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DOCKETS

New Case Filed Up to July 23, 2013

216-13-BZ

750 Barclay Avenue, West side of Barclay Avenue, 0' North of the corner of Boardwalk Avenue, Block 6354, Lot(s) 40,7,9,& 12, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to demolish an existing restaurant and construct a new two story eating and drinking establish with accessory parking for twenty-five cars. R3-X (SRD) zoning district. R3-X, SRD district.

217-13-A

750 Barclay Avenue, West side of Barclay Avenue, 0' North of the corner of Boardwalk Avenue, Block 6354,, Lot(s) 40,7,9,& 12, Borough of **Queens, Community Board: 3**. Appeal seeking to demolish an existing restaurant and construct a two story eating and drinking establishment with accessory parking located in the bed of the mapped street, (Boardwalk Avenue) contrary to General City law Section 35 . R3-X Zoning District . Companion BZ application filed under 216-13-BZ. R3X, SRD district.

218-13-BZ

136 Church Street, Located on the southwest corner of the intersection formed by Warren and Church Streets in TriBeCa, Block 133, Lot(s) 29, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow the operation of a fitness center physical culture establishment on portions of the existing building pursuant §32-10. C6-3A zoning district. C6-3A district.

219-13-BZ

2 Cooper Square, northwest corner of intersection of Cooper Square and East 4th Street, Block 544, Lot(s) 65, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to allow physical culture establishment (Crunch Fitness) within a portions of an existing mixed use building contrary to §42-10. M1-5B zoning district. M1-5B district.

220-13-BZ

2115 Avenue J, Northern side of Avenue J between East 21st and East 22nd Street, Block 7585, Lot(s) 3, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of single family residence located in residential R2 zoning district. R2 district.

220-07-BZ

847 Kent Avenue, East side of Kent Avenue, between Park Avenue and Myrtle Avenue, Block 1898, Lot(s) 10, Borough of **Brooklyn, Community Board: 3**. Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a new four story residential building containing four dwelling units which expires on November 10, 2013. M1-1 zoning district. M1-1 district.

221-13-A

239-26 87th Avenue, Southern side of 87th Avenue between 241st Street and 239th Street, Block 7966, Lot(s) 54, Borough of **Queens, Community Board: 13**. Appeal seeking that the owner has a common law vested right to continue construction and obtain a Certificate of Occupancy under the prior R3A zoning district. R2A zoning district. R2A district.

222-13-BZ

2464 Coney Island Avenue, Southeast Corner of Coney Island Avenue and Avenue V, Block 7136, Lot(s) 30, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-44) to permit the reduction of the required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. C8-1/R5 zoning district. C8-1/R5 district.

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

CALENDAR

AUGUST 20, 2013, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 20, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

139-92-BZ

APPLICANT – Samuel H. Valencia
SUBJECT – Application May 20, 2013 – Extension of Term for a previously granted Special Permit (§73-244) for the continued operation of a UG12 Eating and Drinking Establishment with Dancing (*Deseos*) which expired on March 7, 2013; Waiver of the Rules.
C2-2/R6 zoning district.
PREMISES AFFECTED – 52-15 Roosevelt Avenue, North side 125.53' east of 52nd Street, Block 1316, Lot 76, Borough of Queens.
COMMUNITY BOARD #2Q

199-00-BZ

APPLICANT – Alfonso Duarte, P.E., for EN PING C/O Baker, Esq., owner; KAZ Enterprises Inc., lessee.
SUBJECT – Application March 28, 2013 – Extension of Term of a previously granted Special Permit (§73-244) for the continued operation of an Eating and Drinking Establishment (Club Atlantis) without restrictions on entertainment (UG12A) which expired on March 13, 2013.
C2-3/R6 zoning district.
PREMISES AFFECTED – 76-19 Roosevelt Avenue, northwest corner of Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.
COMMUNITY BOARD #3Q

220-07-BZ

APPLICANT – Eric Palatnik, P.C., for Kornst Holdings, LLC, owner.
SUBJECT – Application July 11, 2013 – Extension of Time to Complete Construction of a previously granted Variance (ZR 72-21) for the construction of a new four story residential building containing four dwelling units which expires on November 10, 2013. M1-1 zoning district.
PREMISES AFFECTED – 847 Kent Avenue, East side of Kent Avenue, between Park Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.
COMMUNITY BOARD #3BK

126-13-A

APPLICANT – Sheldon Lobel, PC, for Woodmere Development LLC, owner.
SUBJECT – Application April 30, 2013 – Appeal from a Determination by New York City Department of Buildings that a rear yard is required at the boundary of a block coinciding with a railroad right-of-way located at or above ground level. R7B Zoning District.
PREMISES AFFECTED – 65-70 Austin Street, 65th Road and 66th Avenue, Block 3104, Lot 101, Borough of Queens.
COMMUNITY BOARD # 6Q

134-13-A

APPLICANT – Bryan Cave, for Covenant House, owner.
SUBJECT – Application May 9, 2013 – Appeal of DOB determination regarding the right to maintain an existing advertising sign. C2-8 HY zoning district.
PREMISES AFFECTED – 538 10th Avenue aka 460 West 41st Street, Tenth Avenue between 41st and 42nd Streets, Block 1050, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #4M

166-13-A

APPLICANT – Sheldon Lobel, PC, for Whitney Museum of American Art, owner.
SUBJECT – Application May 21, 2013 – Construction Code Determination by the Department of Buildings regarding the interpretation of Building Code Sections 28-117, 28-102.4,3 and C2-116.0 in order to determine whether a public assembly permit is required for those portions of the art museum at the premises which were build pursuant to the 1938 Building Code and which have not been altered since being built in 1966. C5-1/R8B zoning districts.
PREMISES AFFECTED – 945 Madison Avenue, southeast intersection of Madison Avenue and East 75th Street, Block 1389, Lot 50, Borough of Manhattan.
COMMUNITY BOARD #8M

227-13-A

APPLICANT – St. Ann's Warehouse by Chris Tomlan, for Brooklyn Bridge Park Development Corp., owner; St. Ann's Warehouse, lessee.
SUBJECT – Application July 26, 2013 – Variance pursuant to the NYC Building Code (Appendix G, Section G304.1.2) to allow for the redevelopment of an historic structure (*Tobacco Warehouse*) within Brooklyn Bridge Park to be located below the flood zone. M3-1 zoning district.
PREMISES AFFECTED – 45 Water Street, (*Tobacco Warehouse*) north of Water Street between New Dock Street and Old Dock Street, Block 26, Lot 1, Borough of Brooklyn.

CALENDAR

COMMUNITY BOARD #2BK

ZONING CALENDAR

279-12-BZ

APPLICANT – Akerman Senterfitt LLP, for Bacele Realty, owner.

SUBJECT – Application September 20, 2012 – Variance (§72-21) to permit a Use Group 6 bank in a residential zone, contrary to ZR 22-00. R4/R5B zoning district.

PREMISES AFFECTED – 27-24 College Point Boulevard, northwest corner of the intersection of College Point Boulevard and 28th Avenue, Block 4292, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

78-13-BZ

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit a residential (UG 2) building contrary to use regulations, ZR §42-00. M1-1& R7A/C2-4.

PREMISES AFFECTED – 876 Kent Avenue, located on the west side of Kent Avenue, approximately 91' north of Myrtle Avenue. Block 1897, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #3BK

97-13-BZ

APPLICANT – Lewis E. Garfinkel, for Elky Ogorek Willner, owner.

SUBJECT – Application April 8, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1848 East 24th Street, west side of East 24th St, 380' south of Avenue R, Block 6829, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

161-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Bennco Properties, LLC, owner; Soul Cycle West 19th street, lessee.

SUBJECT – Application May 28, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Soul Cycle*) within a portion of an existing building. C6-4A zoning district.

PREMISES AFFECTED – 8 West 19th Street, south side of W. 19th Street, 160' west of intersection of W. 19th Street and 5th Avenue, Block 820, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #5M

211-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for NYC Department of Citywide Administrative Services, owner; Civic Center Community Group Broadway LLC, lessee.

SUBJECT – Application July 9, 2013 – Re-instatement (§11-411) of a previously approved variance, which permitted the use of the cellar and basement levels of a 12-story building as a parking garage, which expired in 1971; Amendment to permit a change to the curb-cut configuration; Waiver of the rules. C6-4A zoning district.

PREMISES AFFECTED – 346 Broadway, Block bounded by Broadway, Leonard and Lafayette Streets & Catherine Lane, Block 170, Lot 6 Manhattan,

COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

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

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

SPECIAL ORDER CALENDAR

27-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owners.

SUBJECT – Application February 4, 2013 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on April 18, 2011; Amendment to permit the legalization of site layout and operational changes; Waiver of the Rules. C2-4/R6 zoning district.

PREMISES AFFECTED – 91-11 Roosevelt Avenue, north side of Roosevelt Avenue between 91st and 92nd Street, Block 1479, Lot 38, Borough of Queens.

COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

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

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

327-88-BZ

APPLICANT – Eric Palatnik, P.C., for George Hui, owner.

SUBJECT – Application October 4, 2012 – Amendment to a previously granted variance (§72-21) to legalize the addition of a 2,317 square foot mezzanine in a UG 6 eating and drinking establishment (*Jade Asian Restaurant*). C4-3 zoning district.

PREMISES AFFECTED – 136-36 39th Avenue aka 136-29 & 136-35A Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 14, Borough of Queens.

COMMUNITY BOARD #7Q

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

APPEALS CALENDAR

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application September 5, 2012 – Reopening for a court remand to review the validity of the permit at issue in a prior vested rights application.

PREMISES AFFECTED – 1882 East 12th Street, west side of East 12th Street approx. 75’ north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the underlying case is an appeal requesting a Board determination that the owner of the site has obtained the right to complete construction of a three-story building under the common law doctrine of vested rights; and

WHEREAS, on January 25, 2010, the Applicant filed an application with the Board seeking recognition of a right to continue construction under the common law doctrine of vested rights; and

WHEREAS, on October 5, 2010, under the subject calendar number, the Board found that a vested right to continue construction under Department of Buildings (“DOB”) Permit Application No. 302049441 (“the Permit”) had accrued to the owner under the common law; and

WHEREAS, on November 10, 2010, the adjacent neighbors, represented by counsel (hereinafter, “the Opposition”), appealed the Board’s determination in New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules; and

WHEREAS, by decision and order in Bibi Lieberman 1999 Revocable Trust v. City of New York, dated September 5, 2012, Supreme Court, Kings County, Justice Lewis voided the Board’s decision, and “remanded to the BSA for a full review of the questions presented, including whether the Permit issued by the DOB was legally sufficient to be the foundation of the common law vested right to continue construction”; and

WHEREAS, a public hearing was held on this application on February 12, 2013, after due notice by publication in *The City Record*, with continued hearings on April 9, 2013 and May 21, 2013, and then to decision on July 23, 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, recommended disapproval of the original vested rights application; and

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WHEREAS, United States Congressman Michael Grimm, New York State Senator Tony Avella, and New York State Assemblyman Steven Cymbrowitz submitted written testimony in opposition to the application; and

WHEREAS, the Madison Marine Homecrest Civic Association and the Manhattan Beach Community Group provided testimony in opposition to the application; and

WHEREAS, a representative of the owner of the subject site ("the Applicant") appeared and made submissions in support of DOB's finding that the Permit was valid; and

WHEREAS, the Opposition appeared and made submissions in opposition to DOB's finding that the Permit was valid; and

WHEREAS, certain members of the surrounding community provided testimony in opposition to the application; and

WHEREAS, DOB appeared and made submissions regarding the validity of the Permit; and

BACKGROUND

WHEREAS, the Applicant proposes to develop the subject site with a three-story residential building; the subject site was formerly located within an R6 zoning district, however, on February 15, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, the Applicant represents that the development complies with the former R6 district parameters, but does not comply with the R4-1 district parameters with respect to floor area ratio, height, and front yard depth; and

WHEREAS, as a threshold matter, a valid permit must have been issued prior to the Rezoning Date; and

WHEREAS, the Applicant states that on December 13, 2005, DOB issued the Permit, authorizing construction of a five-story and cellar residential building at the site; and

WHEREAS, the Applicant states that on February 7, 2006, DOB issued a post approval amendment ("PAA") to the Permit authorizing the addition of a sixth floor to the proposed residential building at the site; the applicant represents that the six-story building complied with the R6 zoning district regulations in effect at the time the PAA was issued; and

WHEREAS, the Applicant states that on April 13, 2009, DOB issued a PAA to the Permit authorizing the reduction of the proposed building to a three-story residential building and solarium; the three-story building complied with the R6 zoning and it utilized all of the work completed at the site prior to the Rezoning Date; and

