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DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

Commissioners

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

OFFICE -	250 Broadway, 29th Floor, New York, N.Y. 10007
HEARINGS HELD -	22 Reade Street, Spector Hall, New York, N.Y. 10007
BSA WEBPAGE @	http://www.nyc.gov/html/bsa/home.html

TELEPHONE - (212) 386-0009
FAX - (646) 500-6271

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DOCKETS

New Case Filed Up to September 24, 2013

272-13-BZ

78-02/14 Roosevelt Avenue, South side of Roosevelt Avenue between 78th Street and 79th Street, Block 1489, Lot(s) 7501, Borough of **Queens, Community Board: 4**. Special Permit (§73-36) to permit a physical culture establishment (blink fitness) within a portions of an existing commercial building contrary to §32-10 zoning resolution. C2-3/R6 & R5 zoning district. C2-3(R6)& 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

OCTOBER 22, 2013, 10:00 A.M.

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

SPECIAL ORDER CALENDAR

405-01-BZ

APPLICANT – Eric Palatnik, P.C., for United Talmudcial Academy, owner.

SUBJECT – Application September 18, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a five story school and synagogue which expires on February 14, 2014. R5/C2-3 zoning district.

PREMISES AFFECTED – 1275 36th Street, aka 123 Clara Street, between Clara Street and Louisa Street, Block 5310, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

19-05-BZ

APPLICANT – Slater & Beckerman, P.C., for Groff Studios Corp., owner.

SUBJECT – Application August 26, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the change in use of portions of an existing nine-story, mixed-use building to residential use which expires November 10, 2013. M1-6 zoning district.

PREMISES AFFECTED – 151 West 28th Street, north side of West 28th Street, 101' east of Seventh Avenue, Block 804, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #5M

219-07-BZ

APPLICANT – James Chin & Associates, LLC, for External Sino Dev. Condo, LLC, owner; Shunai (Kathy) Jin, lessee.

SUBJECT – Application June 1, 2012 – Extension of term of a previously granted Special permit (§73-36) to permit the continued operation of a physical culture establishment (*Cosmos Spa*) which expired on June 3, 2010. M1-6 zoning district.

PREMISES AFFECTED – 11 West 36th Street, 2nd Floor, north side of West 36th Street between 5th and 6th Avenues, Block 838, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEALS CALENDAR

110-13-A

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – An Appeal Challenging Department of Buildings interpretation seeking to reinstate a permit in reference to a post approval amendment in regards to the excavation and construction of an accessory swimming pool and covering. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #6BK

226-13-A

APPLICANT – Rothrug Rothkrug & Spector LLP, for High Rock Development LLC, owner.

SUBJECT – Application July 26, 2013 – Proposed construction of a one-family dwelling that does not front a legally mapped street, contrary to Section 36 Article 3 of the General City Law. R3-2 /R2 NA-1 Zoning District.

PREMISES AFFECTED – 29 Kayla Court, west side of Kayla Court, 154.4' west and 105.12' south of intersection of Summit Avenue and Kayla Court, Block 951, Lot 23, Borough of Staten Island

COMMUNITY BOARD #2SI

ZONING CALENDAR

254-12-BZ

APPLICANT – Patrick W. Jones, P.C., for Salmar Properties, LLC, owner.

SUBJECT – Application August 20, 2013 – Variance (§72-21) to permit Use Group 10A uses on the first and second floors of an existing eight-story building, contrary to use regulations. M3-1 zoning district.

PREMISES AFFECTED – 850 Third Avenue aka 509/519 Second Avenue, bounded by Third Avenue, unmapped 30th Street, Second Avenue, and unmapped 31st Street, Block 671, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

90-13-BZ

APPLICANT – Akerman Senterfitt, LLP, for Eleftherios Lagos, owner.

SUBJECT – Application March 18, 2013 – Variance (§72-21) to permit the construction of a single-family dwelling contrary to open area requirements (ZR 23-89). R1-2 zoning district.

PREMISES AFFECTED – 166-05 Cryders Lane, northeast corner of the intersection of Cryders Lane and 166th Street,

CALENDAR

Block 4611, Lot 1, Borough of Queens.
COMMUNITY BOARD #7Q

121-13-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Beth Aron Moshe, owner.

SUBJECT – Application April 25, 2013 – Variance (§72-21) to permit a UG 4 synagogue (*Congregation Beth Aron Moshe*), contrary to front yard (§24-34), side yards (§24-35) and rear yard (§24-36). R5 zoning district.

PREMISES AFFECTED – 1514 57th Street, 100' southeast corner 57th Street and the eastside of 15th Avenue, Block 05496, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

187-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 1030 Southern Boulevard LLC, owner; 1030 Southern Boulevard Fitness Group, LLC, lessee.

SUBJECT – Application June 21, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Fitness Center*), and Special Permit (§73-52) to extend commercial use 25'-0" into the R7-1 portion of the lot. C4-4 zoning district.

PREMISES AFFECTED – 1024-1030 Southern Boulevard, east side of Southern Boulevard approximately 134' north of the intersection formed by Aldus Street and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

COMMUNITY BOARD #2BX

213-13-BZ

APPLICANT – Rothrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-125) proposed two story building to allow a Medical Office for an ambulatory diagnostic or treatment health care facility, contrary to Section §22-14. R3A zoning district.

PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten Island.

COMMUNITY BOARD #2SI

235-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 132 West 31st Street Building Investors11, LLP, owner; Blink West 31st Street, Inc. owner.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within an existing commercial building. M1-6 zoning district.

PREMISES AFFECTED – 132 West 31st Street, south side of West 31st Street, 350' east of 7th Avenue and West 31st

Street, Block 806, Lot 58, Borough of Manhattan.
COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, SEPTEMBER 24, 2013 10:00 A.M.

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

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

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for decision, hearing closed.

239-02-BZ

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

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

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

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for adjourned hearing.

360-65-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Dalton Schools, Inc., owner.

SUBJECT – Application July 19, 2013 – Amendment of previously approved Variance (§72-21) and Special Permit (§73-64) which allowed the enlargement of a school (*Dalton*

School). Amendment seeks to allow a two-story addition to the school building, contrary to an increase in floor area (§24-11) and height, base height and front setback (§24-522, §24-522)(b)) regulations. R8B zoning district.

PREMISES AFFECTED – 108-114 East 89th Street, midblock between Park and Lexington Avenues, Block 1517, Lot 62, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

606-75-BZ

APPLICANT – Sheldon Lobel, P.C., for Printing House Condominium, owners.

SUBJECT – Application July 3, 2013 – Amendment of a previously approved variance (§72-21) which allowed the residential conversion of a manufacturing building; amendment seeks to permit a reallocation of floor area between the maisonette and townhouse units, resulting in a reduction of total units and no net change in total floor area. M1-5 zoning district.

PREMISES AFFECTED – 421 Hudson Street, corner through lot with frontage on Hudson Street, Leroy Street and Clarkson Street, Block 601, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

157-12-A

APPLICANT – Sheldon Lobel, P.C., for John F. Westerfield, owner; Welmar Westerfield, lessee.

SUBJECT – Application May 21, 2012 – Appeal challenging Department of Buildings' determination that the subject property not be developed as an "existing small lot" pursuant to ZR §23-33 as it does not meet the definition of ZR §12-10. R1-2 zoning district.

PREMISES AFFECTED – 184-27 Hovenden Road, Block 9967, Lot 58, Borough of Queens.

