHEREAS, the adjacent property owner on Avenue N provided a letter in support of the application; and

WHEREAS, the applicant submitted a petition signed by 376 community members in support of the application; and

WHEREAS, certain members of the community, represented by counsel, provided written and oral testimony in opposition to the application (the “Opposition”); the Opposition’s primary concerns are that (1) the applicant has not reliably described the program and the congregant body; (2) the applicant has not established the need for the waivers; (3) the bulk of the building is not compatible with the surrounding area; (4) no parking is being provided (19 parking spaces are required); (5) the environmental analysis is flawed; and (6) any benefit to the community is outweighed by the detriment to the community;

WHEREAS, the Opposition submitted a petition signed by 100 community members opposed to the building proposal and a note saying that more signators were available; and

WHEREAS, this application is being brought on behalf of Congregation Khal Bnei Avrohom Yaakov (the “Synagogue”); and

WHEREAS, the site is located on the northeast corner of East 27th Street and Avenue N in an R2 zoning district with 60 feet of frontage along East 27th Street and 100 feet of frontage along Avenue N; and

WHEREAS, the subject site has a lot area of 6,000 sq. ft. and is currently occupied by a residential building with 3,623 sq. ft. of floor area (0.6 FAR); and

WHEREAS, the applicant initially proposed to construct a new building with the following parameters: a floor area of 9,000 sq. ft. (1.5 FAR) (a maximum of 0.5 FAR is permitted or 1.0 FAR by City Planning special permit under ZR § 74-901); a lot coverage of 75 percent (a maximum lot coverage of 60 percent is permitted); front yards with depths of 10’-0” on East 27th Street and Avenue N (front yards with minimum depths of 15’-0” are required); and no side yards (side yards with minimum widths of 8’-0” and 9’-0” are required); and

WHEREAS, at the Board’s direction, the applicant revised the plans to provide side yards along the northern and eastern lot lines; the applicant ultimately reduced the width of the building along Avenue N from 90 feet to 85 feet; and included a side yard with a width of 2’-0” along the northern lot line and a side yard along the eastern lot line with a width of 5’-0”; the applicant reduced the front yard along the southern property line from a depth of 10’-0” to 8’-0”; and

WHEREAS, the addition of the yards resulted in a reduced floor area to 8,500 sq. ft. (1.41 FAR); a reduced lot

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coverage to 71 percent; and a reduced parking requirement from 22 spaces to 19 spaces; and

WHEREAS, the applicant proposes the following additional non-complying conditions: a perimeter wall height of 29 feet (a maximum wall height of 25 feet is permitted); no setback of the street wall (a front setback within the 1:1 sky exposure plane are required); and no parking spaces (a minimum of 19 parking spaces are required); and

WHEREAS, the proposal provides for the following uses: (1) a simcha hall, restrooms, lobbies, storage, coat rooms, and a pantry at the cellar level; (2) men's sanctuary, men's lobby, a washing station, a coffee room, and a coat room at the first story; and (3) women's sanctuary, lobbies, conference room, rabbi's office, and children's library at the second story; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate a congregation with a desire to expand and currently consists of approximately 250 adults and 280 children; (2) to provide separate worship and study spaces for male and female congregants; (3) to provide the necessary space for offering weekly classes; (4) to provide a children's library; and (5) to satisfy the religious requirement that members of the congregation be within walking distance of the residences of the congregants; and

WHEREAS, the applicant also seeks to provide community and religious lectures on weekends, expand its educational programming for children, and offer Talmud classes twice daily; and

WHEREAS, the applicant states that for the past five years, it has leased a synagogue building located at 1249 East 18th Street, which accommodates only approximately 110 people; it has approximately 1,600 sq. ft. of floor area; and

WHEREAS, the applicant states that the leased building is located approximately 0.7 miles from the proposed synagogue location; and

WHEREAS, the applicant states that the Synagogue has been unable to establish a permanent synagogue in the past five years, having looked at many sites in its search to find a site of the appropriate size and central location to suit its programmatic needs; the site is centrally located within the neighborhood of the Synagogue, allowing congregants to walk to services, as required for religious observance; and

WHEREAS, the applicant initially determined that it requires approximately 9,000 sq. ft. of floor area and an additional 6,000 sq. ft. in the cellar but, ultimately, through redesign, was able to reduce the number to 8,500 sq. ft. of floor area; and

WHEREAS, as to the need for a floor area waiver, the applicant notes that a conforming development would be limited to 3,000 sq. ft. of floor area, and 6,000 sq. ft. by City Planning Commission special permit, both significantly less floor area than needed to fulfill the programmatic need; and

WHEREAS, specifically, the applicant notes that in a conforming development, the men's sanctuary would only

accommodate 52 people and the women's sanctuary would only accommodate 48 people, whereas the proposed men's sanctuary would accommodate 187 people and the women's would accommodate 141 people; (the original proposal would have accommodated 216 people in the men's sanctuary and 153 people in the women's sanctuary); and

WHEREAS, the applicant asserts that a conforming development would eliminate the main women's lobby and children's library on the second floor; and that there would not be sufficient space to accommodate Talmud classes and other lectures; and