WHEREAS, the Applicant notes that, as compared to the six-story building, the proposed three-story building represents a reduction in floor area from 7,515 sq. ft. (3.0 FAR) to 4,038 sq. ft. (1.61 FAR), a reduction in wall height from 62'-1" to 42'-10 1/2", and a reduction in total height from 62'-1" to 53'-10 3/4"; therefore, the proposed three-story building reduces the degree of non-compliance with the current R4-1 zoning district, with respect to the floor area and height of the building; and

WHEREAS, on January 25, 2010, the Applicant filed an application with the Board seeking recognition of a right to

continue construction under the common law doctrine of vested rights; and

WHEREAS, DOB submitted letters dated April 20, 2010, May 6, 2010, and October 1, 2010 to confirm for the Board that the Permit was lawfully issued prior to the Rezoning Date; and

WHEREAS, based on these letters, which reflect the permit-issuing agency's confirmation that it validly issued the Permit, the Board found that the Permit was validly issued and therefore a basis on which to seek a vested right to continue construction; and

WHEREAS, on October 5, 2010, the Board voted in favor of a resolution granting a vested right to continue construction; and

WHEREAS, subsequent to the Board's vote, on October 25, 2010, the Opposition emailed a complaint to DOB alleging that the walls and roof of the subject building were removed and the foundation was enlarged; and

WHEREAS, in response to the Opposition's October 25th email, DOB inspected the site and confirmed that such work had taken place; consequently, by letter dated November 15, 2010, DOB advised the Opposition that due to the extent of the removal work, an application for a New Building Permit ("NB") rather than an Alteration Type-1 Permit ("ALT") permit should have been filed, but that the error in application type was "administrative" and "did not render the Permit invalid"; and

WHEREAS, on November 10, 2010, the Opposition appealed the Board's determination in New York State Supreme Court; and

WHEREAS, on September 5, 2012, Justice Lewis remanded the matter to the Board for a review of its decision and a determination on the validity of the Permit; and

THE OPPOSITION'S POSITION REGARDING THE PERMIT

WHEREAS, the Opposition contends that the Permit was not validly issued, and thus cannot form the basis for a vested right to continue construction; and

WHEREAS, specifically, the Opposition asserts that the Permit was invalid when issued because the Permit should have been filed as an NB application rather than an ALT application, per DOB Technical Policy and Procedure Notice ("TPPN") No. 1/02; and

WHEREAS, the Opposition asserts that the Permit should have been filed, per TPPN 1/02, as an NB application, rather than an ALT application, and that such failure renders the permit invalid; and

WHEREAS, the Opposition states that under TPPN 1/02, an NB application must be filed instead of an ALT application when: (a) more than 50 percent of the area of exterior walls is removed; (b) all floors at or above grade and the roof are demolished; and (c) the foundation system is altered or enlarged; and

WHEREAS, the Opposition contends that during the course of construction under the Permit, greater than 50 percent of the exterior walls were removed, all floors at or above grade and the roof were removed and the foundation

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was altered and enlarged; the Opposition submitted photographs in support of this assertion; and

WHEREAS, the Opposition states that because the limits of the TPPN were exceeded, an NB application was required and the applicant was no longer permitted to rely on the Permit for vesting purposes; and

WHEREAS, the Opposition also contends that: (1) the Permit application did not contain complete plans and specifications authorizing the entire construction and not merely a part thereof, per ZR § 11-31; (2) the Permit lacked certain forms that are required by DOB to accompany an NB application, including a Builder's Pavement Plan ("BPP"), a site connection proposal on forms SD1 and SD2, Technical Reports of Inspection ("controlled inspections") for underpinning, shoring and bracing, on forms TR1 and TR2; (3) the Permit did not contain underpinning plans and specifications, as required by New York City Administrative Code ("AC") §§ 27-715 and 27-724, demolition plans or sprinkler plans; and (4) the plans submitted with the Permit suffer from a lack of "construction detailing information," including building sections, wall sections, stair detailing and materials used, contrary to AC § 27-157; and

WHEREAS, the Opposition asserts that the Permit application did not contain complete plans and specifications authorizing the entire construction and not merely a part thereof in accordance with ZR § 11-31, which in pertinent part provides that

[a] lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof; and

WHEREAS, the Opposition states that because the Permit did not include underpinning, demolition or sprinkler plans, forms SD1 and SD2 regarding the house connection, forms TR1 and TR2 regarding the underpinning, bracing, and shoring, and a BPP, the plans generally lacked sufficient detail under AC § 27-157, and the plans were not approved by DOB in accordance with ZR § 11-30; and

WHEREAS, the Opposition also states that the failure to file an NB application was not an administrative irregularity; rather, the Opposition, asserts that such failure necessarily results in a failure to submit numerous additional required items, including forms SD1 and SD2 regarding the house connection, forms TR1 and TR2 regarding the underpinning, bracing, and shoring, and a BPP; and

WHEREAS, the Opposition asserts that the absence of the SD1 and SD2, the BPP and the TR1s and TR2s for underpinning, bracing, and shoring, rendered the Permit invalid; the Opposition also notes that such items should have been included with the Permit according to a Required Items Guide published by DOB and dated July 16, 2006; and

WHEREAS, further, the Opposition contends that once it became clear that an NB Application was required for the scope of work performed at the site, demolition, underpinning and sprinkler plans also became required; and

WHEREAS, as such, the Opposition states that the

absence of demolition, underpinning and sprinkler plans rendered the Permit invalid; and

WHEREAS, in addition, the Opposition contends that the Permit suffers from an overriding lack of completeness and detailing in violation of AC § 27-157, and asserts that the question before the Board is not only whether the Permit is valid, but also whether, if DOB had known about the various alleged deficiencies, would DOB have issued the Permit in the first place; in support of this theory of the case, the Opposition emphasizes the fact that the Permit application was filed under professional certification (pursuant to AC § 27-143.2 and 1 RCNY § 21-01); and

WHEREAS, the Opposition also contends that DOB has departed from its prior determinations of what constitutes a valid permit; and

WHEREAS, specifically, the Opposition asserts that DOB applied a different standard in BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard, Queens); in that case, DOB considered an ALT permit invalid because based on its scope of work, a demolition permit was required, but never obtained; and

WHEREAS, the Opposition states that the failure to file an NB application is analogous to the failure to file a demolition application in BSA Cal. No. 121-10-A and that DOB's determination that the Permit is valid in this case is an arbitrary failure to adhere to the precedent it set in BSA Cal. No. 121-10-A; and

WHEREAS, the Opposition also asserts that the Permit's failure to contain an SD1 and SD2 rendered the permit invalid in accordance with BSA Cal. No. 145-12-A (339 West 29th Street, Manhattan); in that case, DOB considered a permit invalid because it was issued without a required discretionary approval from another agency, namely, the Landmarks Preservation Commission ("LPC"); and

WHEREAS, the Opposition states that because the SD1 and SD2 must be approved by the Department of Environmental Protection ("DEP"), they are analogous to the LPC permit in BSA Cal. No. 145-12-A, and that DOB's determination that the Permit is valid in this case is an arbitrary failure to adhere to the precedent it set in BSA Cal. No. 145-12-A; and

WHEREAS, finally, the Opposition asserts that the Permit contains additional Building Code non-compliances, including: (1) lack of access to the required stair enclosure from the second, fourth and sixth stories, contrary to AC § 27-366 (the original plans were for a six-story building); (2) a private elevator, contrary to AC § 27-356(d); (3) exterior wall assemblies including wood studs, contrary to AC Title 27, Table 3-4; (4) insufficient furnace room ventilation, contrary to AC § 27-424; (5) the creation of a shaft without sufficient fire rating, contrary to AC Title 27, Table 3-4; and (6) rooms designed and arranged to be habitable but lacking required light and ventilation, contrary to AC §§ 27-733, 27-734, 27-749 and 27-750; and

DOB'S POSITION REGARDING THE PERMIT

WHEREAS, DOB contends that the Permit was validly issued, and contained only administrative irregularities; and

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WHEREAS, DOB states that the Permit did not initially propose work that was required to be filed under an NB application pursuant to TPPN 1/02, however, the ALT limits of the TPPN were exceeded at the site and the requirement for an NB application was triggered; and

WHEREAS, DOB states that the Permit did not initially in 2005, or in subsequent amendments filed in 2006, 2008 and 2009 propose work that was required to be filed under an NB application pursuant to TPPN 1/02; and

WHEREAS, however, DOB states that during the course of construction, the ALT limits of the TPPN were exceeded and the requirement for an NB application was triggered; DOB notes that it determined that an NB application should have been filed in November 2010; and

WHEREAS, DOB asserts that the subsequent requirement for the NB application due to the scope of work performed at the site is an administrative irregularity that did not render the Permit invalid; and

WHEREAS, DOB notes that the Administrative Code does not specify whether an NB application or an ALT application is appropriate where an existing building is to be enlarged by removing portions of the building, adding new construction materials, and reusing existing building elements; and

WHEREAS, accordingly, DOB asserts that the failure to file an NB instead of an ALT is not a substantial deviation from the law and therefore not a basis for finding that the Permit was invalid when issued; and

WHEREAS, DOB also notes that whether it requires retroactive compliance with the TPPN i.e., the filing of an NB application to replace an erroneous ALT application, depends on whether work has commenced under the ALT permit; where work has commenced, DOB allows the work to continue under the ALT permit and requires that items typically received prior to (NB) permit be submitted prior to the issuance of a temporary certificate of occupancy; where work has not commenced, DOB requires the ALT application to be withdrawn and replaced with an NB application; and

WHEREAS, as to the balance of the Opposition's arguments regarding the Permit, DOB asserts that: (1) since this application seeks recognition of a vested right under the common law, the statutory definition of "valid permit" set forth in ZR § 11-31 is not relevant; however, if it were, the Permit is considered complete within the meaning of the Zoning Resolution because the Permit application documents provided the minimum information required by the AC § 27-157 and were sufficient to allow DOB to conduct a meaningful review of the proposal; (2) the Permit's lack of certain forms associated with an NB application did not render the Permit invalid; (3) the Permit's lack of underpinning, demolition, or sprinkler plans did not render the Permit invalid; and (4) DOB's determination in the instant matter is distinguishable from its prior determinations in BSA Cal. Nos. 121-10-A and 145-12-A; and

WHEREAS, DOB contends that since this application

seeks recognition of a vested right under the common law, the statutory definition of "valid permit" set forth in ZR § 11-31 is not relevant; and

WHEREAS, DOB states that, even if the Zoning Resolution "valid permit" definition applies, the Permit is considered valid because its application documents contained the information required by the AC § 27-157, which provides that applications for alteration permits shall be accompanied by "such architectural, structural, and mechanical plans as may be necessary to indicate the nature and extent of the proposed alteration work and its compliance with [the Administrative Code] and other applicable laws and regulations"; and

WHEREAS, DOB contends that to satisfy ZR § 11-31 and AC § 27-157, it requires, at a minimum, plans and specifications that are sufficiently complete to allow a meaningful review of the proposal; and

WHEREAS, further, DOB asserts that neither the Zoning Resolution, nor the Administrative Code provide that an application is incomplete if it contains minor errors; and

WHEREAS, DOB also notes that, per ZR § 11-31, "in case of dispute as to whether an application includes 'complete plans and specifications' as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met"; and

WHEREAS, DOB asserts that the Permit's lack of forms associated with an NB application (SD1 and SD2, BPP and TR1s and TR2s for underpinning, shoring, and bracing) did not render the Permit invalid; and

WHEREAS, specifically, DOB states the SD1 and SD2 (which DOB refers to as the "Site Connection Proposal" or "SCP") are required pursuant to AC § 27-901(e) to demonstrate that the water supply and sewage system for a new or altered building is connected to the public system and pursuant to AC § 27-901(k) to demonstrate proper disposal of storm water; and

WHEREAS, DOB asserts that the submission of an SCP after the issuance of the Permit but before the issuance of a temporary certificate of occupancy is a minor error that did not render the Permit invalid; DOB also notes that, upon learning that an NB application should have been filed (based on the scope of work performed at the site), it notified the Applicant that the SCP would be required; and

WHEREAS, as to the BPP, DOB states that a BPP is required pursuant to AC § 27-204 to demonstrate that the sidewalk in front of a new or altered building is suitably improved; and

WHEREAS, DOB asserts that, per AC § 28-204, the BPP must be approved before a certificate of occupancy is issued; as such, the submission of the BPP after the issuance of the Permit did not render the permit invalid; DOB also notes that, upon learning that an NB application should have been filed (based on the scope of work performed at the site), it notified the Applicant that the BPP would be required; and

WHEREAS, DOB states that underpinning, shoring, and bracing controlled inspections were not required, per

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AC § 27-724, because according to the construction documents for the Permit, the proposed underpinning and braced excavation surfaces were less than 10 feet below grade; accordingly, forms TR1 and TR2—which identify the professional responsible for performing the controlled inspections—were not required, and the absence of such forms did not render the Permit invalid; and