COMMUNITY BOARD #8Q

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 –

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WHEREAS, this is an appeal of a Department of Buildings (“DOB”) final determination dated July 2, 2013, issued by DOB’s First Deputy Commissioner (the “Final Determination”); and

WHEREAS, the Final Determination reads in pertinent part:

Proposed residential development on a zoning lot in an R1-2 Zoning District (Lot 58) that is deficient in the lot width and lot area required by ZR Section 23-32 that was owned on December 15, 1961 by a husband and wife as tenants by the entirety, abutting an adjacent lot (Lot 56) that was owned individually only by the husband, pursuant to ZR Section 23-33 is impermissible, since the zoning lot was not owned separately and individually from abutting adjacent lot on December 15, 1961; and

WHEREAS, the appeal was brought on behalf of the owner of 184-27 Hovenden Road (hereinafter the “Appellant”); and

WHEREAS, a public hearing was held on this application on August 13, 2013 after due notice by publication in *The City Record*, and then to decision on September 24, 2013; and

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

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

WHEREAS, the subject site is located on the north side of Hovenden Road between Somerset Street and Chevy Chase Street, within an R1-2 zoning district; and

WHEREAS, Lot 58, a vacant site, has an average width of 38.55 feet (with a minimum width of 37.1 feet), and a total lot area of 3,855 sq. ft.; and

WHEREAS, the R1-2 zoning district regulations require a minimum lot width of 60 feet and a minimum lot area of 5,600 sq. ft., pursuant to ZR § 23-32; and

WHEREAS, Lot 56, the adjacent lot to the east, has similar dimensions to Lot 58 and several other lots on the subject block and is occupied by a two-family home; and

WHEREAS, the Appellant disagrees with DOB’s contention that Lot 56 and Lot 58 were not held in separate and individual ownership on December 15, 1961 and thus Lot 58 cannot be developed as an undersized lot; and

SITE HISTORY

WHEREAS, on July 1, 1941, Otto Westerfeld purchased Lot 56, which is occupied by a home built in approximately 1938 that remains; the home on Lot 56 has a Certificate of Occupancy No. 61216, issued on October 14, 1938; and

WHEREAS, on May 3, 1944, Otto Westerfeld and Christine Westerfeld purchased Lot 58, a vacant lot, as tenants by the entirety; and

WHEREAS, until 1985, Lot 56 was owned by Otto Westerfeld alone when it was transferred to Otto Westerfeld and his wife Christine Westerfeld as tenants by the entirety; and

WHEREAS, until Otto Westerfeld’s death in 1994, Lot 58 was held by Otto Westerfeld and Christine Westerfeld as tenants by the entirety; and

WHEREAS, from 1994 until her death in 2007, Lot 56 and Lot 58 were owned by Christine Westerfeld; and

WHEREAS, from 2007 until 2009, Lot 56 and Lot 58 were owned by the Westerfelds’ heirs; and

WHEREAS, in 2009, the Westerfelds’ heirs conveyed Lot 56 to the current owner; and

WHEREAS, Lot 58 is now owned by the Westerfelds’ heirs; and

WHEREAS, on April 23, 2012, the Appellant sought approval from DOB to allow Lot 58 to be developed as an “existing small lot” pursuant to ZR § 23-33; and

WHEREAS, DOB’s subsequent denial of the request forms the basis for the Final Determination; and

RELEVANT ZONING RESOLUTION PROVISIONS

WHEREAS, the Appellant and DOB cite the following Zoning Resolution provisions, which read in pertinent part:

ZR § 23-33

Special Provisions for Development of Existing Small Lots

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

In all districts, as indicated, either one #single-family detached residence# or, where permitted, one #single-# or #two family residence# may be #developed# upon a #zoning lot# that:

- (a) has less than the prescribed minimum #lot area# or #lot width# or, in #lower density growth management areas# in the Borough of Staten Island, does not comply with the provisions of Section 23-32 (Minimum Lot Area or Lot Width for Residences);
- (b) was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit or, in R2X, R3A, R3X or R4A Districts, both on the effective date of establishing such district on the #zoning maps# and on the date of application for a building permit or, in #lower density growth management areas#, both on December 8, 2005, and on the date of application for a building permit . . . ; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant makes the following primary arguments in support of its assertion that Lot 58 can be developed as an existing small lot in compliance with ZR § 23-33: (1) Lot 58 was owned separately and independently from all adjoining tracts of land on December 15, 1961 and today; (2) the history of development of Lot 56 has been independent of Lot 58; and (3) the Zoning Resolution does not require that adjacent zoning lots in common ownership be merged; and

Separate and Individual Ownership from Adjoining Tracts of Land

WHEREAS, the Appellant asserts that ownership of Lot

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56 by one individual and Lot 58 by that same individual and his wife as tenants by the entirety satisfies the separate and individual ownership requirement of ZR § 23-33; and

WHEREAS, the Appellant asserts that DOB is incorrect to say that the same person owned both lots on December 15, 1961 when one was owned individually by Otto Westerfeld and the other was owned by Otto Westerfeld and Christine Westerfeld as tenants by the entirety; and

WHEREAS, the Appellant relies on two New York State cases: Barbara Homes, Inc. v. Michaelis, 178 N.Y.S.2d 543 (Sup. Ct. 1958) and Edu Custom Builders, Inc. v. Young, 181 N.Y.S.2d 400 (Sup. Ct. 1958) to support its position that ownership of one property by an individual and the other by that individual and their spouse constitutes separate and individual ownership; and

WHEREAS, the Appellant disagrees with DOB's position to distinguish Barbara Homes and Edu Custom Builders on the basis that they concern the right to bequeath, sell, or encumber property because those issues are inherently related to zoning; and

WHEREAS, the Appellant notes that *The Law of Zoning and Planning* Section 49:20, acknowledges the holding in Barbara Homes and Edu Custom Builders with regard to the ownership of one property as an individual and a second as tenants by the entirety; and

WHEREAS, the Appellant acknowledges that from October 21, 1985 when Otto Westerfeld transferred Lot 56 to Otto Westerfeld and Christine Westerfeld as tenants by the entirety until the Westerfeld heirs' sale of Lot 56 on September 2, 2009, Lot 56 and Lot 58 were both owned by Otto Westerfeld and Christine Westerfeld as tenants by the entirety and not owned separately and individually from each other; and

WHEREAS, but, the Appellant notes that the period between 1985 and 2009 is not relevant to ZR § 23-33 and does not affect the required finding that there be separate and individual ownership on December 15, 1961 and on the date of application for a building permit; and

WHEREAS, as to the ownership on the date of an application for a building permit, the Appellant notes that since 2009, Lot 56 and Lot 58 have been owned separately and individually from each other; and

WHEREAS, the Appellant asserts that DOB incorrectly equates "separate and individual ownership" of adjoining tracts of land with "common ownership"; and

WHEREAS, as to the definition of separately and individually, the Appellant asserts that ZR § 23-33 does not make reference to common ownership, a term that was used in DOB Directive No. 14-1967 with the subject "Section 23-33 Zoning Resolution – Provisions for Existing Small Lots" but is not defined nor used in ZR § 23-33; and

History of Development of Lot 56 and Lot 58

WHEREAS, the Appellant asserts that a third party owned Lot 56 at the time of construction of the home there and the issuance of the Certificate of Occupancy in 1938, more than 23 years prior to the effective date of the 1961 Zoning Resolution; and

WHEREAS, the Appellant notes that Otto Westerfeld alone purchased Lot 56, three years later in 1941, 20 years prior to the effective date of the Zoning Resolution; and

WHEREAS, the Appellant asserts that given the history, it is clear that the owners did not try to circumvent the minimum lot size requirement, which was not conceived of or articulated in the Voorhees Report until two decades after the Westerfelds acquired the lots, one of which had previously been developed by another independent third party; and

WHEREAS, the Appellant notes that Lot 58 was vacant and undeveloped on the following dates: in 1938 (when Lot 56 was developed); 1941 (when Otto Westerfeld purchased Lot 56); 1944 (when Otto Westerfeld and Christine Westerfeld purchased it as tenants by the entirety); and 1961 (at the adoption of the Zoning Resolution with the § 23-33 restriction on small lots); and today; and

WHEREAS, the Appellant asserts that its history renders Lot 58 as a ZR § 12-10(a) lot and that DOB does not have the authority to require an involuntary merger pursuant to ZR § 12-10(b); and

WHEREAS, the Appellant notes that Lots 11, 15, 53, and 60 also adjoin Lot 58 and, as per ZR § 23-33, must also have been owned separately and individually from it on December 15, 1961 and on the date of an application for a building permit; and

WHEREAS, the Appellant has submitted deeds for all other adjoining lots which reflect that neither Otto Westerfeld nor Christine Westerfeld are listed as owners of Lots 11, 15, 53, or 60 on December 15, 1961; and

WHEREAS, the Appellant also submitted current deeds for Lots 11, 15, 53, and 60, which reflect that the Westerfelds' heirs are not listed as owners currently; and

WHEREAS, the parties agree that none of the other lots were owned with Lot 58 on December 15, 1961 or thereafter; and

The Absence of a Requirement to Merge Lot 56 and Lot 58

WHEREAS, in support of its assertion that Lot 58 may be developed separately from Lot 56, the Appellant applies the theory that an affirmative action is required to merge contiguous lots and that common ownership alone, without the affirmative action, does not create a de facto zoning lot; and

WHEREAS, the Appellant disputes DOB's position that the two lots were in common ownership, but notes that even common ownership would not force a merger that would require the lots to be developed together; and

WHEREAS, the Appellant cites to several sources including a June 24, 1988 letter from the Department of City Planning's General Counsel which states that the Board's position was that "common ownership of contiguous lots was not automatically recognized to create a zoning lot absent an affirmative action at the Department of Buildings by the filing of an application or alteration which treated the lots as one" and a September 13, 2010 determination by DOB which states that when adjacent lots are clearly distinct on December 15, 1961, they are considered ZR § 12-10(a) zoning lots for all future development unless an application is filed to unify the