WHEREAS, as to the need for waivers to the front and side yards, and lot coverage, the applicant states a conforming development would result in a floor plate of 1,500 sq. ft. (50 feet by 30 feet), as opposed to the 4,250 sq. ft. floor plate proposed, and therefore would be insufficient to satisfy the Synagogue's programmatic needs to accommodate its congregation; and **COMMUNITY BOARD #**

WHEREAS, the applicant states that the proposed building will accommodate more congregants, which is essential considering the current number of congregants who attend the synagogue on weekends and holidays and the anticipated increase in membership; and

WHEREAS, as to the need for height and setback waivers, the applicant represents that the proposal will provide (1) the double-height ceiling of the main sanctuary which is necessary to create a space for worship and respect and an adequate ceiling height for the second floor women's balcony; and (2) other required uses on the second floor; and

WHEREAS, the applicant states that the parking waiver is necessary because providing the required 19 parking spaces would render the site wholly inadequate to support the proposed building and such parking spaces are not necessary because congregants must live within walking distance of their synagogue and must walk to the synagogue on the Sabbath and on high holidays; and

WHEREAS, the applicant states that 57 percent of the congregation lives within a three-quarter-mile radius of the site, which is less than the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship and waiver the parking requirement, but still a significant portion of the congregation; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, space for studying and meeting, and a children's library and other lecture space; and

WHEREAS, the Opposition raised several concerns regarding the applicants stated programmatic need including (1) justification for the floor area increase based on the number of congregants; and (2) the need for the height and setback waiver; and

WHEREAS, the Opposition raised a concern that the request for floor area is not supported by the actual number of congregants who attend the Synagogue; and

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WHEREAS, the Opposition questioned the veracity of the applicant's congregant numbers, stating that the applicant conflates the terms "congregants" and "members," which is problematic because the synagogue may have many members but fewer regular congregants; and

WHEREAS, the applicant produced a congregant list for the record which the Opposition contested; and

WHEREAS, the Board notes that the Opposition's concerns about the congregant list are unprecedented in the religious use context; the Board understands that congregant numbers may fluctuate and may not always correspond with the membership lists, but that Board sees no basis to reject the applicant's list because the Opposition has questions about whether a few of the noted people actually attend another synagogue; further, the Board accepts that the congregation is growing and that the Synagogue seeks to accommodate such growth; and

WHEREAS, as to height, the Opposition asserts that there is no basis for the requested height for the first floor (13'-4" in the area below the women's balcony and greater than 27'-0" in the double-height portion) as it is not required by religious law nor does it improve acoustics; and

WHEREAS, the Board notes that it has approved many applications from religious institutions seeking additional height for sanctuary space and accepts the applicant's representation that the height is necessary for its meaningful sacred space and to accommodate the second floor balcony; and

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

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

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant states that the proposed use is permitted in the subject R2 zoning district; and

WHEREAS, as to bulk, the applicant represents that the proposed FAR and all other bulk regulations are consistent with the character of the neighborhood; and

WHEREAS, in support of its assertions, the applicant provided a study of existing FAR's of larger buildings in the area, which reflects that there are numerous buildings of similar bulk to that proposed; and

WHEREAS, specifically, the applicant identified 15 homes within 600 feet of the subject site that have 1.25 FAR or greater (the ranges is from 1.25 to 3.17 FAR); and

WHEREAS, the applicant states that there are a number of educational and religious institutions in the area with comparable bulk, including four community facilities in the area with FAR ranging from 1.18 to 8.52; and

WHEREAS, the Board notes that the proposed 1.4 FAR falls within the range of FAR's of the larger buildings; and

WHEREAS, the applicant states that the site is currently occupied by a home that exceeds the maximum permitted floor area, has a noncomplying front yard along East 27th Street, a minimal side yard along its northern lot line, and its garage is built nearly to the eastern lot line; thus, the proposed yards are comparable to the existing and provide more space along the portion of the side lot line occupied by the garage; and

WHEREAS, the applicant notes that the proposed side yard with a width of 2'-0" along the northern lot line allows for a distance of 10'-0" from the adjacent home; and similarly, the proposed side yard with a width of 5'-0" along the eastern lot line allows for a distance of 8'-0" from the adjacent home; and

WHEREAS, at hearing, the Board directed the applicant (1) to analyze alternatives that would provide greater side yards than initially proposed and (2) to provide information about the yard context in the area; and

WHEREAS, in response, the applicant increased the side yards from no side yards in their initial application to widths of two and five feet; the front yard was reduced to eight feet along Avenue N and remained at ten feet along East 27th Street; and

WHEREAS, the applicant submitted a study that identified a significant number of sites in the surrounding area that have front yards with depths of less than eight feet and provide less than ten feet of open area between buildings on adjacent lots; and

WHEREAS, the applicant's study reflects that the three adjacent homes to the east on Avenue N have front yards with depths of less than eight feet and provide less than ten feet of open area between buildings on adjacent lots, a comparable condition to the proposed; and

WHEREAS, the opposition raised concerns regarding the accuracy and reliability of the data used for bulk and yard study; and