WHEREAS, DOB also states that, contrary to the Opposition’s assertion, underpinning plans were not required for the proposed construction; rather, the plans complied with the requirements governing excavation and shoring; and

WHEREAS, specifically, DOB asserts that pursuant to AC § 27-715, “where support of adjacent structures or properties is required, such support may be provided by underpinning, sheeting, bracing or by other means acceptable to the Department,” and that the “typical shoring plan” shown on Foundation Plan and Wall Types Sheet A-1 (approved April 2, 2009) shows supported excavation at a depth of eight feet; and

WHEREAS, as to the Opposition’s assertion that a demolition application was required once it became apparent that an NB application should have been filed, DOB asserts that it does not require a demolition application when it discovers that alteration thresholds are exceeded after the commencement of work; instead, DOB requires that the ALT application is amended to show the extent of the removal work; and

WHEREAS, DOB notes that because it did not require a demolition application, it also did not require the Applicant to file certain items (an inspection report from the DOB Building Enforcement Safety Team, utility cutoffs, and extermination certifications) that accompany a demolition application; and

WHEREAS, DOB asserts that the failure to file such items did not render the Permit invalid; DOB also notes that a registered design professional took responsibility for the safety of the removal work at the site, as required by 1 RCNY § 16-01; and

WHEREAS, as to the Opposition’s contention that a sprinkler application was required in connection with the Permit, DOB states that the Administrative Code does not require sprinkler plans to be included with a permit application; as such, the absence of sprinkler plans did not render the Permit invalid; and

WHEREAS, DOB asserts that its determination in the instant matter is distinguishable from its prior determinations in BSA Cal. Nos. 121-10-A and 145-12-A; and

WHEREAS, DOB states that the instant appeal is unlike BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard, Queens); in that case, DOB found that an alteration permit was invalid because it proposed construction of a commercial building within a portion of a parcel occupied by a residential building without showing that the residence was to be demolished and without having obtained a demolition permit; because it would have been impossible to construct the commercial building without the removal of the residence, the alteration permit was invalid;

and

WHEREAS, DOB states that, in contrast to the plans and construction documents for the Francis Lewis Boulevard ALT permit, the construction documents and plans for the Permit showed the existing conditions; thus, the former was invalid and the latter was valid; and

WHEREAS, DOB states that the instant appeal is also distinguishable from BSA Cal. No. 145-12-A (339 West 29th Street, Manhattan); in that case, DOB determined that the permit was invalid because it lacked a discretionary approval from LPC, which was required by AC § 25-305(b)(1) to have been secured prior to DOB’s issuance of the permit; as noted above, the Opposition asserts that the Permit is similarly flawed as it lacked forms SD1 and SD2 (Site Connection Proposal), which require DEP approval, and should similarly be considered invalid; and

WHEREAS, in response, DOB asserts that although as a matter of policy it requires the Site Connection Proposal to be filed along with the NB application, the Site Connection Proposal is not a code-mandated, pre-DOB permit discretionary approval; as such, DOB considers the absence of the Site Connection Proposal in the Permit a minor error, which does not render the Permit invalid; and

WHEREAS, at hearing, the Opposition questioned what standards DOB applies in determining whether a permit is valid; and

WHEREAS, in response, DOB states that it considers on a case-by-case basis whether errors contained in construction documents are so substantial as to render the permit invalid or instead are curable irregularities and that in each case, DOB compares the extent of the error against the scope of work; and

WHEREAS, DOB asserts that there is a “high threshold” for defects that render a permit invalid, citing: BSA Cal No. 242-09-A (75 First Avenue, Manhattan) (permit authorizing a street wall 82 feet higher than the 100-foot maximum was invalid); and BSA Cal. No. 193-09-A (78-46 79th Place, Queens) (permit authorizing a front yard eight feet shorter than the required 18 feet was invalid); and

WHEREAS, DOB also notes that case law supports the notion that only substantial defects render a permit invalid; and

WHEREAS, specifically, DOB cites to Matter of Menachem Realty Inc. v. Srinivasan, 60 AD3d 854 [2nd Dept 2009], in which DOB determined that a permit issued for the construction of a new building was not valid because it failed to demonstrate compliance with required plantings and an accessible ramp and the Board denied the vested rights application (BSA Cal. No. 85-06-BZY; 1623 Avenue P, Brooklyn); the Supreme Court reversed the Board’s decision and the Appellate Division affirmed; and

WHEREAS, DOB also contends that Matter of GRA V, LLC v Srinivasan, 55 AD3d 58 [1st Dept 2008], revd 12 NY3d 863 [2009] is consistent with its determination of validity in the instant matter; in GRA V, LLC, DOB determined that a permit was invalid because it contained a front yard with a 1’-9” error and the Board denied the vested

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rights application (BSA Cal. No. 17-05-A; 3333 Giles Place, Bronx); notwithstanding that the Supreme Court and Appellate Division affirmed the denial, while the case was pending before the Court of Appeals, DOB acknowledged that its position on permit validity had evolved since the commencement of the case to accept cures of similar defects in other cases after a zoning amendment; accordingly, DOB determined the permit to be valid and it formed the basis for the Board's ultimate grant of the common law vested rights application; and

WHEREAS, accordingly, DOB states that the relevant case law supports its determination that the Permit was valid because it contained only minor, curable errors and administrative irregularities; and

THE APPLICANT'S POSITION REGARDING THE PERMIT

WHEREAS, the Applicant concurs in DOB's arguments regarding the validity of the Permit and also submitted an affidavit from a former DOB commissioner, which indicated that the Permit was properly filed as an ALT application in that it complied with TPPN 1/02 (as amended by TPPN 1/05); and

WHEREAS, the Applicant also notes that the Opposition's reliance on the July 10, 2006 Required Items Guide (as evidence of the Permit's defectiveness) is misplaced, because the guide was issued approximately seven months after the Permit was first issued on December 12, 2005; and

WHEREAS, finally, the Applicant states that although the Permit application was filed under professional certification initially, it has been subjected to numerous audits over the years and its validity has consistently been reaffirmed by DOB; and

THE BOARD'S POSITION REGARDING THE PERMIT

WHEREAS, the Board has reviewed the record and agrees with DOB and the Applicant that the Permit was validly issued; and

WHEREAS, the Board finds that whether an application was required to have been filed as an NB application or an ALT application is an administrative matter that is not indicative of the permit's overall validity; and

WHEREAS, the Board notes that DOB is the permit-issuing agency, with the expertise and authority to review plans and construction documents, to approve or deny applications, and to issue interpretations of the Building Code, Zoning Resolution, New York State Multiple Dwelling Law, and other applicable laws, rules, and regulations governing development of property within the City of New York; accordingly, in a vested rights application, the Board requests that DOB confirm that the permit it already issued pursuant to these requirements was valid; DOB's expertise in examining plans and construction documents is well-established and entitled to substantial deference, as the Appellate Division explained in Perrotta v. City of New York, Dep't of Bldgs., 107 A.D.2d 320, 324, 486 N.Y.S.2d 941, 944-45 [1st Dept 1985] aff'd sub nom. Perrotta v. City of New York, 66 N.Y.2d 859, 489 N.E.2d 255 (1985),

[a] determination as to whether [there can be] vested rights under [a] building permit must, of necessity, involve *an examination of the validity of the permit*, as well as compliance with technical provisions of the Zoning Resolution, and this is *clearly an appropriate inquiry for agency expertise*. (emphasis added); and

WHEREAS, the Board notes that during the course of the initial vested rights application, DOB confirmed the Permit's validity on four separate occasions in 2010 alone; therefore, the Board accepted DOB's letters as evidence that it, the permit-issuing agency, made a reasoned determination that the Permit was valid and did not request further information on the rationale underlying the determination; however, in light of the Court's remand, the Board directed DOB to provide the responses to the Opposition's specific assertions rejecting the validity claim and to explain how the Permit status is justified¹; and

WHEREAS, as to the Opposition's assertion that the Board failed to consider the requirements of the TPPN, the Board notes that its October 5, 2010 resolution *pre-dated* DOB's inspection and November 15, 2010 letter to the Opposition confirming that an NB application was required for the scope of work performed at the site; as such, the extent to which construction work deviated from that allowed by DOB under an ALT application pursuant to the TPPN could not have been (and was not) considered by the Board in its decision to grant the application; and

WHEREAS, however, now that the November 15, 2010 letter is before the Board, the Board finds that whether an application has been filed on the proper form is not dispositive as to whether such permit was valid, because the Board agrees with DOB that whether an application is filed as an NB or ALT is not determined by the Administrative Code but rather is an administrative determination that is by statute (New York City Charter § 645(b)(2) and AC §§ 27-110 and 27-139) and case law (Perrotta, 107 A.D.2d 320, 324) within the purview of DOB; consequently, the Board finds that DOB's application forms/types are not relevant to its analysis of vesting criteria, particularly if DOB has determined that the error does not render the permit invalid; and

WHEREAS, the Board notes that while DOB's policy may be embodied in the form of a TPPN, DOB has the authority to deviate from the requirements of a TPPN where appropriate; and

WHEREAS, the Board also finds that it is reasonable for DOB to require retroactive compliance with the TPPN only where work has not commenced; the Board notes that in the instant matter, DOB discovered that the NB limits of the TPPN were triggered nearly five years after the initial issuance of the Permit; and

¹ The Board also notes that, at hearing, the Opposition mischaracterized the Court's decision, alleging that the Court ruled that the Board "failed to follow its own precedent." The Court made no such ruling.

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WHEREAS, as to whether, as the Opposition asserts, DOB should have required the filing of a demolition application once it determined that an NB application should have been filed – and that the failure to file such demolition application rendered the Permit invalid, the Board disagrees; indeed, as with all requirements deriving from the triggering of the NB application, the Board finds that invalidating the Permit based on its non-compliances with the code requirements and DOB’s policies and procedures relating to NB applications ignores the fact that the Permit was filed as an ALT and complied as an ALT, with minor errors; and

WHEREAS, finally, the Board disagrees with the Opposition that the appropriate inquiry for this remand is whether the Permit would have been issued in the first instance if the Permit application had not been filed under professional certification and if DOB had been aware of the Permit’s irregularities; and

WHEREAS, the Board rejects this characterization of the issue, primarily on the basis that it is speculative – it is simply not possible to determine whether the Permit application, as originally filed, would have been approved by a DOB plan examiner; of more importance to the Board is that DOB audited the Permit application multiple times and found that it contained no errors that would render it invalid; accordingly, that the application was professionally-certified (a common and established practice for design professionals in the city) is inconsequential; and

WHEREAS, as to the Opposition’s remaining arguments regarding the validity of the Permit, the Board finds that: (1) the Permit was validly issued under both the statutory standard set forth in ZR § 11-31 and the common law standard; (2) the Permit application’s lack of various forms and plans did not render it invalid; (3) the Opposition did not obtain final determinations for additional alleged Building Code non-compliances and such alleged non-compliances are beyond the scope of this application; and (4) the Board’s precedent and case law are consistent with the determination that the Permit was valid; and

WHEREAS, the Board finds that the Permit was lawfully issued under both the common law and under ZR § 11-31, which is more specific as to requirements; and

WHEREAS, the Board finds that the Permit was complete within the meaning of ZR § 11-31 because the Permit application documents provided the information required by AC § 27-157 and were sufficient to allow DOB to conduct a meaningful review of the proposal; and

WHEREAS, the Board disagrees with DOB’s assertion that the statutory definition of “lawfully issued building permit” set forth in ZR § 11-31 is irrelevant to this application; DOB originally recognized that the permit had vested under ZR § 11-331 because the Applicant had completed foundation work prior to the Rezoning Date; in doing so, it necessarily made a finding that the Permit was valid in accordance with ZR § 11-31; and

WHEREAS, the Board also recognizes, as DOB notes, ZR § 11-31(a) specifically provides that in case of dispute as to whether an application includes complete plans and

specifications, DOB shall determine whether such requirement has been met; finally, the Board notes that under the common law, a permit may vest even if the underlying application did not include “complete plans and specifications” as required for a lawfully-issued permit according to ZR § 11-31; and

WHEREAS, as to the missing items that the Opposition asserts are grounds for finding that the Permit was invalid, the Board agrees with DOB that the Administrative Code does not require the submission of a Site Connection Plan (SD1 and SD2) and a BPP prior to the issuance of a Permit; as such, that the Permit application did not contain these items did not render it invalid; and

WHEREAS, similarly, the Board agrees with DOB that since the Permit application proposed excavation of less than ten feet below grade, the Administrative Code did not require the submission of controlled inspection forms (TR1s and TR2s) for underpinning, shoring, and bracing, and the Permit’s lack of such documents did not render it invalid; and

WHEREAS, the Board also finds that the Permit’s lack of demolition, sprinkler and underpinning plans does not render the Permit invalid; demolition plans were not required because the Permit was filed as an ALT and showed the existing conditions, sprinkler plans are not required under either AC § 27-157 (which governs NB applications) or AC § 27-162 (which governs ALT applications), and underpinning plans were not required because, as DOB states, the plans included with the Permit show “shoring details,” which, per AC § 27-715, DOB found acceptable; and