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uses on the lots or the usage of the lots is linked, in which case they would be considered ZR § 12-10(b) zoning lots; and

WHEREAS, further, the Appellant states that New York courts have held that where there is no ordinance providing for merger by reason of common ownership, common ownership of adjoining parcels alone does not create a lot merger, citing to Allen v. Adami, 39 N.Y.2d 275 (1976); Van Perlstein v. Oakley et al., 611 N.Y.S.2d 336 (Sup. Ct. 1994); and

WHEREAS, accordingly, the Appellant asserts that Lot 58 can be developed as an existing small lot because it was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit and the owners did not take any affirmative action to merge the lots; and
DOB'S POSITION

WHEREAS, DOB makes the following primary arguments in support of its determination that Lot 58 cannot be developed as an existing small lot: (1) Lot 58 and Lot 56 were not owned separately and individually from each other on December 15, 1961; (2) Lot 56 and Lot 58 could have merged pursuant to ZR § 12-10(b); and (3) public policy dictates that undersized lots be prohibited from being developed in most instances; and

Separate and Individual Ownership

WHEREAS, DOB asserts that the same person – Otto Westerfeld - owned Lot 56 and Lot 58 on December 15, 1961 and, therefore, Lot 58 does not meet ZR § 23-33's requirement that the lot was owned "separately and individually" from other adjoining tracts of land on that date; and

WHEREAS, DOB cites to the deeds which reflect that on December 15, 1961, Otto Westerfeld and Christine Westerfeld owned Lot 58 and Otto Westerfeld owned Lot 56; and

WHEREAS, DOB asserts that since the deeds identify Otto Westerfeld as an owner of both lots on December 15, 1961, Lot 58 was not owned separately and individually from all other adjoining tracts of land on December 15, 1961 and therefore Lot 58 is not entitled to be developed as an existing small lot; and

WHEREAS, DOB states that it is not relevant that Christine Westerfeld was also an owner of Lot 58 in 1961, as Otto Westerfeld's ownership of "the totality of both lots" precludes a finding of separate and individual ownership in 1961; and

WHEREAS, DOB cites to a prior Board case at BSA Cal. No. 54-97-A (129 Garretson Avenue, Staten Island) in which the same two people both owned two lots that existed on December 15, 1961 as separate tax lots and the Board decided that "the fact that the lots are separately described in a deed and are separately assessed and taxed has no bearing on whether a lot is a separate lot for zoning purposes or on whether there is separate ownership"; and

WHEREAS, DOB states that the Board's decision in Garretson Avenue makes it clear that ZR § 23-33 requires more than simply a tract of land that existed on December 15, 1961; and

WHEREAS, DOB cites to the Board's consideration in Garretson Avenue that minimum lot width and lot area regulations are undermined if an owner who could have developed adjoining lots together in order to meet minimum size requirements is allowed to develop substandard-sized lots instead; in its Garretson Avenue decision, the Board stated that "the exception in ZR § 23-33 is narrowly drafted so that new frontage and area requirements will not be circumvented by an owner who could have developed the combined lots in conformance with the new zoning requirements at the time the zoning requirements were enacted"; and

WHEREAS, DOB asserts that the Barbara Homes and Edlu Custom Builders cases should not be followed because they are based on whether an owner has the right to bequeath, sell, and encumber property and not whether the owner has a right to develop land; and

WHEREAS, DOB states that the court noted that the zoning regulation at issue in Barbara Homes did not define or explain the term "common ownership" or "different ownership"; and

WHEREAS, DOB notes that the court concluded that the lots were not in common ownership under the statute because each spouse possessed the right of survivorship and neither spouse could sell or mortgage the property without the consent of the other, whereas an individual property owner had full control over his or her own property; and

WHEREAS, DOB distinguishes Barbara Homes and Edlu Custom Builders because it finds that even though tenancy by the entirety limits a spouse's right to bequeath, sell, and encumber a property, it does not limit one spouse's right as an owner of both lots in 1961 to merge the lots into a single zoning lot pursuant to the ZR § 12-10(b) "zoning lot" definition; and

WHEREAS, DOB asserts that rights related to survivorship, conveyance and encumbrance that Christine Westerfeld had to Lot 58 are not relevant to Otto Westerfeld's ability to merge Lots 58 and 56 into a ZR § 12-10(b) zoning lot; and

WHEREAS, accordingly, DOB asserts that the holdings in Barbara Homes and Edlu should not be followed since ZR § 23-33 is concerned with whether an owner would be able to merge lots into a zoning lot under the Zoning Resolution such that any single owner may develop the lots together and not whether that person has the right to bequeath, sell, or encumber property; and

WHEREAS, DOB states that its application of ZR § 23-33 is consistent with the plain meaning of the text; and

WHEREAS, specifically, DOB states that the common sense meaning of the text is that there is no right to develop a small lot if the same person owned or owns all of the small lot and all of an adjoining lot and that a small lot is not owned "separately and individually" from a contiguous lot if one individual had or has ownership of the entirety of both lots; and

WHEREAS, DOB states that in order to satisfy ZR § 23-33, completely different people must own the small lot and the surrounding lots because when one person owns both the

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small lot and an adjoining lot, there is a unity and singleness of ownership that is incompatible with the text's language; and

WHEREAS, DOB asserts that the Appellant's interpretation of ZR § 23-33 is not consistent with its plain language and that Christine Westerfeld's ownership of Lot 58 does not cause it to be owned separately and individually from Lot 56; and

WHEREAS, DOB states that if the text meant to exclude only those small lots that belong equally to any and all owners of neighboring lots, it would have instead stated that the small lot could be developed provided it was not held in "identical," "same" or "common" ownership with adjoining lots; and

WHEREAS, DOB states that when both lots are owned by one person, there is a unity of ownership, and an absence of separate and individual ownership, that is not trumped by the existence of an additional owner of one lot; and

Merger Pursuant to ZR § 12-10(b)

WHEREAS, DOB states that ZR § 23-33 must be read in conjunction with the ZR § 12-10 "zoning lot" definition to determine whether the small lot and an adjoining lot that is not owned separately and individually from the small lot could be developed as a single merged lot that complied with minimum lot size requirements; and

WHEREAS, DOB asserts that if the small lot and the adjoining lot could be merged into a single "zoning lot" by the owner of both lots in accordance with ZR § 12-10, then, by the Board's rationale in Garretson Avenue, the lot cannot be developed in reliance on ZR § 23-33 without undermining the Zoning Resolution's minimum lot standards; and

WHEREAS, DOB states that the small Lot 58 and adjoining Lot 56 were held in "single ownership" by Otto Westerfeld on December 15, 1961, so the lots could have been developed or used together as a "zoning lot" under the ZR § 12-10(b) definition and therefore the small lot should not be developed independently per ZR § 23-33 to circumvent minimum lot standards established in 1961; and

WHEREAS, DOB notes that a ZR § 12-10(b) zoning lot is defined as "a tract of land, either unsubdivided or consisting of two or more contiguous lots or record, located within a single 'block,' which, on December 15, 1961 or any applicable subsequent amendment thereto was in single ownership," consists of contiguous tax lots or other recorded parcels in single ownership on December 15, 1961 that are used or developed together pursuant to a permit, certificate of occupancy or other Department record; and

WHEREAS, DOB asserts that the Board's rationale in the Garretson Avenue decision supports its position that Lot 58 cannot rely on ZR § 23-33 because Otto Westerfeld, as an owner of both Lot 58 and Lot 56 on December 15, 1961 could have complied with ZR § 23-32 by applying for a permit to develop or used the lots together in accordance with the ZR § 12-10(b) "zoning lot" definition; and

WHEREAS, DOB cites to Newport Assn., Inc. v. Solow, 30 N.Y.2d 263 (1972) for the point that an owner can form a zoning lot under the Zoning Resolution where the owner does not possess complete control over that property;

and

WHEREAS, DOB notes that in Newport, the Court determined that a zoning lot could be formed out of three lots because the long-term lessee of one lot, who was also the fee owner of two adjoining parcels, held all the lots in "single ownership"; and

WHEREAS, DOB notes that the Court's decision was based on the 1961 Zoning Resolution definition of ownership of a zoning lot that included a lease of not less than 50 years duration, with an option to renew for an additional 25 years or longer; and

WHEREAS, DOB asserts that there is a parallel relationship between Newport's long-term lessee who had the right to create a zoning lot comprising all the parcels and could properly obtain a permit to use floor area derived from the portion of the lot he leased without needing the consent of the fee owner of the lot, and Otto Westerfeld who did not need Christine Westerfeld's consent to file an application to use or develop Lots 56 and 58 as a single zoning lot pursuant to ZR § 12-10(b) "zoning lot" definition; and