WHEREAS, with regard to the Opposition's questions about the reliability of the applicant's bulk and yards analyses, the Board accepts that the applicant relied on publicly available building and land use data and that any inaccurate bulk conditions were not intentional; and

WHEREAS, the Board concludes that even if the sites with disputed data were eliminated from the analysis, the applicant has still established that the Synagogue is

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compatible with the surrounding context; and

WHEREAS, as noted, during the hearing process, the Board directed the applicant to provide side yards along the northern and eastern lot lines, even though the adjacent neighbor to the east supported the proposal prior to the inclusion of the side yard with a width of 5'-0" on its shared lot line; and

WHEREAS, as to height, the applicant provided a streetscape which reflects that the adjacent row of homes along Avenue N all have heights of 35'-0" as do the homes on East 27th Street; the adjacent home on East 27th Street has a total height of 37'-0"; and

WHEREAS, the applicant represents that the height in excess of 27 feet for portions of the first floor is required in order to promote the metaphysical and physical significance of Judaism in that the ceiling metaphorically reaches to Heaven and gives importance to the space while providing acoustical advantages befitting a place of worship; and

WHEREAS, the applicant asserts that high ceilings have historically been an important element of synagogue architecture; and

WHEREAS, the applicant states that the conforming development would reduce the height of the building and the floor area devoted to sanctuary space; and

WHEREAS, the Board notes that the proposed total height of the building of 35'-0" does not require a waiver and is contemplated by the zoning district regulations; and

WHEREAS, the Board notes that four commissioners visited the site on repeated occasions and personally observed and confirmed that the proposal is compatible with the existing context of the surrounding neighborhood; and

WHEREAS, the applicant states that the parking waiver requested will not result in a material increase in street parking in the surrounding area due to the close proximity to the congregants' homes, which allows congregants to walk to the site in observance of religious law; and

WHEREAS, further, as noted above, the applicant represents that 57 percent (fewer than the 75 percent minimum threshold), of congregants live within a three-quarter-mile radius of the site, thus do not meet the minimum threshold for the parking waiver, but are still within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the applicant performed a parking study which reflects that during the times of day when attendance is greatest and most area residents are at home, there were 369 vacant spaces on one day and 342 and 325 vacant spaces on two other days when the study was repeated; and

WHEREAS, accordingly, the applicant concludes that there is ample curbside parking to accommodate any demand; and

WHEREAS, the applicant notes that the study was conducted within an approximately one-quarter-mile radius of the subject site, consistent with CEQR Technical Manual methodology; and

WHEREAS, the applicant also notes that the trip generation falls below the CEQR Technical Manual threshold size, but, still, it assessed the trip generation based

on occupancy and found it would not exceed threshold levels of vehicular traffic generation, even at its peak attendance level of 350 people during the high holidays; and

WHEREAS, the Opposition raises supplemental concerns about the sufficiency of the applicant's environmental review including that the conclusion that no potential for emissions exists is based on the assumption that the heating flue stacks will be more than 50 feet from the nearest building; and

WHEREAS, in response to the Opposition's assertions about the environmental review being insufficient, the applicant supplemented the record with an Environmental Assessment Statement (EAS) Full Form, including the following narratives: (1) Introduction, Land Use, Zoning, and Public Policy; (2) Urban Design and Visual Resources; (3) Transportation; and (4) Air Quality; and clearly identified the location of the heating flue stacks on the roof and their distance from the lot lines; and

WHEREAS, as to the Opposition's concerns about the environmental review, the Board has carefully considered both parties' environmental analyses, including the areas of traffic/parking, open space, air quality, and construction impacts, and agrees that the applicant has correctly applied the CEQR methodology to conclude that the incremental effect of the proposal versus the no build does not trigger any of the CEQR threshold requirements; and

WHEREAS, the Board notes that the required distance of the heating ducts from adjacent buildings in order to screen the HVAC system is 30 feet, rather than the 50 feet the Opposition alleges and the applicant proposes to locate its rooftop flues more than 30 feet from adjacent buildings; and

WHEREAS, the applicant submitted responses adequately addressing the concerns raised by the opposition regarding the environmental review; and

WHEREAS, the Opposition asserts that the Board must balance the interests of the community and the Synagogue and deny an application when "the (presumed) beneficial effect may be rebutted with evidence of a significant impact on traffic congestion, property values, municipal services and the like" Cornell Univ. v. Bagnardi, 68 N.Y.2d 583, (1986); and

WHEREAS, the Opposition asserts that the Board cannot grant a variance until it is assured that the proposed use is not contrary to public health, safety, or welfare; and

WHEREAS, the Opposition asserts that in order to appropriately analyze the application, the applicant must define the project fully and accurately including its programmatic needs, the number of people it will service, the hours and days of operation and to analyze each through the application of various strictly defined methodologies prescribed in the CEQR manuals; and

WHEREAS, the Opposition also asserts that the traffic study is flawed and that the impact on parking and traffic will be significant to the surrounding area to the extent of diminishing property values; and