WHEREAS, as to the additional alleged Building Code non-compliances identified by the Opposition, the Board notes that the Opposition failed to submit final determinations from DOB regarding such alleged non-compliances; accordingly, these issues are not properly before the Board within the context of the subject appeal; and

WHEREAS, therefore, the Board acknowledges the Opposition’s assertions about the Permit’s alleged Building Code infirmities insofar as they are allegations of the Permit’s incompleteness; however, the Board has not analyzed or reached a determination on any of them individually, in the absence of a final determination from DOB; and

COMMON LAW VESTED RIGHTS FINDINGS

WHEREAS, turning to the Board’s precedent and relevant case law, the Board agrees with DOB and the Applicant that its determination in the instant matter is distinguishable from its prior determinations in BSA Cal. Nos. 121-10-A and 145-12-A and consistent with Matter of Menachem Realty Inc. v. Srinivasan, 60 AD3d 854 [2nd Dept 2009] and Matter of GRA V, LLC v Srinivasan, 55 AD3d 58 [1st Dept 2008], revd 12 NY3d 863 [2009]; and

WHEREAS, the Board finds the instant appeal distinguishable from BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard, Queens) on the ground that the Permit in the instant matter indisputably showed the existing conditions and proposed work that could have been

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performed given those conditions and the invalid Francis Lewis Boulevard permit did not; thus, the Permit proposed work that could have been executed and the Francis Lewis Boulevard permit did not; and

WHEREAS, the Board finds the instant appeal distinguishable from BSA Cal. No. 145-12-A (339 West 29th Street, Manhattan); specifically, the Board finds persuasive DOB's distinction between the lack of approval from LPC that is required by the Administrative Code prior to the issuance of a DOB permit and the lack of an approval from DEP that DOB, as a matter of policy, requests prior to permit; the Board agrees with DOB that the former renders a permit invalid and the latter does not; and

WHEREAS, as to the case law, both Menachem Realty Inc. and GRA V, LLC support the notion that the threshold for finding a permit invalid is high; in both cases, the permits contained Zoning Resolution non-compliances, which were (in Menachem Realty Inc.) found to be and (in GRA V, LLC) acknowledged by DOB as, errors that did not render the permit invalid, notwithstanding that DOB has no authority to waive the Zoning Resolution; in contrast, in the instant matter, there are no Zoning Resolution non-compliances in the Permit application; and

WHEREAS, based on the foregoing, the Board is persuaded that DOB had reasonable bases for its determination that the Permit was validly issued; and

WHEREAS, as a consequence, the Board finds that the Permit was validly issued; and

WHEREAS, to the extent that Justice Lewis in the context of the remand voided the Board's October 5, 2010 decision, the Board turns to the remaining findings for the recognition of a vested right to continue construction under the common law; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained permits for the development and had completed foundation work, such that the right to continue construction was vested by DOB pursuant to ZR § 11-331; and

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

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

WHEREAS, the Applicant states that construction was not completed within two years of the Rezoning Date; and

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

WHEREAS, the Board notes that the Applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 before the deadline of January 13, 2008 and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, the Board notes that a common law vested

right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, the Board notes that the parties did not submit any new evidence regarding substantial construction, substantial expenditures or serious loss; as such, the Board's determination on those findings has not been disturbed and it reiterates its findings from its October 5, 2010 decision with respect to those elements; and

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right.' Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action;" and

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

WHEREAS, the Applicant states that as of February 15, 2008, the Applicant completed excavation, footings, and the entire foundation of the building, including foundation bracing and strapping and underpinning of the existing foundation; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the Applicant submitted the following evidence: photographs of the site; construction contracts, a construction schedule, copies of cancelled checks, and invoices; and

WHEREAS, the Board notes that it has not considered any work performed subsequent to February 15, 2008 and the Applicant represents that its analysis is based on work performed up to that date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work was substantial enough to meet the guideposts established by case law; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be

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considered in an application under the common law; accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the Applicant states that the owner has expended \$158,390.56 or 14 percent, including hard and soft costs and irrevocable commitments, out of \$1,168,251.50 budgeted for the entire project; and

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

WHEREAS, the Opposition argues that the Board should consider the expenditures as a percentage of the total construction costs for the six-story building rather than the proposed three-story building, because the plans approved at the time of the Rezoning Date were for the six-story building; and

WHEREAS, the Board notes that the fact that DOB vested the project under ZR § 11-331 based on plans approved for the six-story building does not preclude the applicant from changing the scope of the project to the proposed three-story building; and

WHEREAS, as noted above, the proposed three-story building decreases the degree of non-compliance with the current R4-1 zoning district as to floor area and height; and

WHEREAS, the Applicant represents that the proposed three-story building utilizes all of the work completed prior to February 15, 2008; and

WHEREAS, accordingly, the Board is not persuaded by the Opposition's argument that the expenditures should be considered in light of the six-story building, given that the Applicant is permitted to change the scope of the project to the proposed three-story building; and

WHEREAS, the Opposition also contends that there are inconsistencies with respect to the total construction costs represented by the Applicant; and

WHEREAS, specifically, the Opposition states that the construction cost of the original five-story proposal listed on the Permit was \$200,000, but that the construction contract submitted in connection with the six-story building approved under the PAA estimated a construction cost in excess of \$1,740,000, and that the estimated construction cost for the proposed three-story building is \$1,168,251.50; and

WHEREAS, in response, the Applicant represents that the estimated cost of the six-story building and the proposed three-story building are accurate, and states that at the time the initial application was filed at DOB the cost of construction was underestimated, and the costs would have been adjusted upon completion of the job by filing a PW3 form indicating the actual construction costs; and

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

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

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

WHEREAS, the Applicant states that if vesting were not permitted, it would result in the inability to develop approximately 1,780 sq. ft., or approximately 44 percent, of the proposed residential floor area of the three-story building; and

WHEREAS, the Opposition argues that the Applicant has failed to provide evidence to support the purported loss that it will incur if vesting were not permitted, and has not explained what portion of the approved three-story building will have to be reduced or redesigned to create a conforming building, and

WHEREAS, in response, the Applicant states that if required to construct pursuant to the current R4-1 district regulations, it would limit the size of the building to a complying floor area of 1,882 sq. ft., with a potential 376 sq. ft. increase under the attic rule, which would be a significant reduction from the originally approved floor area of 7,515 sq. ft. and the currently proposed floor area of 4,038 sq. ft.; and

WHEREAS, the Applicant further states that a complying home would require the street wall to be reduced from the proposed 43'-10 1/2" to 25'-0", and the maximum building height would have to be reduced from 53'-10 3/4" to 35'-0"; and

WHEREAS, the Applicant further states that the inability to construct under the prior zoning regulations would require the owner to re-design the home; and

WHEREAS, the Board agrees that the need to re-design, the expense of demolition and reconstruction, and the actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

CONCLUSION

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 302049441-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

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

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345-12-A

APPLICANT – Barry Mallin, Esq./Mallin & Cha, P.C., for 150 Charles Street Holdings LLC c/o Withroff Group, owners.

SUBJECT – Application December 21, 2012 – Appeal challenging DOB's determination that developer is in compliance with §15-41 (Enlargement of Converted Buildings). C6-2 zoning district.

PREMISES AFFECTED – 303 West Tenth Street aka 150 Charles Street, West Tenth, Charles Street, Washington and West Streets, Block 636, Lot 70, Borough of Manhattan

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Final Determination letter dated December 5, 2012 by the Manhattan Borough Commissioner of the NYC Department of Buildings (“DOB”) (the “Final Determination”) with respect to DOB Application No. 104869509; and

WHEREAS, the Final Determination states, in pertinent part:

The Department is in receipt of your correspondence dated August 13, 2012 in which you claim that the permit issued in connection with Alteration No. 104869509 is unlawful on the basis that the existing building was demolished and is no longer eligible to rely on a City Planning Commission (CPC) authorization per New York City Zoning Resolution Section 15-41 to facilitate the enlargement and conversion of the building for residential use.

The application for construction document approval is consistent with the Department’s policy regarding the type of application that must be filed for work involving the demolition of exterior building walls (see Technical Policy and Procedure Notice #1/02, amended by TPPN #1/05). TPPNs #1/02 & 1/05 allow the proposed work to be filed as an alteration of an existing building, instead of as the demolition and construction of a new building, because not more than 50% of the existing building’s walls are removed. As such the permit may properly rely on the CPC authorization under ZR 1[5]-[4]1; and

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

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

WHEREAS, the appeal was brought on behalf of neighbors of the area surrounding the site who were

represented by counsel (the “Appellant”) and who provided their own individual written and oral testimony in support of the appeal; and

WHEREAS, individual members of the community also, through written and oral testimony expressed opposition to the potential impact of the building’s massing, increased traffic, absence of open space, effect on light air, and views, and other site conditions and in support of the appeal

WHEREAS, DOB provided written and oral testimony in opposition to the appeal; and

WHEREAS, representatives of the owner (the “Owner”) provided written and oral testimony in opposition to the appeal; and

WHEREAS, the appeal involves a site at 303 West Tenth Street/150 Charles Street, historically occupied by a through-block full lot coverage four-story warehouse building (with 3.8 FAR) bounded by West Tenth Street, Charles Street, Washington Street, and West Street with 257’-9” of frontage on Charles Street and 237’-4” of frontage on West Tenth Street; and

WHEREAS, the site is within a C1-7 zoning district which allows a maximum residential FAR of 6.02; and

WHEREAS, the proposal reflects a building with a four-story base with an 11-story stepped for a total of 15 stories that would be approximately 178 feet in height; and

WHEREAS, the proposed total floor area is 280,209 sq. ft. (5.9 FAR); and

WHEREAS, the proposal was approved pursuant to a City Planning Commission (CPC) authorization as provided by ZR § 15-41 (Enlargement of Converted Buildings); and

WHEREAS, the appeal seeks the reversal of DOB’s determination that the Owner is in compliance with ZR § 15-41 and that the associated building permit is valid; and

PROCEDURAL HISTORY

WHEREAS, on September 19, 2007, CPC approved the enlargement and conversion of an existing four-story manufacturing building and a new 11-story tower pursuant to an authorization in accordance with ZR § 15-41; and

WHEREAS, ZR § 15-41 was added to the Zoning Resolution by text amendment, approved by CPC in conjunction with the authorization, and adopted by the City Council on October 17, 2007; and

WHEREAS, ZR § 15-41 authorizes certain zoning waivers (including open space and height factor requirements) in connection with enlargements of residential conversions of non-residential buildings and applicable to buildings converted to residential use pursuant to the Zoning Resolution’s Article I, Chapter 5; and

WHEREAS, the parameters of ZR § 15-41 include: Enlargements of Converted Buildings

In all #Commercial# and #Residence Districts#, for #enlargements# of #buildings converted# to #residences#, the City Planning Commission may authorize:

- (a) a waiver of the requirements of Section 15-12 (Open Space Equivalent) for the existing portion of the #building#

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- #converted# to #residences#; and
(b) the maximum #floor area ratio# permitted pursuant to Section 23-142 for the applicable district without regard for #height factor# or #open space ratio# requirements; and

WHEREAS, the citywide text amendment modified ZR § 15-41 to allow for a waiver of the open space requirements in ZR § 15-12 (Open Space Equivalent) for the portion of the building being converted to residential use; and to allow the maximum FAR to be achieved on the site irrespective of the site meeting its required height factor or open space requirements; and

WHEREAS, on April 25, 2011, CPC approved the renewal of the authorization without any changes to the approved plans or the requirements shown on those plans; and

WHEREAS, on April 18, 2013, CPC approved the renewal of the authorization to allow certain changes in the landscaping design for the open space areas; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that by demolishing as much of the building as it did, the Owner has forfeited its right to the zoning approval granted under ZR § 15-41 since ZR § 15-41 requires that the existing building be preserved and enlarged; and

WHEREAS, the Appellant makes the following primary arguments: (1) as noted in its Final Determination, DOB's reliance on the TPPN is misplaced as the Zoning Resolution is the prevailing authority; (2) the Owner has misrepresented/altered its plans so that more than 50 percent of the walls have been removed; (3) the project is contrary to the public policy and intent of ZR § 15-41; and (4) the building is incompatible with neighborhood character; and

WHEREAS, the Appellant asserts that DOB's rationale for permitted the construction to continue, as expressed in its Final Determination, is misplaced as DOB relied on its TPPNs rather than on zoning, while the TPPNs are only departmental guidelines; and

WHEREAS, the Appellant notes that the Final Determination focuses on the type of application that must be filed for permits pursuant to the TPPNs and not on the Zoning Resolution definition of building or the public policy underlying the enactment of the amendment to ZR § 15-41; and