WHEREAS, DOB states that its determination that the subject lots were not owned separately and individually within the meaning of ZR § 23-33, but rather in single ownership, is consistent with the ruling in Newport; and

WHEREAS, DOB states that the 1977 Zoning Resolution amendment to the "zoning lot" definition did not nullify the Court's determination that one owner of an entire tract of land holds the land in "single ownership" even though the land includes differently held parcels; and

WHEREAS, DOB notes that the 1977 Zoning Resolution amendment removed the definition of "ownership" that included long term lessees, but this did not disturb the concept that an owner of a tract of land holds the land in "single ownership" and may develop as a ZR § 12-10(b) zoning lot notwithstanding the objection of an additional owner of a portion of the land; and

WHEREAS, DOB finds that the Newport Court recognized not just the leasehold ownership, but the fee ownership in lots which together placed the land under "single ownership" notwithstanding the existence of another owner of one of the lots; and

WHEREAS, DOB notes that the City Planning Commission (CPC) added the ZR § 12-10(d) zoning lot definition and removed the ownership through lease device for combining lots to solve the problem raised in Newport of allowing a party with a leasehold interest to shift unused development rights without notice to other parties holding property interests; and

WHEREAS, DOB notes that CPC did not amend ZR § 12-10(b) to change the concept that single ownership may have existed in 1961 in the absence of a leasehold interest where there was one fee owner of the entire tract of land in addition to other fee owners of portions of the land; and

WHEREAS, DOB states that if Lot 58 and Lot 56 are each a lot of record existing on December 15, 1961 and there was no application to develop or use the lots together in order to satisfy a requirement of the Zoning Resolution, they are

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each zoning lots as defined by ZR § 12-10(a), but they still cannot take advantage of the special provisions for developing existing small lots because ZR § 23-33 grants the exception only where the lots are separately and individually owned in 1961 and on the date of application for a building permit; and

WHEREAS, DOB states that there is nothing in the Administrative Code or Zoning Resolution that would preclude DOB from accepting a permit application filed by Otto Westerfeld had he chosen to exercise his right to merge the lots under ZR § 12-10(b) and DOB would have had no basis to revoke the permit in the event Christine Westerfeld objected to such merger; and

WHEREAS, DOB adds that as long as the land is held in “single ownership,” that owner is entitled to full utilization of development rights derived from the entire tract of land under ZR § 12-10(b), per Newport; and

Public Policy Goals

WHEREAS, DOB states that the Zoning Resolution sets a high standard in the R1 district to provide usable open space, privacy, and low density comparable to the standards in adjacent suburban areas for families that might otherwise leave the city (citing to Voorhees Walker Smith & Smith, Zoning New York City, A Proposal for a Zoning Resolution for the City of New York, August 1958); and

WHEREAS, DOB asserts that to allow Lot 58 to be developed separately from Lot 56 when both could have been merged by Otto Westerfeld in 1961 to comply with minimum size requirements would defeat the goal of the R1 districts minimum lot area and lot width regulation; and

WHEREAS, DOB asserts that ZR § 23-33 should be applied under limited circumstances because the Zoning Resolution’s minimum lot size and lot width requirements achieve important public purposes; and

CONCLUSION

WHEREAS, the Board has determined that Lot 58 meets the requirements of ZR § 23-33 and can be developed as an existing small lot; and

WHEREAS, specifically, the Board finds that Lot 58 meets the criteria of an existing small lot because: (1) it was owned separately and individually from all adjoining lots on December 15, 1961 and (2) it is owned separately and individually from all adjoining lots today (and since 2009), in advance of an application for a building permit; and

WHEREAS, the Board finds that because on December 15, 1961, Otto Westerfeld owned Lot 56 and Otto Westerfeld and Christine Westerfeld owned Lot 58 as tenants by the entirety, they were owned separately and individually; and

WHEREAS, the Board notes that the meaning of “owned separately and individually” is not clear on its face; however, the Board is not persuaded that the text has a plain meaning of practical, effective, or even common ownership; and

WHEREAS, further, the Board is not persuaded by DOB’s reliance on the term “single ownership” from the definition of “zoning lot” at ZR § 12-10(b) as there is no basis to import that term and it is similarly not defined, thus, its meaning in relation to ZR § 23-33’s “owned separately and

individually” is unclear; and

WHEREAS, the Board does not see any support in the text for DOB’s position that “owned separately and individually” means that in order to satisfy ZR § 23-33, the ownership of the two lots must be disconnected or completely distinct such that the lots could not have been developed together per the ZR § 12-10(b) definition of “zoning lot”; and

WHEREAS, the Board finds that the facts of Barbara Homes are on point to the extent that the case involved two adjoining sites, one owned by a husband and the other owned by the husband and his wife as tenants by the entirety and that the question was raised about whether development could occur on a lot that existed prior to the adoption of the zoning ordinance and was smaller than what the zoning ordinance required; and

WHEREAS, the Board notes that the statute in Barbara Homes precluded such development if the adjoining lots were in common ownership, but noted that common ownership was not defined in the statute; and

WHEREAS, the Board notes that in Barbara Homes, the court considered the principles of ownership by tenants by the entirety and found that in such an arrangement “neither party has any individual interest” and that there are numerous differences between individual or absolute ownership and tenancy by the entirety; and

WHEREAS, the Board notes that the court concluded that the sites were under different ownership and did not meet the zoning ordinance’s “common ownership” standard; and

WHEREAS, the Board notes that there has not been any dispute as to whether Lot 56 and Lot 58 are or will be owned separately and individually on the date of the application for a building permit; and

WHEREAS, the Board is not persuaded by DOB’s citation to the Garretson Avenue decision or the Newport case, both of which can be distinguished; and

WHEREAS, as to Garretson Avenue, the Board notes that both lots were unquestionably owned by the same two individuals on December 15, 1961, so there can be no claim that they were owned separately and individually; and

WHEREAS, the Board notes that it determined the Garretson Avenue case based on those facts failing to satisfy the requirements of ZR § 23-33 and not based on its statement that ZR § 23-33’s intent is to prohibit an owner who could have developed combined lots from developing an existing small lot; and

WHEREAS, further, the Board notes that the Appellant does not assert that merely because Lot 56 and Lot 58 existed in their current configuration on December 15, 1961 that the exception at ZR § 23-33 is available; and

WHEREAS, the Board notes that the Newport Court acknowledged the long-term lessee as *the* owner at the time of the application to transfer the air rights and rejected the fee owner as another owner with the right to transfer the air rights during the term of the lease; and

WHEREAS, further, the Board notes that the Newport case addressed whether the long-term lessee (*the* owner at the time of application) had the ability to merge the contiguous

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lots; it did not say that if the same identical entity owned contiguous lots it must merge them; and

WHEREAS, the Board finds that the Newport Court recognized an identical owner as the owner of the contiguous lots and there was not an assertion that there was co-ownership between the long-term lessee and the fee owner or that the long-term lessee had a co-owner in some other manner on one of the other lots; and

WHEREAS, the Board notes that Zoning Resolution text in effect at the time of the Newport decision recognized the long-term lessee as an owner who could satisfy the ZR § 12-10(b) requirement of a tract of land (three contiguous lots) in “single ownership” with the right to merge the lots and did not address the issue of co-ownership; and

WHEREAS, in Newport, the same entity was the owner (as it was defined at the time) of the leased lot and the adjacent two lots, which it owned in fee; and

WHEREAS, the Board notes that the Zoning Resolution was amended to exclude long-term lessees as owners who could assume the role of the fee owner to merge lots; and

WHEREAS, the Board finds that the Westerfelds’ ownership structure is quite different from Newport in that there is not a scenario under which both lots had the same owner because Otto was not the sole owner of both and nor were Otto and Christine as tenants by the entirety the owners of both; further, Newport did not address the question of tenants by the entirety, an ownership structure in which Otto nor Christine alone could fully assume the role of owner of Lot 58; and

WHEREAS, as to a zoning lot merger pursuant to ZR § 12-10(b), the Board does not find that the ability to merge the lots, when such merger is not automatic or required, is indicative of Lot 58 failing to meet the requirements of the ZR § 23-33 exception for small lots; and

WHEREAS, finally, the Board does not find the fact that DOB only requires one of the two tenants by the entirety to authorize applications for building permits to be conclusive on the question of whether the two lots are owned separately and individually; the Board notes that a single tenant by the entirety cannot encumber or alienate his or her property without the consent of the other; and

WHEREAS, the Board states that its decision is limited to the subject facts in which one spouse owned one lot and both spouses owned the adjoining undersized lot as tenants by the entirety on December 15, 1961, and it has not made a determination about any other ownership structure; and

WHEREAS, the Board concludes that, based upon the above, Lot 58 satisfies the ZR § 23-33 criteria for an existing small lot that can be developed according to all other applicable Zoning Resolution requirements.