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WHEREAS, the applicant responded that the Synagogue will have a beneficial impact on the community surrounding the site and will provide a place of worship for many local residents; the applicant asserts that the Synagogue's beneficial effect has not been rebutted with any "evidence of a significant impact on traffic congestion, property values, municipal service, [or] the like," citing to Cornell; and

WHEREAS, the applicant submitted a petition signed by nearly 400 community members in support of the application; and

WHEREAS, further, in response to the Opposition's concerns about the operation of the Synagogue, the applicant revised its application to note that (1) there will be no onsite catering; (2) the simcha hall will be used primarily for Kiddush ceremonies following Sabbath prayer services; and (3) there will be no simultaneous use of the simcha hall and worship areas anytime there is a near-capacity crowd at the synagogue, but they may be used together when neither is at near capacity; and

WHEREAS, the Board agrees with the applicant that it has submitted (1) a full and complete description of the proposal including programmatic needs, number of people it will serve, and hours and days of operation; and (2) the Opposition has failed to provide any evidence of a significant negative impact caused by the proposal as required by the New York State courts to deny a variance for a religious institution; and

WHEREAS, the Board has reviewed the Opposition's concerns and notes the following: (1) the requirements of ZR § 72-21(a) are met by the demonstration of legitimate programmatic needs and the limitations of the site in meeting those goals; and (2) the case law does not recognize concerns about potential traffic and disruption of residential character of the neighborhood as basis for rejecting a variance request; and

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

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

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

WHEREAS, the applicant analyzed a lesser variance scenario with a side yard with a width of 5'-0" along the eastern lot line and a side yard with a width of 5'-0" along the northern lot line and asserts that a lesser variance would compromise the programmatic needs of the Synagogue; and

WHEREAS, specifically, a lesser variance scenario that could only accommodate 175 men, as opposed to the 216 in the initial proposal (187 in the current proposal) and 137 women, as opposed to the 153 in the initial proposal (141 in the current proposal) for the women's sanctuary would be

insufficient; and

WHEREAS, the applicant asserts that the addition of the proposed yards is the most possible without further limiting its ability to accommodate its congregation; and

WHEREAS, additionally, the applicant asserts that many of the rooms on the first and second floors, including the rabbi's office, children's library, and conference room would be greatly reduced under the lesser variance scenario; and

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA095K, dated March 12, 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; 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 prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site in an R2 zoning district, the construction of a two-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for floor area ratio, lot coverage, front yards, side yards, height, setback, and parking, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 15, 2013" – Fourteen (14) sheets and "Received May 17, 2013" – One (1) sheet; and *on further condition*:

THAT the building parameters will be: three stories; a maximum floor area of 8,500 sq. ft. (1.41 FAR); front yards

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with depths of 8'-0" on the southern lot line and 10'-0" on the western lot line; side yards with widths of 2'-0" on the northern lot line and 5'-0" on the eastern lot line; a maximum lot coverage of 71 percent; a maximum building height of 35'-0"; and a maximum street wall height of 29'-0", as illustrated on the BSA-approved plans;

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

THAT the use will be limited to a house of worship (Use Group 4) and any classes will be accessory to this use;

THAT the use of the cellar kitchen will be limited to warming;

THAT no commercial catering will take place onsite;

THAT there will be no simultaneous use of the simcha hall and worship areas anytime there is more than half capacity in either space;

THAT the site, during construction and under regular operation, will be maintained safe and free of debris;

THAT garbage will be stored inside the building except when in the designated area for pick-up;

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

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

THAT rooftop mechanicals will comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings and that the flue stacks be located at least 30 feet from adjacent buildings, as reflected 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 objection(s) only;

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

THAT construction will proceed in accordance with ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, May 21, 2013.

***The resolution has been amended. Corrected in Bulletin No. 24, Vol. 98, dated June 19, 2013.**

*CORRECTION

This resolution adopted on May 21 2013, under Calendar No. 10-13-BZ and printed in Volume 98, Bulletin No. 21, is hereby corrected to read as follows:

10-13-BZ

CEQR #13-BSA-083M

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

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

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

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 21, 2012, acting on Department of Buildings Application No. 120406131, reads in pertinent part:

1. ZR 24-11 Proposed bridge connection at the 4th story level in R7-2 district does not qualify as a permitted obstruction pursuant to ZR 24-33 and therefore increases the degree of non-compliance with respect to lot coverage, contrary to ZR 24-11 and ZR 54-31;
2. ZR 24-36 Proposed vertical extension of building portion exceeding 23 ft above curb level and the proposed bridge connection at the 4th story level in R7-2 district does not qualify as permitted obstruction pursuant to ZR 24-33 and therefore increases the degree of rear yard non-compliance, contrary to ZR 24-36 and ZR 54-31;
3. ZR 24-522 Portion of proposed vertical extension of building at the 5th and 6th story levels penetrates the sky exposure plane and increases degree of front setback non-compliance, contrary to ZR 24-522 and ZR 54-31;
4. ZR 33-26 Proposed vertical extension of