WHEREAS, the Appellant asserts that the question is not whether the Owner complied with its own internal policy per the TPPNs but whether it complied with the Zoning Resolution; and

WHEREAS, the Appellant asserts that if there is any conflict between the Zoning Resolution and DOB policy notices, the Zoning Resolution must prevail; and

WHEREAS, the Appellant cites to the Zoning Resolution definition of (1) building, which states that it has one or more floors and a roof and at least one primary exit and (2) enlargement which is an addition to the floor area of an existing building and that, accordingly, the construction does not meet the requirement for enlarging an existing building notwithstanding the guidance in the TPPNs; and

WHEREAS, as to the wall condition, the Appellant provided photographs which reflect the current conditions of framing of the north and south walls without any bricks, mortar, doors, or windows, which it asserts is insufficient to meet the Zoning Resolution criteria for enlargement of an existing building; and

WHEREAS, the Appellant asserts that the Owner does not plan to build atop the existing building as it represented it would in its application CPC because no existing building remains; and

WHEREAS, as to the plans, the Appellant asserts that there are discrepancies between the plan sheets concerning how much of the building was to be retained; specifically, the Appellant questions the inclusion of plan sheet AF-005 in the submission to the Board because it asserts that the plan reflects the retention of portions of the building as originally described in the CPC application and not what actually has been retained; and

WHEREAS, the Appellant asserts that the Owner shows on plan sheet AF-005 that approximately 30 feet of depth of the existing building along both streets (Charles and West Tenth) would be retained; each of those sections was approximately 250 feet long by 30 feet wide and four stories; and

WHEREAS, the Appellant asserts that the level of demolition exceeds that shown on the plans and that only approximately 15 percent of the original walls remains; and

WHEREAS, further, the Appellant asserts that it appears that CPC has not been informed of the changes to the original proposal; and

WHEREAS, as to the meaning of ZR § 15-41, the Appellant asserts that the building is contrary to public policy and the intent of the provision in several ways; and

WHEREAS, first, the Appellant asserts that the Owner erroneously identifies the goal of ZR § 15-41 as to preserve the "urban form" rather than the actual building, but that such position is not supported by the Zoning Resolution; and

WHEREAS, instead, the Appellant asserts that ZR § 15-41 is clear with its use of the term "existing building" and the purpose as a "preservation tool"; and

WHEREAS, specifically, the Appellant asserts that (1) ZR § 15-41 requires the preservation and enlargement of an existing building; and (2) the Owner represented that it would preserve the existing building; and

WHEREAS, the Appellant asserts that DOB is circumventing required procedures that undermine ZR § 15-41 by granting an approval for construction which reflects modifications that have not been submitted to the community boards and involved agencies; and

WHEREAS, the Appellant asserts that the Owner's changes are subject to public review, just as the original plans were and DOB cannot grant permit approvals to the Owner for plans that are contrary to those submitted to the community board and CPC; and

WHEREAS, the Appellant and other community members in opposition to the project assert that the as-of-right taller and narrower tower surrounded by smaller buildings is

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more consistent with the neighborhood character which they identify as reflecting taller buildings surrounded by smaller buildings and such design better preserves views and access to light and air than the proposed; and

WHEREAS, the Appellant also asserts that a proto-type as-of-right building would be only three stories higher than the current proposal and would provide air, view, and public space; and

WHEREAS, the Appellant disfavors the proposed private open space, primarily above a height of 40 feet, as opposed to public open space at grade which it represents would be provided with the as-of-right alternative; and

WHEREAS, the Appellant raised additional concerns about the diminishment of property value in the surrounding area, the potential for increased vulnerability to flooding in the area due to the proposed design and its effect on drainage, increased traffic, exhaust, and noise; and

WHEREAS, accordingly, the Appellant requests the reversal of DOB's determination and revocation of the building permits for failure to comply with the requirements of ZR § 15-41; and

DOB'S POSITION

WHEREAS, in response to the Appellant, DOB states that (1) the plans it reviewed and approved are consistent with CPC approvals; (2) the Owner has provided sufficient information regarding its plan revisions and has maintained a sufficient amount of the building; (3) the Appellant misreads the intent of ZR § 15-41; and (4) it does not rely on the TPPN; and

WHEREAS, DOB maintains that the plans associated with the permit are consistent with the CPC-approved plans associated with the authorization and therefore there is not any basis to revoke the permit; and

WHEREAS, DOB asserts that the Zoning Resolution does not require DOB to review or concur with CPC's determination that the project is entitled to an authorization under ZR § 15-41, rather that its role with regard to whether a permit may rely on CPC's authorization is to issue a permit consistent with that authorization; and

WHEREAS, further, DOB asserts that the Zoning Resolution does not give DOB authority to approve or reject CPC's grant, to question whether the grant of the authorization is appropriate for a project, or to reevaluate CPC's decision to regard the project as an "enlarged building;" and

WHEREAS, as to the extent of the demolition, DOB states that the removal work allowed under the permit is consistent with CPC's authorization as CPC's authorization does not require that a certain percentage of the existing building remain intact or specify that a particular amount of existing construction materials must be preserved; further, the authorization application to the CPC states that the warehouse's fourth floor would be removed and approximately 43,304 sq. ft. of floor area would be removed in order to create a common courtyard; and

WHEREAS, DOB notes that CPC's report, dated September 19, 2007, acknowledges the Owner's plan to

remove the portion of the fourth story of the existing building and the 43,304 sq. ft. of floor area from the interior portion of the existing warehouse to create a common courtyard and open space available to residents, thus, CPC understood that the proposal included removal of parts of the original warehouse and it granted the authorization to enlarge and convert the building without imposing any limits on how much of the warehouse could be removed; and

WHEREAS, DOB states that contrary to the Appellant's assertion, ZR § 15-41's use of the defined terms "enlargement" and "building" do not preclude the removal of floors and roof from the original building during the course of permitted work; as Article I Chapter 5 establishes standards for changing non-residential floor area to residences but does not regulate conditions during the transition to residences nor does it require that a certain portion of the former building be retained in the completed building; and

WHEREAS, specifically, DOB asserts that Article I Chapter 5 (Residential Conversions within Existing Buildings) does not define the term "existing building" but the applicability provision ZR § 15-01 provides that the chapter controls conversions in buildings erected prior to December 15, 1961 that are located in Manhattan Community District 1 through 6, which includes the subject building, a former warehouse built in 1938; and

WHEREAS, DOB concludes that for the purpose of applying ZR § 15-41, where the original building's massing is preserved in the new design and bulk is added, the building is enlarged regardless of whether a new roof and new floors are installed in the structure; similarly, a damaged or destroyed building that does not meet the definition of "building" due to the extent of damage sustained may still rely on ZR § 54-40 (Damage or Destruction in Non-Complying Buildings) as a "non-complying building" that may be permissibly reconstructed provided it does not create a new non-compliance or increase the degree of non-compliance with applicable bulk regulations; and

WHEREAS, DOB asserts that sections like ZR § 54-40 use defined terms as a practical matter to refer to a structure before and after their provisions are utilized and do not expressly require that the structure always satisfy the requirements of the "building" definition or that it preserve floors so as to maintain "floor area" at all times; and

WHEREAS, DOB finds that an alteration permit is appropriate in this instance because less than 50 percent of the area of exterior walls was removed; DOB states that plan sheet AF-005, titled "Alteration of Existing Warehouse" and approved by the Department in connection with the application on September 29, 2011, shows approximately 450 linear feet of the east and west walls of the existing warehouse will be removed and 495 linear feet of the north and south exterior walls of the existing warehouse structure, with the exception of exterior windows, doors and the smaller setback at the fourth story, will remain intact; and

WHEREAS, as to the Appellant's assertion that the

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Owner misrepresented to CPC the scope of the removal work by amending plan sheet AF-005, the Owner submitted revised drawings superseding the original AF-005 and an A11: Additional Information form submitted with the permit application, which states: “Changes include demolition of remaining interior floor slabs, loading dock beam extensions and end bays spandrel beams and replacement of existing brick walls at street facades and property lines;” and

WHEREAS, DOB notes that it approved the amendment on September 29, 2011 while CPC had initially approved the proposal to remove portions of the existing warehouse on September 19, 2007, it renewed the grant on April 25, 2011, and it approved a modification to the authorization affecting the open space design and the massing of the building envelope on April 18, 2013; and

WHEREAS, accordingly, DOB states that CPC reviewed and continued to approve the project after plan sheet AF-005 was revised; and

WHEREAS, as to the intent of ZR § 15-41, DOB asserts that CPC’s report reflects a consideration of the building form rather than the conservation of original construction materials; and

WHEREAS, specifically, DOB cites to CPC’s report which states that the grant under ZR § 15-41 acts as a preservation tool by allowing the retention of the massing of the existing warehouse with high lot coverage and high street wall characteristics of the former industrial neighborhood and the CPC’s finding in the report include that the building form resulting from use of the authorization would appropriately result in a building far more in context than an as-of-right tower constructed pursuant to height factor regulations; and

WHEREAS, DOB notes that the CPC was concerned that the enlarged building retains the existing streetwall and this is reflected in the construction documents showing that the north and south streetwalls are not removed; and

WHEREAS, DOB asserts that it is not obligated to make an independent assessment that a CPC authorization is warranted for this project; and

WHEREAS, as to the text, DOB notes that in the absence of ZR § 15-41, a new as-of-right building could be designed according to the maximum open space ratio and maximum floor area ratio according to the building’s height factor as set forth in ZR § 23-142; and

WHEREAS, DOB asserts that the purpose of ZR § 15-41 is to provide a means for an alternative design that allows available floor area to be used together with the original building’s high lot coverage and street wall configuration and that CPC’s findings include a determination that the building’s scale is compatible with the surrounding neighborhood and that the enlarged building will not adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air; and

WHEREAS, DOB asserts that ZR § 15-41 also authorizes CPC to prescribe additional conditions and safeguards to minimize adverse effects on the character of the surrounding area; ZR § 15-41’s purpose is to make possible conversions and enlargements that are in accord with the

surrounding neighborhood; and

WHEREAS, DOB concludes that the CPC properly evaluated the proposed plan for the completed enlarged building, made the required findings, and deemed the authorization appropriate; and

WHEREAS, DOB rejects the Appellant’s assertion that DOB’s permit is improper because it undermines the purpose of ZR § 15-41 to preserve an existing building because conservation of improvements is not the text’s goal; and

WHEREAS, DOB asserts that the purpose of ZR § 15-00 includes allowing owners to increase a return on investment in existing buildings by authorizing conversions without requiring conformance with Article II, providing locations and space for commercial and manufacturing uses and providing new housing at an appropriate density, none of the goals describe the protection of improvements or architectural features of a special character or historical or aesthetic interest; and

WHEREAS, DOB states that, per CPC’s report dated September 19, 2007 (at pages 9-10), the term “preservation” as used in ZR § 15-41 refers to an existing building’s massing, not its construction materials; and

WHEREAS, DOB states that an enlarged building that keeps an existing configuration that is compatible with the character of the surrounding neighborhood achieves the goal of ZR § 15-41; and

WHEREAS, further, DOB states that in approving the subject proposal, CPC noted that the enlarged building retains the warehouse’s high lot coverage and street wall and appropriately results in a building with the characteristics of the former industrial neighborhood; and

WHEREAS, accordingly, DOB finds that CPC’s authorization and the Permit, issued consistently with the authorization, further the intent of the text; and

WHEREAS, DOB finds that the Appellant objects to CPC’s authorization rather than DOB’s permit and DOB defers to CPC; and

WHEREAS, DOB asserts that the scope of the removal work is not a basis to declare the permit invalid, since the removal work was contemplated in the authorization and does not contravene any section of the Zoning Resolution; and

WHEREAS, DOB represents that notwithstanding the Final Determination, it does not rely on TPPN 1/02 to allow the proposed construction work to be filed as a permit application to alter a building rather than as an application to construct a new building to determine whether the permit may use CPC’s authorization; and

WHEREAS, DOB states that the proposed work does not need to qualify as an alteration type application in order to be considered eligible for an enlargement authorization under ZR § 15-41 and the TPPN does not provide any guidance on the applicability of zoning regulations governing existing buildings; and

WHEREAS, DOB asserts that the 2005 amendment to the TPPN removed the paragraph that allowed DOB to grant exceptions where the classification of a permit as a “new building” when it would adversely affect its status under the

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ZR provisions governing existing buildings; this paragraph was removed because the TPPN was being misinterpreted as a guide for applying the Zoning Resolution when it was only intended for classifying work for administrative purposes; and

WHEREAS, DOB states that the analysis of whether the permit is consistent with the Zoning Resolution must be based on the regulations of the Zoning Resolution and is not dependent on the administrative classification of the application for construction document approval; and

WHEREAS, DOB states that the purpose of the TPPN is to inform DOB's assessment of whether a new building or alteration permit is required; and