Therefore it is Resolved, that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated July 2, 2013, is hereby granted.

Adopted by the Board of Standards and Appeals, September 24, 2013.

67-13-A

APPLICANT – Bryan Cave LLC, for ESS-PRISAI LLC, owner; OTR 945 Zerega LLC, lessee.

SUBJECT – Application February 12, 2013 – Appeal challenging Department of Buildings’ determination that the existing roof sign is not entitled to non-conforming use status. M1-1 zoning district.

PREMISES AFFECTED – 945 Zerega Avenue, Zerega Avenue between Quimby Avenue and Bruckner Boulevard, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Bronx Borough Commissioner of the Department of Buildings (“DOB”), dated January 14, 2013, denying registration for a sign at the subject premises (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. However, such documentation does not support the establishment of the existing sign prior to the relevant non-conforming use date. As such the sign is rejected. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS, a public hearing was held on this application on July 16, 2013, after due notice by publication in *The City Record*, and then to decision on September 24, 2013; and

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

WHEREAS, the subject premises (the “Premises”) is located on the southwest corner of the intersection of Zerega Avenue and Bruckner Boulevard, within an M1-1- zoning district; and

WHEREAS, the Premises is occupied by a five-story commercial building; atop the building is an advertising sign with a surface area of 672 sq. ft. (the “Sign”); and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign structure (the “Appellant”); and

WHEREAS, the Appellant states that the Sign is 50 feet from and within view of the Cross Bronx Expressway, an arterial highway pursuant to Appendix H of the Zoning Resolution; and

WHEREAS, the Appellant notes that on March 27, 2008, DOB issued Permit No. 210039224 for the repair of

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the structural elements of the Sign and on April 21, 2008, DOB issued Permit No. 201143253 for the repair of the Sign itself (collectively the “Permits”); however, on January 31, 2013, DOB revoked the Permits based on its determination that the Sign was not established as a non-conforming advertising sign; and

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of the registration (and related revocation of the Permits) of the Sign based on DOB’s determination that the Appellant failed to provide evidence of the establishment of an advertising sign; and

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

REGISTRATION REQUIREMENT

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

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

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

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

all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

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

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

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

WHEREAS, the acceptable forms of evidence set forth

at Rule 49 are, in pertinent part as follows:

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

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

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

REGISTRATION PROCESS

WHEREAS, on September 5, 2012, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching copies of cancelled checks, leases, and other agreements as evidence of establishment of the Sign; and

WHEREAS, on October 3, 2012, DOB issued a Notice of Sign Registration Deficiency, stating that “[DOB is] unable to accept the sign for registration at this time (due to a) failure to provide proof of legal establishment of the sign”; and

WHEREAS, by letter dated December 3, 2012, the Appellant submitted a response to DOB, including additional leases and DOB records, which it claimed demonstrated that the Sign was legally established; and

WHEREAS, DOB determined that the December 3, 2012 submission lacked sufficient evidence of the Sign’s establishment, and on January 14, 2013, issued the Final Determination denying registration; likewise, DOB revoked the Permits for the Sign by letter dated January 31, 2013; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 *Definitions*

Non-conforming, or non-conformity

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

* * *

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and

Designated Arterial Highways

M1 M2 M3

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

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

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

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

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

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

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

General Provisions

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

* * *

ZR § 52-61 *Discontinuance*

General Provisions

If, for a continuous period of two years, either the

#nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

* * *

Building Code § 28-502.4 – Reporting Requirement

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

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

* * *

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

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

* * *

RCNY § 49-16 – Non-conforming Signs

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

THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed and the Permits should be reinstated because the evidence it submitted was sufficient to demonstrate that the Sign was: (1) established as a non-conforming use; and (2) not discontinued for a period of two

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or more years since establishment; and

WHEREAS, the Appellant contends that the evidence it has submitted demonstrates that the Sign was established at the Premises prior to November 1, 1979 and therefore may be continued pursuant to ZR § 42-55(c)(2); specifically, the Appellant submitted: a June 12, 1978 lease between Joma Manufacturing Company (of the Premises) and Allied Outdoor Advertising (the “1978 Lease”), an affidavit from Allied Outdoor Advertising President Richard J. Theryoung (the “Theryoung Affidavit”), and an affidavit from advertising and media consultant Bruce Silverman (the “Silverman Affidavit”), and asserts that these items are, considered together, a sufficient basis for a finding that the Sign existed as of November 1, 1979; and

WHEREAS, the Appellant states that the 1978 Lease authorized Allied Outdoor Advertising (“Allied”) to construct and maintain a sign atop the roof of the Premises for seven years, from June 15, 1978 to June 14, 1985; as such, it is evidence that the Sign existed as of November 1, 1979; and

WHEREAS, the Appellant contends that the Theryoung Affidavit, in which the affiant states that he was President of Allied from 1979 to 1997 and that the Sign was constructed in early 1979 and continuously maintained thereafter, further supports the establishment of the Sign; and

WHEREAS, as to the Silverman Affidavit, the Appellant notes that it should be understood as providing background information on the outdoor advertising industry in New York City in the 1970s and supportive of the establishment of the Sign; according to the affiant, recordkeeping practices in the industry at the time were so uneven that the presence of the 1978 Lease makes the existence of the Sign virtually certain; and

WHEREAS, accordingly, the Appellant asserts that it has demonstrated that the Sign existed as of November 1, 1979 and was therefore established as a non-conforming advertising sign; and

WHEREAS, the Appellant contends that the evidence it has submitted demonstrates that the Sign has not been discontinued since its establishment and is not subject to termination under ZR § 52-61; and

WHEREAS, specifically, the Appellant has submitted the following to evidence the Sign’s continuity: (1) a July 15, 1980 Work Completion Notice (the “1980 Notice”) for the construction of a Best Way Food Stores sign; (2) an affidavit from Frank Ferrovechio, who attests that he commuted on the Bruckner Expressway during the 1980s and 1990s and observed the Sign daily; (3) the 1980 Lease, which the Appellant asserts shows continuity from 1978 through 1985; (4) leases with substantial rents in 1988 and 1998; (5) the Theryoung Affidavit; (6) a November 26, 1996 contract for tobacco bulletins for the period 1994 to 1998; (7) miscellaneous lease forms and correspondence between Allied and Universal Outdoor from 1996, 1997, 1998, 2000, 2008 and 2009; (8) 1997 and 1998 rent invoices; (9) a 1998 late notice; (10) a check covering the period between the beginning of July 2004 and the end of August 2004; (11) insurance certificates from 2000 to 2005; (12) a 2007 lease

termination; and (13) photographs of the Premises and the Sign from approximately 2005 and from February 2008 through the present; and

WHEREAS, as to any gaps in the evidence, the Appellant requests that the Board apply the evidentiary principle of the “presumption of continuity” as set forth in *Prince-Richardson on Evidence* § 3-101 (1995) and *Wilkins v. Earle*, 44 NY 172 (1870), to find that the Sign was not discontinued because DOB has not presented evidence of discontinuance; in particular, the Appellant asserts that under that principle, once an object, condition, or tendency is factually established, it may be presumed to continue for as long as is usual with such conditions; further, the Appellant explains that the presumption of continuity “reflects a common sense appraisal of the probative value of circumstantial evidence,” *Foltis v. City of New York*, 287 NY 108, 115 (1941), and should be applied in the instant matter to find that the evidence supports a finding that the Sign continued even if the items of evidence of its existence do not cover the entire period in question; and

WHEREAS, furthermore, the Appellant points to the Silverman Affidavit to bolster its claim that recordkeeping was generally inconsistent in the outdoor advertising industry during most of the time period in question and that the existence of any supporting documentation is persuasive evidence that the Sign existed continuously; and

WHEREAS, as to DOB’s assertion that a tax photograph from the 1980s shows that the Sign and its structure were removed, the Appellant states that such a photograph only shows the Premises at a single point in time and not over a period of time; as such, it is not sufficient evidence to conclude that the Sign was discontinued for more than two years, and the Appellant cites the Board’s decision in BSA Cal. No. 96-12-A (2284 12th Avenue, Manhattan) in support of the principle that a single photo cannot, standing alone, demonstrate that a use was discontinued for more than two years; and

WHEREAS, the Appellant also notes that the 1980 Notice—which DOB asserts is evidence that the Sign was not constructed prior to November 1, 1979—merely supports the continued existence of the Sign and is not dispositive on the actual date that the Sign was established; and