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building portion exceeding 23 ft above curb level in C1-9 district does not qualify as permitted obstruction pursuant to ZR 33-23 and therefore increases degree of rear yard non-compliance, contrary to ZR 33-26 and ZR 54-31; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of an existing school building to accommodate classrooms and an exercise and activity space (“the Enlargement”), and the construction of a bridge (“the Bridge”) between the subject building located at 175 West 89th Street (“the South Building”) and the building located at 148 West 90th Street (“the North Building”), which do not comply with zoning regulations for lot coverage, minimum required rear yard, permitted obstructions in a rear yard, and sky exposure plane, contrary to ZR §§ 24-11, 24-33, 24-36, 24-522, 33-23, 33-26 and 54-31; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in the *City Record*, and then to decision on May 21, 2013; and

WHEREAS, a companion variance application to allow the Bridge construction within the rear yard of the North Building has been filed under BSA Cal. No. 11-13-BZ and decided at the same hearing; and

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

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

WHEREAS, Councilmember Gail Brewer submitted a letter in support of the application; and

WHEREAS, certain members of the community testified at the hearing in support of the application; and

WHEREAS, this application is brought on behalf of the Stephen Gaynor School (the “School”), a nonprofit educational institution founded in 1962, which serves approximately 300 students with various special needs ranging in age from three to 14; and

WHEREAS, the subject site, which is Tax Lot 5, is an interior lot located on the north side of West 89th Street between Amsterdam Avenue and Columbus Avenue, partially within an R7-2 zoning district and partially within a C1-9 zoning district; and

WHEREAS, the site has 75 feet of frontage along West 89th Street and a lot area of 7,553 sq. ft.; and

WHEREAS, the site is currently occupied by the South Building, a five-story building that was originally constructed in 1892 as a boarding stable and came to be known as the Claremont Stables; the South Building was designated as an individual landmark by the Landmarks Preservation Commission in 1990, and it is also on the National Register of Historic Places; and

WHEREAS, the applicant states that the School purchased the South Building in 2009 and currently utilizes a

portion of the first story and the entire second story as its Early Childhood Center; and

WHEREAS, the applicant notes that the campus of the School currently includes seven stories of the 11-story North Building and two stories of the five-story South Building; there is another School-owned building under construction at 171 West 89th Street; each building is a separate tax and zoning lot; and

WHEREAS, the applicant states that the South Building has a height of 79.18 feet, including mechanicals and a total floor area of 34,404 sq. ft., with 9,255 sq. ft. (4.60 FAR) located within the C1-9 portion of the lot and 25,149 sq. ft. (4.54 FAR) located within the R7-2 portion of the lot; and

WHEREAS, the applicant proposes to enlarge the South Building and construct a bridge in the rear yard to connect to the North Building, which would increase the floor area to 38,412 sq. ft. and result in an FAR increase from 4.60 FAR to 5.34 FAR within the C1-9 portion of the lot and 4.54 FAR to 4.99 FAR within the R7-2 portion of the lot; and

WHEREAS, the applicant represents that the South Building has the following existing, non-compliances: (1) the lot coverage within the R7-2 portion of the lot is 95 percent (per ZR § 24-11, the maximum lot coverage is 65 percent); (2) the rear yard is 5.04 feet (per ZR § 24-36, a minimum rear yard depth of 30 feet is required; per ZR § 33-26, a minimum rear yard depth of 20 feet is required); (3) the portion of the building wall within the R7-2 district does not provide the required 20-foot front setback, exceeds the 60-foot maximum height, and violates the sky exposure plane, contrary to ZR § 24-522; and (4) the projecting blade sign located above the main entrance exceeds the maximum size permitted by ZR § 22-341; the applicant notes that the degree of non-compliance with respect to (3) and (4) will not change under the application; and

WHEREAS, the applicant states that, contrary to ZR § 54-31, the proposal will increase the degree of non-compliance with respect to: (1) lot coverage, which will increase by one percent; (2) required rear yard within the R7-2 district, which, as a result of the Bridge, will be decreased by an area of approximately 41 sq. ft. and, as a result of the Enlargement, will be decreased by a total area of approximately 1,372 sq. ft. (the Bridge is not a permitted obstruction, per ZR § 24-33); (3) sky exposure plane, which will be penetrated by the 170.5 sq. ft. portion of the Enlargement that is located at the front of the South Building; and (4) required rear yard within the C1-9 district, which, as a result of the Enlargement, will be decreased by an area of approximately 300 sq. ft. (this portion of the South Building is not a permitted obstruction, per ZR § 33-23); and

WHEREAS, the applicant states that the Enlargement will accommodate three new academic/science classrooms on the fifth story, and a multifunctional activity space on the sixth story and rooftop; the proposed Bridge will integrate the South Building with the North Building; and

WHEREAS, because neither the Enlargement, nor the Bridge comply with the applicable bulk regulations in the subject zoning districts, the applicant seeks the requested

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variance; and

WHEREAS, the applicant states that the variance is necessary to meet the School's programmatic needs of: (1) providing sufficient space to carry out its specialized curriculum, which is heavily infused with exercise, art, and photography; and (2) minimizing travel time between the South Building and the North Building in order to maximize instruction and learning times; and