WHEREAS, DOB contends that its obligations relating to the permit were properly carried out; namely, to confirm that the building is a building that may be converted subject to the provisions of Article I Chapter 5, and that the construction documents conform to the authorization; ZR § 15-41 does not require that any amount of the former building be retained in the completed building nor does CPC's authorization require that a certain percentage of the existing building remain intact in the finished construction; and

WHEREAS, accordingly, DOB states that the Appellant fails to present a basis to determine that DOB issued the alteration permit contrary to the Zoning Resolution; and

WHEREAS, DOB notes that the Department of City Planning has not advised DOB that the permit exceeded the terms of the Commission's authorization; and

WHEREAS, DOB also notes that CPC approved the proposal to remove portions of the existing warehouse when it issued the authorization on September 19, 2007, when it renewed the grant on April 25, 2011, and when it approved a modification to the authorization affecting the open space design and the massing of the building envelope on April 18, 2013; and

THE OWNER'S RESPONSE

WHEREAS, the Owner agrees with DOB that the permit should not be disturbed and that the proposal was reviewed and approved appropriately first by CPC and then by DOB; and

WHEREAS, the Owner agrees with DOB that the relevant question is whether it acted in accordance with the authorization in issuing the Permit; and

WHEREAS, the Owner asserts that its application to DOB and its resulting construction conditions are consistent with CPC approvals and thus there is not any basis to disturb the permit; and

WHEREAS, the Owner asserts that the Appellant's contention that the existing building ceased to be a "building" once portions of the original warehouse were removed such that the Owner forfeited the right to use ZR § 15-41 is unfounded; and

WHEREAS, the Owner asserts that DOB determined that the building was properly filed as an alteration and enlargement in compliance with the standards of the TPPNs and did not require an NB application under this standard in a written determination dated June 11, 2007; DOB also

approved the repair and replacement of the bricks in the exterior walls during construction of the building, in an amendment to the existing building permit issued on September 29, 2011; and

WHEREAS, the Owner agrees with the Appellant that the Zoning Resolution, not DOB's policy guidance, is the proper source for the determination of the meaning of ZR § 15-41; however, the Appellant's interpretation of the meaning of ZR § 15-41 and its application to this case is incorrect; and

WHEREAS, the Owner asserts that ZR § 15-41 is absent a requirement to preserve a particular amount of the original fabric of a building in order to obtain the authorization; rather, the findings concern the scale of the building and the quality of its landscaping improvements that must be provided after the building is constructed and do not concern the preservation of the existing fabric of the building to be retained; and

WHEREAS, specifically, the Owner notes that in order to grant this authorization, ZR § 15-41 requires that CPC make the following findings:

- (1) the enlarged building is compatible with the scale of the surrounding area;
- (2) open areas are provided on the zoning lot that are of sufficient size to serve the residents of the building. Such open areas, which may be located on rooftops, courtyards, or other areas on the zoning lot, shall be accessible to and usable by all residents of the building, and have appropriate access, circulation, seating, lighting and paving;
- (3) the site plan includes superior landscaping for all open areas on the zoning lot, including the planting of street trees; and
- (4) the enlarged building will not adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air; and

WHEREAS, the Owner notes that the Zoning Resolution does not include a definition of "existing building" or otherwise establish any standard for how much of the fabric of an existing building must be retained for the purposes of ZR § 15-41; and

WHEREAS, the Owner asserts that the Zoning Resolution's definition of "building" only describes a finished structure and does not relate to one in stages of construction; and

WHEREAS, accordingly, the Owner asserts that in the case of this authorization, the CPC approval was clearly directed at achieving and recreating an urban form, with a building built along the street line that would recall the original warehouse form and contain superior landscaping; the authorization did not require any specific quantum of the original building fabric to be retained, as long as the resulting design and massing complied with the approved drawings; and

WHEREAS, the Owner asserts that the plans it submitted to DOB and DCP on November 8, 2007 did not include any representations as to the amount of the building that would be retained or its exact appearance; instead, they

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show the size and dimensions of the building's open space areas, the landscaping details that were the basis for the CPC's finding that the building would include "superior landscaping," and the overall massing of the final building; and

WHEREAS, the Owner asserts that the nature of the approved plans and the CPC approval also make clear that substantial changes to the original building were explicitly contemplated by the authorization; and

WHEREAS, the Owner asserts that in its revised plans it provided a description of the numerous changes to the streetwall and façade of the warehouse building; and

WHEREAS, the Owner notes that it provided a plan sheet to DOB which illustrates the area of the walls to be repaired and replaced to a degree in excess of 50 percent of the original walls; and

WHEREAS, the Owner states that DOB's approval of a simultaneous repair and replacement of the bricks and windows, which results in the current condition, was reasonable and proper, and consistent with its long-standing practice; and

WHEREAS, the Owner adds that there were certain significant infirmities of the walls including insufficient load requirements per the Building Code and obsolete windows that did not meet the noise attenuation requirements set forth in the authorization; and

WHEREAS, the Owner contends that the Appellant's assertions of misrepresentation are unfounded as it has properly represented all of its changes and gone through all required channels of approval, as DOB agrees; and

WHEREAS, specifically, the Owner states that it filed the 2011 version of plan sheet AF-005 with DOB (explicitly as an amendment of the existing building permit and the earlier 2007 plan) in order to seek DOB approval for the repair and replacement of the exterior bricks and windows; the Owner states that DOB initially approved the plans for compliance with TPPN #1/02, based on the percentage of the walls to be retained, on June 11, 2007; and

WHEREAS, the Owner states that subsequently, on September 29, 2011, DOB approved the repair and replacement of the bricks and windows within the walls, to occur simultaneously with the construction of the Building; DOB has confirmed that it approved the 2011 version which demonstrates that less than 50 percent of the exterior walls of the building were removed, such that the proposed building was properly filed as an alteration, in accordance with DOB TPPN #1/02, because the drawing shows that 450 linear feet of the exterior walls of the original warehouse were removed and 495 linear feet of the exterior walls remained; and

CONCLUSION

WHEREAS, the Board notes that the subject of the appeal is narrow and that is whether DOB has a basis to determine that the permit granted for work approved by a CPC authorization is unlawful; and

WHEREAS, the Board finds that any questions about the validity of CPC's 2007 approval are not appropriately

before it; and

WHEREAS, the Board agrees with DOB and the Owner that DOB's permit issuance was appropriate based on plans that were consistent with the CPC authorization absent any showing from the Appellant that the DOB plans are inconsistent with the CPC-approved plans in any relevant way; and

WHEREAS, the Board agrees with DOB that its role with regard to whether a permit may rely on CPC's authorization is to issue a permit consistent with that authorization and that (1) the Zoning Resolution does not require DOB to review or concur with CPC's determination that the project is entitled to an authorization under ZR § 15-41; (2) the Zoning Resolution does not give DOB authority to approve or reject CPC's grant, to question whether the grant of the authorization is appropriate for a project, or to reevaluate CPC's decision to consider the project as an "enlarged building;" and (3) it is not appropriate for DOB to make an independent assessment as to whether a CPC authorization is warranted; and

WHEREAS, accordingly, the Board agrees that DOB's obligations to confirm that the building is a building that may be converted subject to the provisions of Article I Chapter 5 and that the construction documents conform to the authorization were properly carried out; and

WHEREAS, the Board notes that ZR § 15-41 does not require that any amount of the former building be retained in the completed building nor does CPC's authorization require that a certain percentage of the existing building remain intact in the finished construction; and

WHEREAS, the Board notes that DOB relied on the TPPNs in its approvals and in its Final Determination, but, in the course of the subject appeal correctly shifted the focus of the authority back to CPC, the approving body with sole jurisdiction pursuant to grant authorizations pursuant to ZR § 15-41; and

WHEREAS, the Board does not find that it is necessary to engage in an analysis of the definition of building and whether more than 50 percent of the floor area of the warehouse building has been retained; and

WHEREAS, the Board agrees that nowhere in CPC's extensive analysis did it specify what portion of existing buildings must remain; and

WHEREAS, the Board agrees with DOB that CPC's authorization was based on many factors with, per the text, an emphasis on aesthetics and compatibility with the existing built context, but not the preservation of the historic building materials; and

WHEREAS, the Board is not a reviewing body to question CPC's decision making and deliberative review of the project; however, the Board notes that the project went through a public review process and that all amendments were reviewed by CPC and DOB; and

WHEREAS, the Board notes that the Appellant does not cite to any required process or rule that CPC erroneously avoided in its initial or subsequent review; and

WHEREAS, further, the Board notes that CPC is aware

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of the status of the project; the Department of City Planning received a copy of the subject appeal application (which includes photographs of the condition of the site), and has as recently as April 2013 reviewed and approved the project and has not made any assertion that there is any non-compliance with its authorization; and

WHEREAS, the Board agrees with DOB and the Owner that DOB has followed its duties under the City Charter and the Zoning Resolution to implement the zoning approvals for this building; and

WHEREAS, the Board also agrees with DOB and the Owner that DOB issued the Permit to construct the building, as approved pursuant to the authorization and as shown on the approved plans and that in the absence of a requirement in the authorization to retain a specific amount of the original building, the authorization is satisfied if the building is constructed in accordance with the approved plans; and

WHEREAS, the Board finds that there was not any basis for DOB to impose any requirements for the retention of the original building fabric, because no such requirements were indicated on the approved plans or required by ZR § 15-41; and

WHEREAS, the Board notes that, instead, DOB determined in its Final Determination that, because the proposed work could be filed as an alteration and enlargement, “the permit may properly rely on the CPC authorization;” and

WHEREAS, as reflected in the Final Determination, DOB determined only that the Owner’s retention of 50 percent of the original walls was sufficient to allow the permit to rely on ZR § 15-41 rather than that it was necessary to do so in order to comply with the authorization, or that compliance with the TPPN is substituted for compliance with the authorization; and

WHEREAS, the Board finds that compliance with the authorization is determined by reference to the approval and the requirements of the plans, which contain specification for the massing, open spaces, landscaping, and façade details of the final building, but do not include requirements for the retention of any amount of the original fabric of the building; and

WHEREAS, the Board concludes that DOB has the authority to allow reasonable and customary construction means and methods in the implementation of its permits, and its accepted means of replacing building components in kind; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated December 5, 2012, which states that the Permit may rely on CPC’s authorization, is hereby denied.

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

190-13-A

APPLICANT – Zygmunt Staszweski, for The Breezy Point Cooperative, Inc., owner; Tracey McEachern, lessees.

SUBJECT – Application June 27, 2013 – Proposed reconstruction of a single-family dwelling in the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law, and the proposed upgrade of an existing septic system contrary to DOB policy. R4 zoning district. PREMISES AFFECTED –107 Arcadia Walk, East of Arcadia Walk 106’ South Rockaway Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

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 June 19, 2013, acting on Department of Buildings (“DOB”) Application No. 420847757, reads in pertinent part:

- A1- The proposed enlargement is on a site where the building and lot are located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3 Section 35 of the General City Law;
- A2- The proposed upgrade of the private disposal system is contrary to the Department of Buildings policy; and

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

WHEREAS, by letter dated July 1, 2013, the Fire Department states that it has reviewed the subject proposal and has no objections; the Fire Department also states that it requires that DOB-approved drawings indicate that the building will be fully sprinklered; and

WHEREAS, the record reflects that the applicant has provided a site plan indicating that the building will be fully sprinklered and smoke alarms will be interconnected to the existing hard-wired electrical system; and

WHEREAS, by letter dated July 2, 2013, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated July 5, 2013, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency’s Capital Improvement Program; and

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

Therefore it is Resolved that the decision of the Queens

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Borough Commissioner, dated July June 19, 2013, acting on DOB Application No. 420847757, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received June 27, 2013"- one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

THAT the home will be fully-sprinklered and will be provided with interconnected smoke alarms in accordance with the BSA-approved plans;

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, July 23, 2013.

89-07-A

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

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district. PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 August 13, 2013, at 10 A.M., for decision, hearing closed.

92-07-A thru 94-07-A

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

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

COMMUNITY BOARD #3SI

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 August 13, 2013, at 10 A.M., for decision, hearing closed.

95-07-A

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

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

COMMUNITY BOARD #3SI

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

245-12-A & 246-12-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 515 East 5th Street, LLC, owner.

SUBJECT – Application August 9, 2012 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law. Application seeking a determination that the owner of the property has acquired a common law vested right to complete construction under the prior R7-2 zoning. R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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220-10-BZY

APPLICANT – Goldman Harris LLC, Orchard Hotel LLC,c/o Maverick Real Estate Partners, vendee ,DAB Group LLC, owner.

SUBJECT – Application March 11, 2013 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a previous vested rights approval, which expires on March 15, 2013. Prior zoning district C6-1. C4-4A zoning district.

PREMISES AFFECTED – 77, 79, 81 Rivington Street, a/k/a 139 , 141 Orchard Street , northern p/o block bounded by Orchard Street to the east, Rivington Street to the north, Allen Street to the west, and Delancy Street to the south, Block 415, Lot 61-63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

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 August 20, 2013, at 10 A.M., for decision, hearing closed.