WHEREAS, finally, as to whether the Sign was, as DOB contends, prohibited from being reconstructed after it was removed pursuant to ZR §§ 42-55 and 52-83, the Appellant asserts that DOB has previously accepted as a non-conforming use signs that appear to have been altered, relocated, or reconstructed; and

WHEREAS, specifically, the Appellant states that signs at the following addresses were structurally altered, relocated and/or reconstructed: 5 Eldridge Street, Manhattan; 330 East 126th Street, Manhattan; 2284 12th Avenue, Manhattan; 682-686 East 133rd Street, Bronx; 586 Third Avenue, Brooklyn; 51-06 Vernon Boulevard, Queens; and 54-30 43rd Street, Queens; and

WHEREAS, as such, the Appellant asserts that DOB’s position that removal and reconstruction of the Sign violated

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ZR §§ 42-55 and 52-83 in this case is belied by its position in prior instances and is, thus, arbitrary; and

WHEREAS, accordingly, the Appellant states that DOB's Final Determination with respect to the Sign and revocation of the Permits should be reversed; and

DOB'S POSITION

WHEREAS, DOB asserts that: (1) the Appellant has not submitted sufficient evidence to demonstrate the Sign was established at the Premises prior to November 1, 1979; and (2) even if the Board were to find that the Sign was established, the evidence demonstrates that it was removed and reconstructed contrary to ZR §§ 42-55; and 52-83; and

WHEREAS, DOB states that the 1978 Lease and Theryoung Affidavit are, collectively, insufficient evidence of the establishment of the Sign at the Premises prior to November 1, 1979; and

WHEREAS, DOB asserts that under Rule 49(d)(15)(b), an affidavit, on its own and without supporting documentation, is insufficient evidence of establishment; and

WHEREAS, DOB contends that although the Appellant has submitted the 1978 Lease as supporting documentation for the statements of the Theryoung Affidavit, the 1978 Lease by its terms does not demonstrate the establishment of the Sign; and

WHEREAS, in particular, DOB asserts that, according to the language employed in the 1978 Lease ("Lessee will erect the said advertising sign structure and its appurtenances"), Allied was authorized to construct and maintain a sign at the Premises, rather than maintain an existing sign at the Premises; and

WHEREAS, DOB asserts that distinction is critical, because it demonstrates that no sign existed when the 1978 Lease was executed and gives no indication as to when the rights under the lease to construct the Sign were exercised; thus, DOB concludes that the evidence fails to demonstrate the Sign was established prior to November 1, 1979; and

WHEREAS, DOB also contends that a Department of Finance tax photograph from the 1980s shows the Premises without the Sign and its structure; accordingly, DOB concludes that the Sign was removed at some point and reconstructed, in violation of ZR §§ 42-55 and 52-83; and

WHEREAS, specifically, DOB states that pursuant to ZR § 42-55, which regulates advertising signs in manufacturing districts, no advertising sign may be structurally altered, relocated or reconstructed if that sign is located in a district regulated by ZR § 42-55 and is within 200 feet of an arterial highway; and

WHEREAS, DOB notes that ZR § 52-83 allows non-conforming advertising signs in specific zoning districts to be structurally altered, reconstructed, or replaced, provided that such alteration does not create any new non-conformity; however, the section also contains an exception clause, which states, "except as otherwise provided in Section 42-55"; and

WHEREAS, therefore, DOB contends that where a non-conforming advertising sign is in a district covered by

both ZR § 52-83 and ZR § 42-55, the exception clause in ZR § 52-83 requires that the more restrictive provisions of ZR § 42-55 apply; as such, in this case, ZR § 42-55 prohibits the Sign, which is within an M1-1 district and within 50 feet of an arterial highway, from being structurally altered, relocated or reconstructed; and

WHEREAS, accordingly, DOB contends that the Sign cannot have non-conforming status because it was removed and reconstructed in the 1980s contrary to ZR §§ 42-55 and 52-83; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determination denying the registration of the Sign and properly revoked the Permits; and

CONCLUSION

WHEREAS, the Board finds that DOB properly denied the Sign registration because the Appellant has not met its burden of demonstrating that the Sign was established prior to November 1, 1979; and

WHEREAS, the Board agrees with DOB that, by its terms, the 1978 Lease is only evidence of what Allied was authorized to do, namely construct and maintain the Sign; and

WHEREAS, thus, the Board also agrees with DOB that nothing in the 1978 Lease provides a basis for the Board to determine when the Sign was actually constructed; the 1978 Lease speaks to, at most, when the Sign *could have been* constructed; and

WHEREAS, further, the Board finds that the only other item of evidence that is somewhat contemporaneous with the 1978 Lease is the 1980 Notice, which is dated July 15, 1980, and which suggests that the Sign construction was completed more than eight months after November 1, 1979, the required date of establishment in ZR § 42-55; and

WHEREAS, as to the Theryoung Affidavit, the Board finds that it lacks specificity and contains conclusory statements, which do not credibly establish that the Sign existed at the Premises prior to November 1, 1979; and

WHEREAS, the Board notes that although Theryoung states that he was "directly involved" in the "specific project" he provides no details regarding the dimensions, orientation, or message of the Sign; and

WHEREAS, as to the Silverman Affidavit, the Board finds that insofar as it seeks to equate the 1978 Lease with the existence of the Sign prior to November 1, 1979, it is not persuasive; indeed, the Board notes that in this case, the record indicates that there was a time period during the 1980s when a lease for the Sign existed, but the Sign—and its structure—were absent from the roof of the Premises; and

WHEREAS, accordingly, the Board agrees with DOB that the Appellant has not submitted sufficient evidence of the Sign's establishment prior to November 1, 1979; and

WHEREAS, because the Board finds that the Sign was never established as non-conforming, it is unnecessary to determine whether the Zoning Resolution permitted its removal and reconstruction or whether the presumption of continuity impels the Board to find, based on the Appellant's evidence, that the Sign was not discontinued;

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and

WHEREAS, therefore, the Board finds that DOB's enforcement against the Sign is warranted, and as such, DOB properly rejected the Appellant's registration of the Sign and properly revoked the Permits.

Therefore it is Resolved, that this appeal, challenging a Final Determination issued on January 14, 2013, is denied.

Adopted by the Board of Standards and Appeals, September 24, 2013.

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.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated July 31, 2013, acting on Department of Buildings Application No. 320517017, reads, in pertinent part:

The existing building is a Historic Structure and as per FIRM map 3604970203F is located within an area of special flood hazard (Elev. 10 AE Zone). The elevation of the lowest level is below the Base Flood Elevation and compliance with BC Appendix G (G304.1.2, section 1 or 2) is required; and

WHEREAS, this is an administrative appeal filed pursuant to Appendix G, Section BC G107 of the New York City Administrative Code (the "Building Code") to permit the renovation and enlargement of an existing building in a flood hazard area contrary to the flood-proofing requirements of Appendix G, Section G304.1.2 of the Building Code; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, and then to decision on September 24, 2013; and

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

Commissioner Ottley-Brown; and

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

WHEREAS, Councilmember Steven T. Levin submitted a written statement in support of this application; and

WHEREAS, the subject site is a corner lot located on the north side of Water Street between New Dock Street and Old Dock Street within the Empire-Fulton Ferry State Park a/k/a Brooklyn Bridge Park, within an M3-1 zoning district; (zoning compliance has been overridden by the General Park Plan); and

WHEREAS, the site is occupied by the remnants of a building, which was constructed between 1860 and 1861, altered numerous times over the years, and has come to be known as the "Tobacco Warehouse"; it is included on the National and New York State Registers of Historic Places and was designated an individual landmark by the Landmarks Preservation Commission ("LPC") in 1977; and

WHEREAS, the applicant proposes to integrate the remnants of the building—which are free-standing masonry walls—into a new theater building with approximately 19,000 sq. ft. of floor area and 7,000 sq. ft. of open space; the applicant notes that the theater will be operated as "St. Ann's Warehouse"; and

WHEREAS, the applicant states that the proposed building does not comply with the flood-proofing requirements of the Building Code; and

WHEREAS, accordingly, the applicant seeks a variance pursuant to Section BC G107.2.1; and

WHEREAS, the applicant states that the site is located within a Special Flood Hazard Area as determined by the Federal Emergency Management Agency ("FEMA"), as indicated on the Flood Insurance Rate Maps for the City of New York; and

WHEREAS, Appendix G, Section BC G304 of the Building Code establishes general limitations on occupancy and construction within Special Flood Hazard Areas; and