WHEREAS, as to the specialized curriculum of the School, the applicant states that because the School specializes in educating children with special needs and certain learning differences, it emphasizes physical education and the arts to a much greater degree than mainstream schools, because these subjects help the students with both confidence and focus; and

WHEREAS, the applicant states that due to the relationship between physical activity and creating an effective learning environment for the School's students, the proposed activity space on the sixth story—which includes a synthetic floor that accommodates a multitude of activities—is neither recreational nor elective, but rather an important component of the School's highly-specialized educational program; and

WHEREAS, the applicant states that the proposal would allow for the creation of several new spaces to effectively conduct the curriculum; specifically, the Enlargement would result in new seminar rooms, a multi-media arts room, a state-of-the-art digital photography lab, and physical activity space, as mentioned above; and

WHEREAS, thus, the applicant states that the Enlargement effectively addresses the School's programmatic need to provide sufficient space to carry out its specialized curriculum and create a learning environment that is tailored to the particular needs of its student body; and

WHEREAS, as to the need to minimize travel time between the South Building and the North Building, the applicant represents that, currently, students, faculty and staff who must travel between the buildings must exit the front of their building on either West 89th Street (the subject building) or West 90th Street (the North Building), walk west to Amsterdam Avenue and travel either north or south for an entire block before turning east toward the other front door, a trip that takes approximately 15 minutes; and

WHEREAS, the applicant states that the School has determined that, on average, a student travels between the two buildings seven times per week, for a total weekly travel time of approximately 105 minutes; the applicant notes that this is the equivalent of more than two full class periods; in addition, because the walk takes the students past an active garage, traveling students are required to be accompanied by a faculty member; and

WHEREAS, the applicant states that the travel between the buildings is necessary because the School has a variety of educational specialists throughout the two buildings who provide one-on-one assistance to students; and

WHEREAS, in addition, the applicant states that several classes attended by most students are only offered in one building; for example, Music, Gym and Library are currently offered only in the North Building; and although there are

cafeterias in both buildings, there is insufficient space for all students to eat, and Middle School students from the North Building must travel to the South Building for lunch; and

WHEREAS, the applicant also notes that student arrivals and dismissals are located in the North Building, so students taking all or most of their instruction in the subject building would benefit from the construction of the Bridge; and

WHEREAS, accordingly, the applicant states that the Bridge most effectively meets the School's programmatic need to minimize travel time and maximize instruction and learning times; and

WHEREAS, as to the selection of the fourth story for the location of the Bridge, the applicant states that such placement will enable the overlap and access of two similar programs between the Lower School in the North Building and the Middle School in the South Building; in particular, the North Building students will have access to Mixed Media and Digital Arts program and the physical activity space created by the Enlargement; and

WHEREAS, the applicant asserts that there is no as-of-right alternative for the proposed development because the building already exceeds the maximum permitted lot coverage, violates the sky exposure plane, and does not provide the required rear yard at all stories above the first story; and

WHEREAS, the applicant represents that the location of the stair and elevator bulkheads prevent the construction of the proposed activity space at the fifth story; and

WHEREAS, the applicant represents that the Bridge could not be located at the cellar, first, second, third or fifth stories without significantly disrupting existing program or mechanical spaces; and

WHEREAS, specifically, the applicant states that: (1) a connection at the cellar level would interfere with well-established program and support space; (2) a connection at the first story would interfere with a planned performing arts classroom at the South Building; (3) a bridge at the second story would interfere with a portion of the South Building's Early Childhood Center, whose program requires isolation due to the age of the students; (4) a bridge at the third story would interfere with program space in both buildings and create an elevational challenge for mechanical stacks located at the second story play yard at the North Building; and (5) a bridge at the fifth story would adversely affect the proposed classrooms in the South Building and significantly increase travel times for the North Building's third story students; and

WHEREAS, the applicant states that satisfying the School's programmatic needs without the Bridge and the Enlargement would require enlargement of one or both buildings (with new height and setback waiver requests) and the creation of redundant facilities, at significant cost; and

WHEREAS, the applicant notes that the width and height of the Bridge have been minimized to those dimensions necessary to further the School's mission and provide safe egress; and

WHEREAS, the Board acknowledges that the School, as

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an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant states that the block on which the building is located within the West Side Urban Renewal Area and as such there has been considerable eclectic community facility development over the past half century; and

WHEREAS, the applicant states that the midblock is largely developed with religious, educational, and cultural institutions; the North Building is shared with Ballet Hispanico, an internationally-renowned dance company, the block to the south (Block 1219) is largely occupied by P.S. 166, and a large NYCHA development is located on the block to the north of the subject block (Block 1221); and

WHEREAS, the applicant represents that both the Enlargement and the Bridge will be minimally visible to the public; the Bridge will only be obliquely visible from West 89th Street and will be visible to—and approximately 80 feet from—only the northernmost windows on the rear elevation of The Sagamore, a residential building located at 189 West 89th Street; and

WHEREAS, the applicant states that approximately 45 percent of the new floor area will be within the rear yards of the South Building and the North Building, which minimizes the impact of the expansion on adjacent properties; and