272-12-A

APPLICANT – Michael Cetera, for Aaron Minkowicz, owner.

SUBJECT – Application September 6, 2012 – Appeal challenging Department of Buildings’ determination that an existing non-conforming single family home may not be enlarged per §52-22. R2 zoning district.

PREMISES AFFECTED – 1278 Carroll Street, between Brooklyn Avenue and Carroll Avenue, Block 1291, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #9BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 17, 2013, at 10 A.M., for decision, hearing closed.

317-12-A

APPLICANT – Eric Palatnik, P.C., for 4040 Management, LLC, owner.

SUBJECT – Application November 29, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior M1-3D zoning district regulations. M1-2/R5B zoning district.

PREMISES AFFECTED – 40-40 27th Street, between 40th Avenue and 41st Avenue, Block 406, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

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

127-13-A

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Brusco Group, Inc., owner.

SUBJECT – Application May 1, 2013 – Appeal under Section 310 of the Multiple Dwelling Law to vary MDL Sections 171-2(a) and 2(f) to allow for a vertical enlargement of a residential building. R8 zoning district.

PREMISES AFFECTED – 332 West 87th Street, south side of West 87th Street between West end Avenue and Riverside Drive, Block 1247, Lot 48 Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

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

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

242-12-BZ

CEQR #13-BSA-014K

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 – Application granted on condition.

THE VOTE TO GRANT –

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

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THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 5, 2012, acting on Department of Buildings Application No. 320476285 reads, in pertinent part:

1. Proposed plans are contrary to ZR §43-43 in that the proposed total height (of front wall) above the street line exceeds the maximum.
2. Proposed plans are contrary to ZR § 43-43 in that the proposed initial setback distance is less than the maximum required.
3. Proposed plans are contrary to ZR § 43-43 in that the proposed sky exposure plane fails to meet the minimum ratio required.
4. Proposed plans are contrary to ZR § 43-26 and ZR § 43-302 in that the proposed rear yard (open area along the rear lot line) is less than the minimum required.
5. Proposed plans are contrary to ZR § 44-21 in that the required parking is not provided; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an M1-1 zoning district, the construction of a three-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for front wall height, setback, sky exposure plane, rear yard, open area along a rear lot line, and parking, contrary to ZR §§ 43-43, 43-26, 43-302, and 44-21; and

WHEREAS, a public hearing was held on this application on January 15, 2013, after due notice by publication in *The City Record*, with a continued hearing on February 26, 2013, and then to decision on July 23, 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 12, Brooklyn, recommends approval of the application; and

WHEREAS, the adjacent property owner testified in support of the application; and

WHEREAS, this application is being brought on behalf of Congregation Toldos Yehuda (the “Synagogue”); and

WHEREAS, the subject site is a rectangular interior lot with 80 feet of frontage along 61st Street between 16th Avenue and 17th Avenue in an M1-1 zoning district; and

WHEREAS, the subject site has a lot area of 8,000 sq. ft. and is currently occupied by a one-story manufacturing building with 6,080 sq. ft. of floor area (0.76 FAR); and

WHEREAS, the applicant proposes to construct a new building with the following parameters: a complying floor area of 18,543.3 sq. ft. (2.32 FAR); three stories and a maximum front wall height of 50’-0” (a maximum front wall height of 35’-0”, or three stories, whichever is less, is permitted); no setback of the street wall (a setback at 20’-0” and a 1:1 sky exposure plane are required); no rear yard on the first and second floor (a minimum of 20’-0” is required); no open area along the rear lot line (an open area of 30’-0”

along the rear lot line is required); no parking spaces (a minimum of 25 parking spaces are required); and

WHEREAS, the proposal provides for the following uses: (1) a worship area, bathrooms, showers, a dressing room, a laundry room, electric, storage and mechanical rooms, lobbies and a mikvah at the cellar level; (2) men’s sanctuary, men’s bathroom, a coffee room, office, and coat area at the first story; (3) women’s sanctuary, women’s bathrooms, storage, and a lobby at the second story; and (4) a library, book storage room, conference room, office, men’s bathroom, and a hallway at the third 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 that currently consists of approximately 75 individuals on a daily basis, 205 men and 60 women on the Sabbath, and 300 men and 200 women on high holidays; (2) to provide separate worship and study spaces for male and female congregants; (3) to provide the necessary space for offering weekly classes for adults and teenagers and holding cultural program; and (4) to satisfy the religious requirement that members of the congregation be within walking distance of the synagogue; and

WHEREAS, the applicant states that the as-of-right building would have a total floor area of 12,481 sq. ft. (1.56 FAR), 5,565 sq. ft. of floor area on the first story, only 3,910 sq. ft. of floor area on the second story (because much of the second story would remain open to the sanctuary below) and only 3,005.8 sq. ft. of floor area on the third story; and

WHEREAS, the applicant states that the as-of-right building would allow for a men’s sanctuary on the first story that would hold approximately 205 persons and a women’s sanctuary on the second story that would hold approximately 78 persons, and would require the elimination of the library on the third story; in contrast, the proposal would allow for 368 persons in the main sanctuary and 191 persons in the women’s sanctuary; and

WHEREAS, the applicant states that the height and setback waivers permit: (1) the double-height ceiling of the first story 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) the library on the third story, which will help the Synagogue participate in a publishing fund; and

WHEREAS, the applicant states that the waiver of the required open area along the rear lot line and rear yard allows the Synagogue to build to a size that will accommodate current and projected numbers of congregants; the applicant also notes that the existing building at the site has no open area along the rear lot line; and

WHEREAS, the applicant states that the parking waiver is necessary because providing the required parking 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

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WHEREAS, the applicant states that 50 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, but still a significant portion of the congregation; and

WHEREAS, the applicant states that the Synagogue has occupied three stories of a nearby 6,300 sq. ft. building as a place of worship for approximately 14 years, and such space is wholly inadequate to accommodate the congregation, especially on high holidays, when the congregation is forced to rent separate space; 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 library for publishing books and recordings; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; 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 M1-1 district; and

WHEREAS, the applicant states that, although the subject block is split between manufacturing and residence districts, of the approximately 38 developed lots, 33 maintain residential uses, with one lot (lot 39) developed with a four-story, 72,000 sq. ft. Yeshiva building (Yeshiva Novominsk), and there are additional educational, religious and health institutions in the immediate area; and

WHEREAS, as to bulk, the applicant notes that the proposed FAR is less than the maximum permitted as of right for a community facility in the M1-1 district; and

WHEREAS, as to front wall height, the applicant performed a study of neighboring buildings, which reflects that there are eight nearby buildings that are between 40'-0" and 50'-0" in height; accordingly, the proposed building height (50'-0") is compatible with the surrounding neighborhood; and

WHEREAS, the applicant notes that a rezoning of a nearby block from M1-1 to R6A adopted by the City Planning Commission on January 20, 2013 is likely to result in the construction of nearby buildings that are similar in height and FAR to the proposed building; and

WHEREAS, as to yards, the applicant notes that the existing building on the site has no rear yard and while the first two stories of the proposed building will not provide the required 30-foot open area, the third story will set back from the rear lot line 30'-0"; the applicant also notes that the lots abutting the rear of the building maintain a 30-foot rear yard and that if the building were not along a district boundary line but rather in a residence district, a complying community facility building would be permitted in the required rear yard up to a height of one story or 23 feet; further, the applicant notes that the existing building extends to the rear lot line; and

WHEREAS, as to parking, the applicant represents that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, in addition, the applicant submitted a parking and traffic study that concluded that the proposal would not significantly or adversely impact parking or traffic in the area; and

WHEREAS, specifically, the study found that out of approximately 850 legal parking spaces within a ¼-mile radius, there was an average of 85 available spaces during the morning and 150 available spaces during the evening for parking; and

WHEREAS, further, as noted above, the applicant represents that 50 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, during the hearing process, the Board directed the applicant to review the design of the rear of the building to determine if it could be shortened; and

WHEREAS, in response, the applicant modified the design to provide a 30'-0" rear setback (open area) at the third story; 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 Board finds the requested waivers to be

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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. 13BSA014K, dated August 2, 2012; and

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

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

WHEREAS, DEP reviewed and accepted the June 2013 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 March 2013 stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the results of the August 2012 noise assessment and based on the measured ambient noise levels at the project site, no potential noise impacts are anticipated to occur; 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 M1-1 zoning district, the construction of a three-story building to be occupied by a synagogue, which does not comply with the zoning district regulations for front wall height, setback, sky exposure plane, open area along a rear lot line, and parking,

contrary to ZR §§ 43-43, 43-26, 43-302, and 44-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 11, 2013" – Fourteen (14) sheets; and *on further condition*:

THAT the building parameters will be: a floor area of 18,543.3 sq. ft. (2.32 FAR); no minimum required rear yard or open area for the first and second stories to a height of 28'-0"; three stories; a maximum building height of 50'-0" and 41'-0" at the rear, as illustrated on the BSA-approved plans;

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

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

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

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

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

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

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

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

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

5-13-BZ

CEQR #13-BSA-078Q

APPLICANT – Goldman Harris LLC, for Queens College Special Projects Fund, Inc., owners.

SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of an education center (UG 3A) in connection with an existing community facility (*Louie Armstrong House Museum*), contrary to lot coverage (§24-11/24-12), front yard (§24-34), side yard (§24-35), side yard setback (§24-551), and planting strips (§24-06/26-42). R5 zoning district.

PREMISES AFFECTED – 34-47 107th Street, eastern side of 107th Street, midblock between 34th and 37th Avenues, Block 1749, Lot 66, 67, 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

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Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated January 8, 2013, acting on Department of Buildings Application No. 420605660 reads, in pertinent part:

1. Proposed lot coverage exceeds maximum permitted, contrary to ZR ZR 24-11 and 24-12;
2. Proposed front yard is less than minimum required, contrary to ZR 24-34;
3. Required side yards are not provided, contrary to ZR 24-35(a);
4. As per ZR 24-55, the proposed mechanical bulkhead is not a permitted obstruction within a required side setback, contrary to ZR 24-551;
5. Required planting strip in accordance with ZR 26-42 is not provided, contrary to ZR 24-06; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, the construction of a two-story building to be occupied by a community facility (Use Group 3), which does not comply with the underlying zoning district regulations for lot coverage, front yard, side yards, side setback and planting strip, contrary to ZR §§ 24-11, 24-12, 24-34, 24-35, 24-55, 24-551, 26-42, and 24-06; and

WHEREAS, a public hearing was held on this application on June 18, 2013, after due notice by publication in *The City Record*, and then to decision on July 23, 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 the application; and

WHEREAS, a representative of Queens College, City University of New York (“Queens College” or “the School”), provided testimony in support of this application; and

WHEREAS, this application is being brought on behalf of the Queens College Special Projects Fund, Inc. (“the applicant”), an affiliate of Queens College, which owns the subject site; and

WHEREAS, the subject site is located on the east side of 107th Street, between 34th Avenue and 37th Avenue, within an R5 zoning district; and

WHEREAS, the site is a zoning lot that comprises tax lots 66 and 67, with 60 feet of frontage along 107th Street, a lot depth of 95 feet, and a lot area of 5,700 sq. ft.; and

WHEREAS, the site is currently vacant; the applicant notes that across the street from the site (at 34-56 107th Street) is the Louis Armstrong House Museum (“the Museum”), which is operated by the applicant; and

WHEREAS, the applicant proposes to construct a two-story building to be occupied as an Education Center for the

Museum (“Education Center”) with a complying floor area of 9,046 sq. ft. (1.59 FAR) (the maximum permitted floor area is 11,400 (2.00 FAR) and a complying total height of 31’-3” (the maximum permitted total height is 35’-0”); and

WHEREAS, in addition, the Education Center will include the following non-compliances: lot coverage of 57 percent (the maximum permitted lot coverage is 55 percent); a; a front yard with a depth of 5’-0” (a front yard with a minimum depth of 10’-0” is required); two side yards with widths of 0’-1 $\frac{1}{8}$ ” (two side yards with minimum widths of 8’-0” each are required); a non-permitted obstruction (a sound enclosure for the mechanical bulkhead) within the side setback, which reduces the setback to 16’-3” (a side setback of 22’-6” is required); and no planting strip (a minimum of 0’-6” of planting is required); and

WHEREAS, the Education Center will provide for the following uses: (1) educational space for the Museum and Queens College; (2) Museum visitor reception; (3) a state-of-the art, climate-controlled research, storage, and archive space; (4) a 73-seat auditorium; (5) an exhibit gallery and (6) accessory offices; and

WHEREAS, the applicant represents that the Museum is an affiliate of Queens College and a registered public charity administered by the applicant pursuant to a long-term license agreement with the New York City Department of Cultural Affairs, which owns the Museum site; and