WHEREAS, specifically, Section BC G304.1.2 requires that nonresidential buildings comply with either an "elevation option," in which the lowest floor is elevated at or above the design floodplain elevation, or a "dry floodproofing option," in which the building is made watertight to a level at or above the design flood elevation, or obtain a variance; and

WHEREAS, the applicant states that the design floodplain elevation is 8.44 feet and the proposed ground floor elevation is 7.29 feet; therefore, the ground floor elevation is below the design floodplain elevation, contrary to Section BC G304.1.2; and

WHEREAS, accordingly, the instant appeal was filed seeking relief from Appendix G, Section G304.1.2 of the Building Code; and

WHEREAS, pursuant to Building Code Appendix G Section G107.2.1, the Board may grant a variance to the provisions of Section G304 upon finding that: (1) the application has received approval from LPC and/or the New

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York State Historical Preservation Office, as applicable; (2) the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure; and (3) the variance is the minimum necessary to preserve the historic character and design of the structure; and

WHEREAS, the applicant states that on June 4, 2013, LPC issued a positive advisory report for the proposal, and by letter dated July 19, 2013, the New York State Historic Preservation Office indicated that it had forwarded the proposal to the National Park Service with the recommendation that it be approved; and

WHEREAS, the applicant states that the proposed rehabilitation will not preclude the structure's continued designation as a historic structure; and

WHEREAS, in particular, the applicant states that the proposal is supportive of the historic structure, in that: (1) it maintains the existing masonry walls and openings, which give the building its distinctive character; (2) it preserves the ground floor openings in their original relationship to the grades at Water Street and the surrounding park (which historically were the working waterfront streets and spaces); and (3) it employs design elements, such as doors, windows, and interior finishes that allude to the historic function and configuration; and

WHEREAS, the applicant states that the variance is the minimum necessary to preserve the historic character and design of the structure; and

WHEREAS, specifically, the applicant states that the Tobacco Warehouse's distinctive façade and its historic at-grade entrances from the street are key elements of the building's historic character and design; as such, alteration of these elements to provide a compliant elevation or dry floodproofing was deemed infeasible; and

WHEREAS, as to elevating the building, the applicant represents that it would require extensive structural modifications and the creation of accessible ramps and landings, which would alter the site and surrounding spaces and be inconsistent with the historic character and design of the building; in addition, the applicant represents that the proposed ground floor elevation is the highest elevation that will provide the minimum floor-to-ceiling height necessary (20 feet) to create a modern performance venue that will accommodate stage sets, lighting positions and seating with proper viewlines within the proposed total building height (38.75 feet), which the applicant endeavored to minimize, both for preservation, and neighborhood-impact purposes; and

WHEREAS, as to dry floodproofing the building, the applicant represents that it would require the partial disassembly and reconstruction of the façade with an integrated water membrane, the installation of steel receiving channels on the façade or within door jambs, and the construction of flood gates at entrances, all of which would compromise the aesthetics of the building and the site; and

WHEREAS, based on its review of the record, the Board finds that the proposed repair or rehabilitation will

not preclude the structure's continued designation as a historic structure, and that the variance is the minimum necessary to preserve the historic character and design of the structure; and

WHEREAS, further, as noted above, LPC issued a positive advisory report for the proposal on June 4, 2013, and by letter dated July 19, 2013, the New York State Historic Preservation Office indicated that it had forwarded the proposal to the National Park Service with the recommendation that it be approved; and

WHEREAS, in addition to the specific findings the Board must make pursuant to Appendix G Section G107.2.1, the Board must also evaluate the effect of the proposed variance on the following factors: (1) the danger that material and debris may be swept onto other lands resulting in damage or injury; (2) the danger to life or property due to flooding or erosion damage; (3) the susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners; (4) the importance of the services provided by the proposed development to the community; (5) the availability of alternative locations for the proposed development that are not subject to flooding or erosion; (6) the relationship of the proposed development to comprehensive plan and flood plain management program for that area; (7) the safety of access to the property in times of flood for ordinary and emergency vehicles; (8) the expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and (9) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges; and

WHEREAS, the applicant represents that the proposed variance would not create the danger that material and debris may be swept onto other lands resulting in damage or injury, in that the applicant has developed a building safety plan to be implemented in the event of a flood warning; in such case, the plan requires all unfixed items to be relocated to the mezzanine level, to the top of the seating riser, or onto the catwalk structure; and

WHEREAS, the applicant represents that the proposed variance would not create a danger to life and property due to flooding or erosion damage, in that the applicant anticipates that it will receive sufficient notice of a flood and that it will prevent occupancy of the building during any such event; further, as noted above, in a flood event, all unfixed items at the ground floor will be relocated; and

WHEREAS, the applicant states that flood damage to the proposed building and its contents would be limited because the project requires that critical building elements and infrastructure (electrical, mechanical, ducted distribution, and lighting) that could be damaged during flooding are located well above the base flood elevation; in addition, the finishes at the ground level (concrete floors, gypsum and plywood) are comparatively inexpensive and

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easy to replace in the event that they are damaged by flood waters; likewise, office spaces are to be located at upper levels, which will protect records, furnishings and equipment; finally, the proposed elevator is controlled by a gearless hoist mechanism located at the top of the elevator shaft, approximately 22 feet above the ground floor, and the elevator pit will contain only incidental equipment, such as an access ladder, steel guiderails, and pit bumpers; and

WHEREAS, as to the importance of the services provided by the proposed development to the community and the availability of alternative locations for the proposed development that are not subject to flooding or erosion, the applicant represents that the adaptive reuse of the 250-year-old Tobacco Warehouse on the Brooklyn waterfront as a community and performance space furthers the public interest in historic preservation and the arts and has garnered the support of numerous elected officials and community groups; and

WHEREAS, as to the relationship of the proposed development to the comprehensive plan and flood plain management program for that area and the safety of access to the property in times of flood for ordinary and emergency vehicles, the applicant represents that, as noted above, it has developed a comprehensive flood management program for the building, including the evacuation of the building during a hazardous flood and the provision of additional staffing, which obviates the need for vehicular access to the site; however, if access were to become necessary, the applicant notes that it is easier under the proposed design than it would be if flood gates and barriers were provided in accordance with Building Code Appendix G; and

WHEREAS, as to the expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, the applicant represents that the proposed building and grounds do not impact such items; the applicant also notes that the existing building survived the surge that accompanied Superstorm Sandy without damage to its structure and the proposed building is designed to withstand similar floodwaters; and

WHEREAS, finally, the applicant represents that the proposal does not increase the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges; and

WHEREAS, based on the above, the Board has determined that the evidence in the record supports the findings required to be made pursuant to Building Code Section BC G107.2.1 and Section 666(7) of the New York City Charter.

Therefore it is Resolved, that the application to permit the renovation and enlargement of an existing building in a flood hazard area contrary to the flood-proofing requirements of Section BC G304.1.2 of the Building Code is granted; *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 August 30, 2013” nine (9) sheets; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited objections; 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 not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 24, 2013.

143-11-A thru 146-11-A

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

SUBJECT – Application September 16, 2011 – Appeal challenging the Fire Department’s determination that the grade of the fire apparatus road shall not exceed 10 percent, per NYC Fire Code Section FC 503.2.7. R2 zoning district. PREMISES AFFECTED – 20, 25, 35, 40 Harborlights Court, east side of Harborlights Court, east of Howard Avenue, Block 615, Lot 36, 25, 35, 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

58-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Sylvaton Holdings LLC, owners.

SUBJECT – Application February 5, 2013 – Proposed construction of a twelve-family residential building located partially within the bed of a mapped but unbuilt street contrary to General City Law Section 35. R4/M3-1 zoning district.

PREMISES AFFECTED – 4 Wiman Place, west side of Wiman Place, south of Sylvaton Terrace and north of Church Lane, Block 2827, Lot 205, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for adjourned hearing.

68-13-A

APPLICANT – Bryan Cave LLP, for ESS PRISA LLC, owner; OTR 330 Bruckner LLC, lessee.

SUBJECT – Application February 13, 2013 – Appeal challenging Department of Buildings’ determination that the existing sign is not entitled to non-conforming use status. M3-1 zoning district.

PREMISES AFFECTED – 330 Bruckner Boulevard, Bruckner Boulevard between E. 141 and E. 149 Streets, Block 2599, Lot 165, Borough of Bronx.

COMMUNITY BOARD #1BX

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
November 19, 2013, at 10 A.M., for decision, hearing
closed.