WHEREAS, finally, the applicant notes that the proposed use is permitted in the subject zoning district and that the general welfare of any community is furthered by the strengthening of educational facilities; and

WHEREAS, the Board notes that on April 30, 2012, the Landmarks Preservation Commission issued a Certificate of Appropriateness with respect to the proposal; and

WHEREAS, accordingly, the Board finds that this

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

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions of the South Building and the North Building; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as a Type I 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. 13BSA083M dated January 17, 2013; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of an existing school building to accommodate classrooms and an exercise and activity space, and the construction of a bridge between the subject building located at 175 West 89th Street and the building located 148 West 90th Street, which do not comply with zoning

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regulations for lot coverage, minimum required rear yard, permitted obstructions in a rear yard, front setback, and sky exposure plane, contrary to ZR §§ 24-11, 24-33, 24-36, 24-522, 33-23, 33-26 and 54-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 1, 2013" – seventeen (17) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the South Building: a total floor area of 38,412 (4.99 FAR in the R7-2 district and 5.34 FAR in the C1-9 district), a maximum building height of 95'-7/8", a maximum street wall height without setback of 72'-0", and 96 percent lot coverage in the R7-2 district and 95 percent lot coverage in the C1-9 district, as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT construction will proceed in accordance with ZR § 72-23;

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

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

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

Adopted by the Board of Standards and Appeals, May 21, 2013.

***The resolution has been amended. Corrected in Bulletin No. 24, Vol. 98, dated June 19, 2013.**

*CORRECTION

This resolution adopted on May 21 2013, under Calendar No. 11-13-BZ and printed in Volume 98, Bulletin No. 21, is hereby corrected to read as follows:

11-13-BZ

CEQR #13-BSA-083M

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

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

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

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 21, 2012, acting on Department of Buildings Application No. 121397201, reads in pertinent part:

1. ZR 24-11 24-33 Proposed bridge connection at the 4th story level in R7-2 district does not comply with lot coverage requirements because the proposed bridge does not qualify as a permitted obstruction pursuant to ZR 24-33, contrary to ZR 24-11
2. ZR 24-33 24-36 Proposed bridge connection at the 4th story level in R7-2 district does not comply with rear yard requirements because the proposed bridge does not qualify as a permitted obstruction pursuant to ZR 24-33, contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R7-2 zoning district, the construction of a bridge ("the Bridge") between the subject building located at 148 West 90th Street ("the North Building") and the building located at 175 West 89th Street ("the South Building"), which does not comply with zoning regulations for lot coverage, minimum required rear yard, and permitted obstructions in a rear yard, contrary to ZR §§ 24-11,

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24-33 and 24-36; and

WHEREAS, a public hearing was held on this application on April 23, 2013, after due notice by publication in the *City Record*, and then to decision on May 21, 2013; and

WHEREAS, a companion variance application to allow enlargement of the South Building and construction of the Bridge within its rear yard has been filed under BSA Cal. No. 10-13-BZ and decided at the same hearing; and

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

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

WHEREAS, Councilmember Gail Brewer submitted a letter in support of the application; and

WHEREAS, certain members of the community testified at the hearing in support of the application; and

WHEREAS, this application is brought on behalf of Stephen Gaynor School (the "School"), a nonprofit educational institution founded in 1962, which serves approximately 300 students with various special needs ranging in age from three to 14; and

WHEREAS, the subject site is an interior lot located on the south side of West 90th Street between Amsterdam Avenue and Columbus Avenue, within an R7-2 zoning district; and

WHEREAS, the site has 65 feet of frontage along West 90th Street and a lot area of 6,546 sq. ft.; and

WHEREAS, the site, which is Tax Lot 7506, was merged into a single zoning lot with Tax Lot 107 in 2004; Lot 107 has 47.5 feet of frontage along West 89th Street and a total lot area of 4,783; together the lots have a combined lot area of 11,329 sq. ft. and a total floor area of 50,050 sq. ft. (4.42 FAR); and

WHEREAS, the applicant states that the site is currently occupied by the 11-story North Building; the School occupies the first through seventh stories, Ballet Hispanico occupies the eighth through tenth stories, and the 11th story comprises mechanical space shared by both the School and Ballet Hispanico; and

WHEREAS, the applicant notes that Ballet Hispanico also occupies the two-story building on Lot 107; and

WHEREAS, the applicant notes that the campus of the School currently includes seven stories of the 11-story North Building and two stories of the five-story South Building; there is another School-owned building under construction at Lot 7 (171 West 89th Street); each building is a separate zoning lot; and

WHEREAS, the applicant states that the North Building complies in all respects with the zoning resolution; and

WHEREAS, the applicant proposes to create a bridge between the North Building and the South Building ("the Bridge"), which will increase the floor area from 50,050 sq. ft. (4.42 FAR) to 50,263 sq. ft. (4.43 FAR) and create new non-compliances with respect to rear yard, lot coverage, and permitted obstructions, contrary to ZR §§ 24-11, 24-33 and