WHEREAS, the applicant notes that Queens College handles all administrative functions for the Museum, including personnel, security, technical support, and design services; the applicant notes that the director of the Museum and all Museum staff members are employed by Queens College; the applicant also notes that scholars outside the School benefit from the collections; and

WHEREAS, as to the educational nature of the Museum, the applicant represents that Queens College professors and students use the Museum’s research collections as part of their curriculum for courses on jazz history, library studies and English; in addition, the Museum offers internships to Queens College students who are interested in musicology, library science and other related fields; and

WHEREAS, additionally, the applicant notes that approximately 25 percent of the annual visitorship of the museum is from New York City public and private elementary and high schools; and

WHEREAS, consistent with ZR § 72-21(a), the applicant articulated the following primary programmatic needs, which necessitate the requested variances: (1) to locate near the Museum (which is substantially undersized given its use), so that the buildings can function together; and (2) to provide additional space for the School’s educational programming related to the Museum; and

WHEREAS, the applicant represents that the School has a programmatic need to locate the Education Center as near to the Museum as possible; and

WHEREAS, the applicant states that the Museum has experienced unexpected growth in the number of visitors to the Museum since its opening in 2003, and that it will soon be

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unable to accommodate the number of visitors interested in the Museum's collections and tours; and

WHEREAS, the applicant notes that the Museum is located in a converted single-family dwelling with only 2,500 sq. ft. of floor area, which, as a tribute to Louis Armstrong and his legacy, maintains its original character and size; and

WHEREAS, the applicant also notes that the Museum building has been designated as an individual landmark by the New York City Landmarks Preservation Commission ("LPC"); as such, the Museum's ability to expand to accommodate its increased popularity is constrained; and

WHEREAS, the applicant represents that the Museum can only accommodate a maximum of 24 visitors at one time, and that such limited space results in patrons and groups (often school children) being forced to congregate outdoors; as a result, tours are often cancelled or rescheduled due to inclement weather; and

WHEREAS, the applicant states that locating the Education Center at the site will alleviate the overcrowding on the Museum premises and surrounding properties; and

WHEREAS, in addition, the applicant states that allowing the Education Center to be constructed with the requested variances will further the School's educational objectives at the Museum and allow for additional programs and future growth; and

WHEREAS, the applicant represents that the proposal will allow the Museum to provide a wider range of educational experiences to a greater number of Museum visitors and Queens College students; and

WHEREAS, the applicant notes that the proposal will permit the number of visitors who can occupy the first floor of the Education Center (approximately 160) to match the typical size of the school group that visits the Museum on a daily basis; and

WHEREAS, the applicant also states that the Museum lacks adequate space for the conservation of sound recordings, photographs, manuscripts, letters, films, artwork, and textiles; the proposal addresses this need by providing space for workstations devoted exclusively to conservation; and

WHEREAS, the applicant represents that the Education Center presents the only option for Queens College to continue to fulfill its educational mission through the Museum and meet the demands of its growing patronage; and

WHEREAS, the applicant submitted as-of-right plans which reflected that a complying building would result in a narrower lobby and an auditorium which would be too small to accommodate large groups, which would, in turn, eliminate the ability of the School to host lectures, concerts, and cultural events at the Museum; and

WHEREAS, in addition, the applicant represents that an as-of-right building would require a reduction in the size of the exhibit gallery by 60 percent, which would prevent the use of state-of-the-art materials and displays, and the elimination of archive space for the Museum's collections, which would result in the Museum maintaining its current, inefficient and disconnected system of off-site storage at Queens College; and

WHEREAS, the applicant also states that providing a

complying front yard at the second story would both eliminate a contextual feature of the building (a second-story terrace is commonplace throughout the neighborhood), and weaken the Education Center's spatial and visual connection to the Museum; and

WHEREAS, finally, the applicant states that without the requested variances, the proposed exhibit gallery would be reduced from 28 feet to 12 feet in width and the Museum store—which would sell books, CDs, DVDs, and other educational materials central to the academic mission of Queens College—would have to be eliminated entirely; 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, accordingly, 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the proposed building would be in keeping with the character of the surrounding neighborhood; and

WHEREAS, the applicant notes that the proposed use and FAR are permitted as-of-right within the R5 zoning district; the applicant also represents that the scale and design of the Education Center is compatible with nearby residential buildings, in that most feature second-story terraces or bay windows set back from the street and undersized side and front yards; and

WHEREAS, the applicant states that the proposed front yard is similar to neighboring front yards, which are predominantly non-complying due to a rezoning that changed the district from R6B to R5; the applicant represents that a complying front yard with complying plantings would create a "missing tooth" in the streetscape of the block and alter the essential character of the neighborhood more than the proposed design; and

WHEREAS, as for the proposed side yards, the

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applicant represents that narrow side yard widths are commonplace throughout the neighborhood, including the directly adjacent neighbor to the Education Center's north (34-45 107th Street), which has a side yard width abutting the site of 2'-4¾" and the Education Center's neighbor directly to the south (34-53 107th Street), which has a side yard width abutting the site of 3'-11"; as such, the proposed side yards are contextual; and

WHEREAS, the applicant states that the proposed non-permitted obstruction within the side setback—the sound-attenuating enclosure for the rooftop mechanical bulkhead—is necessary to minimize impact of noise upon the surrounding residence; and

WHEREAS, the applicant also notes that the Museum places a strong emphasis on community outreach, including neighborhood involvement in its management, and block residents have routinely held seats on the Museum's advisory board since 1994; 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, in accordance with ZR § 72-21(d), the hardship was not self-created and that no development that would meet the programmatic needs of the School 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, pursuant to ZR § 72-21(e); 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 the School 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 an Unlisted 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. 13BSA078Q, dated April 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, 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 to permit, on a site within an R5 zoning district, the construction of a two-story building to be occupied by a community facility (Use Group 3), which does not comply with the underlying zoning district regulations for lot coverage, front yard, side yards, side setback, and plantings for community facilities, contrary to ZR §§ 24-11, 24-12, 24-34, 24-35, 24-55, 24-551, 26-42, and 24-06, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 9, 2013" – thirteen (13) 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: a maximum floor area of 9,046 sq. ft. (1.59 FAR); a maximum lot coverage of 57 percent; a maximum total height of 31'-3"; a minimum front yard depth of 5'-0"; two side yards with minimum widths of 0'-1⅞"; a minimum side setback of 16'-3", as reflected on the BSA-approved plans;

THAT the sound attenuation measures in the proposed building will be maintained 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 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, July 23, 2013.

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99-13-BZ

CEQR #13-BSA-119Q

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mehran Equities Ltd., owner; Blink Steinway Street, Inc., lessee.

SUBJECT – Application April 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink*) within a two-story commercial building. C4-2A zoning district.

PREMISES AFFECTED – 32-27 Steinway Street, 200' south of intersection of Steinway and Broadway, Block 676, Lot 35, 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 April 1, 2013, acting on Department of Buildings Application No. 420824424, reads in pertinent part:

Proposed Physical Culture Establishment in a C4-2A district is contrary to ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-2A zoning district, the operation of a physical culture establishment (“PCE”) in the cellar, first and second story of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 18, 2013, after due notice by publication in *The City Record*, and then to decision on July 23, 2013; and

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

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

WHEREAS, the subject site is located on the east side of Steinway Street between Broadway and 34th Avenue, within a C4-2A zoning district; and

WHEREAS, the site has 100 feet of frontage along Steinway Street and a total lot area of 9,000 sq. ft.; and

WHEREAS, the site is occupied by a two-story commercial building with approximately 16,000 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy the entire building, with approximately 8,000 sq. ft. of floor space in the cellar (to be used for accessory storage with no patron access), 8,000 sq. ft. of floor area on the first story, and 8,000 sq. ft. of floor area on the second story; and

WHEREAS, the PCE will be operated as Blink; and

WHEREAS, the applicant represents that the services

at the PCE include facilities for instruction and programs for physical improvement; and

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

WHEREAS, 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 Unlisted 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. 13BSA119Q, dated April 5, 2013; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C4-2A zoning district, the operation of a PCE in the cellar, first

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and second story of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 3, 2013" – Five (5) sheets and *on further condition*:

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

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

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

THAT the hours of operation will not exceed Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.;

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, July 23, 2013.

102-13-BZ

CEQR #13-BSA-122M

APPLICANT – Law Office of Fredrick A. Becker, for 28-30 Avenue A LLC, owner; TSI Avenue A LLC dba New York Sports Club, lessee.

SUBJECT – Application April 11, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*New York Sports Club*) within a five-story commercial building. C2-5 (R7A/R8B) zoning district.

PREMISES AFFECTED – 28-30 Avenue A, East side of Avenue A, 79.5" north of East 2nd Street, Block 398, Lot 2, Borough of Manhattan.

COMMUNITY BOARD #3M

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 April 9, 2013, acting on Department of Buildings Application No. 121511417, reads in pertinent part:

Proposed Physical Culture Establishment at the first through fifth floors is not permitted as-of-right in C2-5 district within R7A and R8B zoning districts and is contrary to ZR 32-31 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C2-5 (R7A) zoning district and partially within an R8B zoning district, the operation of a physical culture establishment ("PCE") on portions of the first through fifth stories of a five-story commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on June 18, 2013, after due notice by publication in *The City Record*, and then to decision on July 23, 2013; and

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

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

WHEREAS, the subject site is located on the east side of Avenue A between East Second Street and East Third Street, partially within a C2-5 (R7A) zoning district and partially within an R8B zoning district; and

WHEREAS, the site has 44 feet of frontage along Avenue A, a lot depth of 120 feet, and a total lot area of 5,280 sq. ft.; and

WHEREAS, the site is occupied by a five-story commercial building with approximately 25,285 sq. ft. of floor area (4.79 FAR); and

WHEREAS, the applicant notes that because 20 feet of the lot's 120-foot depth extends beyond the C2-5 (R7A) district into the R8B district, and because the lot existed as a lot of record as of December 15, 1961, per ZR § 77-11, the use regulations applicable in the C2-5 (R7A) district may apply in the R8B portion; therefore, commercial uses permitted in a C2-5 district are permitted throughout the lot; and

WHEREAS, the proposed PCE will be located on the second through fifth stories, with an entrance on a portion of the first story, with a total PCE floor area of 20,905 sq. ft. (3.96 FAR); and

WHEREAS, the PCE will be operated as New York Sports Club; and

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

WHEREAS, the hours of operation for the proposed PCE will be Monday through Thursday, from 5:30 a.m. to 11:00 p.m., Friday from 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.; and

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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 Unlisted 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. 13BSA122M, dated April 10, 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 C2-5 (R7A) zoning district and partially within an R8B zoning district, the operation of a PCE on portions of the first through fifth stories of a five-story commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 20, 2013" – Six (6)

sheets and *on further condition*:

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

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

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

THAT the signage shall comply with C2-5 district regulations, except as otherwise permitted by DOB;

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, July 23, 2013.

35-11-BZ

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

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

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

COMMUNITY BOARD #13Q

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

16-12-BZ

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

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district. PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block

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1753, Lot 42, 43, Borough of Brooklyn.

COMMUNITY BOARD #4BK

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

50-12-BZ

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

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

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

COMMUNITY BOARD #12Q

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

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 August 20, 2013, at 10 A.M., for deferred decision.

54-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

COMMUNITY BOARD #6Q

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

62-12-BZ

APPLICANT – Akerman Senterfitt LLP, for VBI Land Inc., owner.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of commercial building, contrary to use regulations (§22-00). R7-1 zoning district.

PREMISES AFFECTED – 614/618 Morris Avenue, northeastern corner of Morris Avenue and E 151th Street, Block 2411, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to October 8, 2013, at 10 A.M., for continued hearing.

199-12-BZ

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

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

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

COMMUNITY BOARD #4BK

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

259-12-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for 5239 LLC, owner.

SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the development of a single-family house, contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district.

PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, Borough of Bronx.

COMMUNITY BOARD #8BX

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

86-13-BZ

APPLICANT – Eric Palatnik, P.C., for Yefim Portnov, owner.

SUBJECT – Application March 6, 2013 – Special Permit (§73-621) to allow the enlargement of an existing single-family home, contrary to open space ratio and floor area (§23-141) regulations. R2 zoning district.

PREMISES AFFECTED – 65-43 171st Street, between 65th Avenue and 67th Avenue, Block 6912, Lot 14, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

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

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

101-13-BZ

APPLICANT – Dennis D. Dell'Angelo, for Meira N.
Sussman, owner.

SUBJECT – Application April 10, 2013 – Special Permit
(\$73-622) to allow the enlargement of an existing single
family home, contrary to open space and floor area (§23-
141), side yards (§23-461), and less than the required rear
yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1271 East 23rd Street, East side
190' north of Avenue "M", Block 7641, Lot 15, Borough of
Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

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

Jeff Mulligan, Executive Director

Adjourned: P.M.