87-13-A

APPLICANT – Bryan Cave LLP, for 176 Canal Corp.,
owner .OTR Media Group; lessee
SUBJECT – Application March 6, 2013 – Appeal
challenging Department of Buildings’ determination that the
existing sign is not entitled to non-conforming use status.
C6-1G zoning district

PREMISES AFFECTED – 174 Canal Street, Canal Street
between Elizabeth and Mott Streets, Block 201, Lot 13,
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 October
22, 2013, at 10 A.M., for decision, hearing closed.

98-13-A

APPLICANT – Eric Palatnik, P.C., for Scott Berman,
owner.
SUBJECT – Application April 8, 2013 – Proposed two-
story two family residential development which is within the
unbuilt portion of the mapped street on the corner of Haven
Avenue and Hull Street, contrary to General City Law 35.
R3-1 zoning district.

PREMISES AFFECTED – 107 Haven Avenue, Corner of
Hull Avenue and Haven Avenue, Block 3671, Lot 15,
Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to
November 19, 2013, at 10 A.M., for adjourned hearing.

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

ACTION OF THE BOARD – Laid over to

November 19, 2013, at 10 A.M., for deferred decision.

131-13-A & 132-13-A

APPLICANT – Sheldon Lobel, P.C., for Rick Russo, owner.
SUBJECT – Application May 10, 2013 – Proposed
construction of a residence not fronting on a legally mapped
street, contrary to General City Law Section 36. R2 & R1
(SHPD) zoning districts.

PREMISES AFFECTED – 43 & 47 Cecilia Court, Cecilia
Court off of Howard Lane, Block 615, Lot 210, Borough of
Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October
22, 2013, at 10 A.M., for continued hearing.

224-13-A

APPLICANT – Slater and Beckerman, P.C., for Michael
Pressman, owner.
SUBJECT – Application July 25, 2013 – Appeal
challenging the determination by the Department of
Buildings that an automatic sprinkler system is required in
connection with the conversion of a three family dwelling (J-
2 occupancy) to a two-family (J-3 occupancy). R6B zoning
district.

PREMISES AFFECTED – 283 Carroll Street, north side of
Carroll Street between Smith Street and Hoyt Street, Block
443, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to October
22, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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ZONING CALENDAR

72-12-BZ

CEQR #12-BSA-104K

APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.

SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.

PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, September 24, 2013.

211-13-BZ

CEQR #14-BSA-007M

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 public 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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, a reinstatement, and an extension of term for the continued use of a parking garage for more than five vehicles, which expired on May 29, 1971; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by

publication in *The City Record*, and then to decision on September 24, 2013; and

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

WHEREAS, Community Board 1, Manhattan, noted its familiarity with the subject site but declined to issue a recommendation regarding this application; and

WHEREAS, the site comprises the block bounded by Broadway, Leonard Street, Catherine Street and Lafayette Street and is within a C6-4A zoning district; and

WHEREAS, the site has 60 feet of frontage along Broadway, 400 feet of frontage along Leonard Street, 401.75 feet of frontage along Catherine Street, and 82.83 feet of frontage along Lafayette Street, and is occupied by a 12-story commercial building; and

WHEREAS, the exterior and portions of the interior of the building are designated as individual landmarks by the Landmarks Preservation Commission (“LPC”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 29, 1956, when, under BSA Cal. No. 18-56-BZ, the Board granted a use variance to permit a portion of an existing building to be used as a parking garage for more than five motor vehicles, contrary to 1916 Zoning Resolution § 7f; the Board granted the variance for a term of 15 years; and

WHEREAS, by resolution dated July 17, 1956, the Board amended the grant to allow access to the garage by ramp, instead of elevators; and

WHEREAS, the term of the grant expired in 1971 and was never extended; and

WHEREAS, the applicant now seeks to reinstate the variance granted under BSA Cal. No. 18-56-BZ for a term of ten years; and

WHEREAS, the applicant proposes to locate 110 parking spaces in the basement (21 spaces) and in the cellar (79 spaces, including stacker spaces) of the building, and provide access to the facility via a curb cut on Leonard Street; and

WHEREAS, the applicant notes that the City of New York, Department of Citywide Administrative Services (“DCAS”) has owned the site since 1968; recently, the site was the subject of a request for proposals by the New York City Economic Development Corporation and a purchaser has been selected; the prospective owner seeks to convert the building to primarily residential use and to continue the parking use; and

WHEREAS, the Board notes that, under its Rules, an applicant requesting reinstatement of a pre-1961 use variance must demonstrate that: (1) the use has been continuous since the expiration of the term; (2) substantial prejudice would result if reinstatement is not granted; and (3) the use permitted by the grant does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, as to continuity, the applicant represents

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that, although the term expired in 1971, the parking use has been continuous from 1971 to the present; in support of this representation, the applicant submitted numerous leases, certificates of insurance, communications, appraisals, licenses, permits, court filings, and various other public records, which demonstrate the continuity of the parking use; and

WHEREAS, further, the applicant represents that substantial prejudice would result if reinstatement is not granted, because both DCAS and the prospective owner, in agreeing to the terms of sale, contemplated that the garage use would be continued and that the garage would be an available amenity to the residents of the building and to the public in the surrounding area; and

WHEREAS, as to the whether the parking use substantially impairs the appropriate use and development of adjacent properties, the applicant asserts that the garage has operated continuously at the site as the neighborhood has evolved from predominantly commercial and manufacturing to mixed residential and commercial; further, the parking spaces have always been and will to continue to be located in the cellar and basement of the building, which mitigates any impact the garage may have upon adjacent properties; and

WHEREAS, based on the applicant's representations, the Board finds that reinstatement of the subject variance is appropriate; and

WHEREAS, the applicant also requests a ten-year extension of the term; and

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

WHEREAS, at hearing, the Board requested clarification regarding whether: (1) the accessory signage near the intersection of Lafayette Street and Leonard Street was approved by LPC; and (2) whether the stackers in the cellar were approved by the Department of Buildings ("DOB"); and

WHEREAS, in response, the applicant submitted amended plans indicating that: (1) the signage at the intersection of Lafayette Street and Leonard Street had been removed and noting that signs may be posted at the garage entrance, not illuminated and not extending beyond the building line, to identify the garage and provide such other information as may be required by the Department of Consumer Affairs; and (2) the parking would be according to layouts approved by DOB and would not exceed 110 spaces; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 11-411 to permit, within a C6-4A zoning district, the reinstatement of a prior Board approval for a parking garage at the subject site, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked

'Received September 9, 2013'- (5) sheets; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on September 24, 2023;

THAT the layout of the spaces will be as approved by DOB and will not exceed 110 spaces;

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

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

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

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

(DOB Application No. 121684301)

Adopted by the Board of Standards and Appeals, September 24, 2013.

16-12-BZ

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

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district. PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

COMMUNITY BOARD #4BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for decision, hearing closed.

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 October 29, 2013, at 10 A.M., for adjourned hearing.

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282-12-BZ

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

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

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

339-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Lion Bee Equities, LLC., owner.

SUBJECT – Application December 12, 2012 – Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.

PREMISES AFFECTED – 252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway, Block 8129, Lot p/o 53, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

13-13-BZ & 14-13-BZ

APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.

SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for decision, hearing closed.

77-13-BZ

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 45 Great Jones Street LLC, for Joseph Lauto, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit residential use, contrary to ZR 42-00 and ground floor commercial use contrary to ZR§42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 45 Great Jones Street, between Lafayette and Bowery Streets, on the south side of Great Jones Street, Block 530, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for decision, hearing closed.

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 new four-story, four-unit residential building (UG 2), contrary to use regulations, ZR §42-00. M1-1& R7A/C2-4 zoning districts.

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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for decision, hearing closed.

81-13-BZ

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

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

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

COMMUNITY BOARD # 13Q

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for adjourned hearing.

MINUTES

100-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zipporah Farkas and Zev Farkas, owners.

SUBJECT – Application April 10, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1352 East 24th Street, west side of East 24th Street between Avenue M and Avenue N, Block 7659, Lot 69, 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 October 22, 2013, at 10 A.M., for decision, hearing closed.

106-13-BZ

APPLICANT – Law office of Fredrick A Becker, for Harriet and David Mandalaoui, owners.

SUBJECT – Application April 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461) and perimeter wall height (§23-631); R3-2 zoning district.

PREMISES AFFECTED – 2022 East 21st Street, west side of East 21st Street between Avenue S and Avenue T, Block 7299, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

162-13-BZ

APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.

SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units, ground floor retail, and 11 parking spaces, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100' south of Spring street, Block 490, Lot 27, 35, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

167-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Michael Calabrese, owner.

SUBJECT – Application June 4, 2013 – Variance (§72-21) to permit the enlargement of an existing one-story automobile sales establishment, contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1614/26 86th Street and Bay 13 Street, southwest corner of 86th Street and Bay 13 Street, Block 6363, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.