24-36; specifically, the Bridge will: (1) encroach upon the required 30-foot rear yard for the full depth of the yard, a width of seven feet, and an area of 213 sq. ft.; (2) increase lot coverage from 65 percent, which complies, to 67 percent, which does not comply; and (3) violate ZR § 24-33, because the Bridge is a portion of the building located within the required rear yard at a height of greater than 23 feet; and

WHEREAS, the applicant states that the proposed Bridge will integrate the North Building with the South Building; and

WHEREAS, because the Bridge does not comply with the applicable bulk regulations in the subject zoning district, the applicant seeks the requested variance; and

WHEREAS, the applicant states that the variance is necessary to meet the School's programmatic need to minimize travel time between the North Building and the South Building in order to maximize instruction and learning times; and

WHEREAS, as to the need to minimize travel time between the North Building and the South Building, the applicant represents that, currently, students, faculty and staff who must travel between the buildings must exit the front of their building on either West 90th Street (the North Building) or West 89th Street (the South Building), walk west to Amsterdam Avenue and travel either north or south for an entire block before turning east toward the other front door, a trip that takes approximately 15 minutes; and

WHEREAS, the applicant states that the School has determined that, on average, a student travels between the two buildings seven times per week, for a total weekly travel time of approximately 105 minutes; the applicant notes that this is the equivalent of more than two full class periods; in addition, because the walk takes the students past an active garage, traveling students are required to be accompanied by a faculty member; and

WHEREAS, the applicant states the travel between the buildings is necessary because the School has a variety of educational specialists throughout the two buildings who provided one-on-one assistance to students; and

WHEREAS, in addition, the applicant states that several classes attended by most students are only offered in one building; for example, Music, Gym and Library are currently offered only in the North Building; and although there are cafeterias in both buildings, there is insufficient space for all students to eat, and Middle School students from the North Building must travel to the South Building for lunch; and

WHEREAS, the applicant also notes that student arrivals and dismissals are located in the North Building, so students taking all or most of their instruction in the subject building would benefit from the construction of the Bridge; and

WHEREAS, accordingly, the applicant states that the Bridge most effectively meets the School's programmatic need to minimize travel time and maximize instruction and learning times; and

WHEREAS, as to the selection of the fourth story for the location of the Bridge, the applicant states that such

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placement will enable the overlap and access of two similar programs between the Lower School in the North Building and the Middle School in the South Building; in particular, the North Building students will have access to the Mixed Media and Digital Arts program and the physical activity space created by the Enlargement; and

WHEREAS, the applicant represents that the Bridge could not be located at the cellar, first, second, third or fifth stories without significantly disrupting existing program or mechanical spaces; and

WHEREAS, specifically, the applicant states that: (1) a connection at the cellar level would interfere with well-established program and support space; (2) a connection at the first story would interfere with a planned performing arts classroom at the South Building; (3) a bridge at the second story would interfere with a portion of the South Building's Early Childhood Center, whose program requires isolation due to the age of the students; (4) a bridge at the third story would interfere with program space in both buildings and create an elevational challenge for mechanical stacks located at the second story play yard at the North Building; and (5) a bridge at the fifth story would adversely affect the proposed classrooms in the South Building and significantly increase travel times for the North Building's third story students; and

WHEREAS, the applicant states that satisfying the School's programmatic needs without the Bridge would require enlargement of one or both buildings (with new height and setback waiver requests) and the creation of redundant facilities, at significant cost; and

WHEREAS, the applicant notes that the width and height of the Bridge have been minimized to those dimensions necessary to further the School's mission and provide safe egress; and

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

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate

use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the block on which the North Building is located within the West Side Urban Renewal Area and as such there has been considerable eclectic community facility development over the past half century; and

WHEREAS, the applicant states that the midblock is largely developed with religious, educational, and cultural institutions; the North Building is shared with Ballet Hispanico, an internationally-renowned dance company, the block to the south (Block 1219) is largely occupied by P.S. 166, and a large NYCHA development is located on the block to the north of the subject block (Block 1221); and

WHEREAS, the applicant represents that the Bridge will be minimally visible to the public; the Bridge will only be obliquely visible from West 89th Street and will be visible to—and approximately 80 feet from—only the northernmost windows on the rear elevation of The Sagamore, a residential building located at 189 West 89th Street; and

WHEREAS, finally, the applicant notes that the proposed use is permitted in the subject zoning district and that the general welfare of any community is furthered by the strengthening of educational facilities; and

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

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions of the North Building and the South Building; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as a Type I 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, 13BSA083M dated January 17, 2013; and

WHEREAS, the EAS documents that the operation of the School 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

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Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R7-2 zoning district, the construction of a bridge between the building located at 148 West 90th Street and the building located at 175 West 89th Street, which does not comply with zoning regulations for lot coverage, minimum required rear yard, and permitted obstructions in a rear yard, contrary to ZR §§ 24-11, 24-33 and 24-36, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 1, 2013” – twenty (20) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the North Building: a floor area of 50,263 sq. ft. (4.43 FAR) and 67 percent lot coverage, as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT construction will proceed in accordance with ZR § 72-23;

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

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

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

Adopted by the Board of Standards and Appeals, May 21, 2013.

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