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41-14-BZ

21-37 Waverly Avenue, Located between Flushing Avenue and Park Avenue front both Washington and Waverly Avenues, Block 1874, Lot(s) 38, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-19) seeks proposed legalization of the existing religious based(Use Group 3) Yeshiva school. M1-2 zoning district M1-2 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

APRIL 1, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 1, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

156-02-BZ

APPLICANT – Herrick Feinstein Lullaby Jennifer Dickson, for 8021 15th Avenue Corp., owner; JP Morgan Chase & Co., lessee.

SUBJECT – Application August 1, 2013 – Extension of Term (§11-411) of a previously approved variance which permitted the maintenance of a new and used car sales lot with an accessory office and parking, which expired on August 5, 2013: Amendment (§11-413) to permit the change in use to an accessory parking lot to an existing bank. R5B zoning district.

PREMISES AFFECTED – 964 65th Street, between Fort Hamilton Parkway and Tenth Avenue. Block 5750, Lot 49 (Tent 51). Borough of Brooklyn.

COMMUNITY BOARD #10BK

174-07-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bolla EM Realty, LLC, owner.

SUBJECT – Application November 12, 2013 – Extension of Time to complete construction of a previously approved Special Permit (§73-211) which permitted the reconstruction of an existing Auto Service Station (UG 16B which expired on June 17, 2012; Amendment to permit changes to the canopy structure, exterior yard and interior accessory convenience store layout. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, northeast corner of Avenue P. Block 6758, Lot 51. Borough of Brooklyn.

COMMUNITY BOARD #12BK

177-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.

SUBJECT – Application January 2, 2014 – Amendment of a previously approved Variance (§72-21) which permitted construction of a 2- story and mezzanine, 2-family residential building that did not comply with §23-45(a) (front yard), the amendment seeks to permit construction of a 3-story, 3-family residential building. R5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, southeast corner of the intersection of Glenmore Avenue and Milford Street. Block 4208, Lot 17. Borough of Brooklyn.

COMMUNITY BOARD #5BK

COMMUNITY BOARD #5BK

ZONING CALENDAR

178-13-BZ

APPLICANT – Jeffery A. Chester, Esq./GSHLLP for Peter Procops, owner; McDonald's Corporation, lessee.

SUBJECT – Application June 9, 2013 – Special Permit (§73-243) for an eating and drinking establishment with an existing accessory drive-through facility. C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection with Beach Channel Drive, Block 15709, Lot 101. Borough of Queens.

COMMUNITY BOARD #14Q

250-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 3555 White Plains Road Corp., owner; 3555 White Plains Road Fitness Group. LLC., lessee.

SUBJECT – Application August 28, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Fitness Center*) on the cellar, first and second floors. R7A/C2-4 zoning district.

PREMISES AFFECTED – 3555 White Plains Road, west side of White Plains Road approximately 100' south of the intersection formed by East 213 Street and White plains Road, Block 4643, Lot 43, Borough of Bronx.

COMMUNITY BOARD #12BX

275-13-BZ

APPLICANT – Warshaw Burstein, LLP, for Kedzkidz Realty LLC., owner; Antonaccio-Crous, LLC, lessee.

SUBJECT – Application September 26, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment with the existing building. M1-5 zoning district.

PREMISES AFFECTED – 404-406 Broadway, east side of Broadway south of its intersection with Canal Street in TriBeCa, Block 196, Lot 3. Borough of Manhattan.

COMMUNITY BOARD #1M

285-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 495 Flatbush Ave, LLC, owner; 495 Flatbush Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*fitness center*) on the first and the second floors of the existing building. C8-6 zoning district.

PREMISES AFFECTED – 495 Flatbush Avenue, east side of Flatbush Avenue approximately 110 feet northwest of its intersection with Lefferts Avenue, Block 1197, Lot 6.

CALENDAR

Borough of Brooklyn.

COMMUNITY BOARD #9BK

286-13-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Trebinski, owner.

SUBJECT – Application October 11, 2013 – Variance (§72-21) for the proposed enlargement of an existing one story residential home contrary to front yard (ZR §23-45); side yard (ZR §23-161); floor area and lot coverage (ZR §23-141) and off street parking requirements (ZR §25-621(B). R4 zoning district.

PREMISES AFFECTED – 2904 Voorhies Avenue, Voorhies Avenue, between Nostrand Avenue and a dead end portion of East 29th Street, Block 8791, Lot 201, Borough of Brooklyn.

COMMUNITY BOARD #15BK

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub, LLC., owner; Metropolitan College of New York, lessee.

SUBJECT – Application November 22, 2013 – Variance (§72-21) the proposed college (UG 3))(MCNY) to occupy 816 square feet of floor area at the proposed second floor which falls within a manufacturing (M-1) zoning district.

PREMISES AFFECTED – 459 East 149th Street, northwest corner of Brook Avenue and East 149th Street, Block 2294, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MARCH 11, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

331-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Blue Millennium Realty LLC, owner; Century 21 Department Stores LLC, lessee.

SUBJECT – Application October 24, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the expansion of floor area in an existing commercial structure (*Century 21*). The amendment seeks to permit a rooftop addition above the existing building which exceeds the maximum permitted floor area. C5-5 (LM) zoning district.

PREMISES AFFECTED – 26 Cortlandt Street, located on Cortlandt Street between Church Street and Broadway. Block 6911, Lot 6 & 3. Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance, which, pursuant to ZR § 72-21, authorized in a C5-5 zoning district within the Special Lower Manhattan District the enlargement of an existing commercial building contrary to floor area regulations and waived the requirement to relocate two adjacent subway entrances in connection with the enlargement; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

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

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

WHEREAS, the subject site spans the full length of the east side of Church Street, between Cortlandt Street and Dey Street, within a C5-5 zoning district, within the Special Lower

Manhattan District; and

WHEREAS, the site comprises Lots 3 and 6, has approximately 170 feet of frontage along Cortlandt Street, approximately 215 feet of frontage along Church Street, approximately 128 feet of frontage along Dey Street, 38,178 sq. ft. of lot area, and is located across the street from the World Trade Center site; and

WHEREAS, Lot 3 is occupied by a 34-story commercial building (the “Tower Building”) and Lot 6 is occupied by a five-story commercial building (the “Bank Building”); together, the buildings have 595,882 sq. ft. of floor area (15.6 FAR); and

WHEREAS, the applicant represents that Century 21 Department Store (“Century 21”) occupies the entirety of the Bank Building and floors one through six of the Tower Building, as well as the two buildings adjacent to the Tower Building on Block 63, Lot 1 (“10-12 Cortlandt Street”); and

WHEREAS, on February 15, 2005, under the subject calendar number, the Board granted a variance to permit: (1) a 4,583 sq.-ft. enlargement of the existing second-floor mezzanine of the Century 21 store in the Bank Building, while an equal amount of floor area was simultaneously retired via deed restriction from 10-12 Cortlandt Street; and (2) a waiver of the requirement to relocate two adjacent subway entrances in connection with the enlargement, contrary to ZR §§ 31-122 and 91-43; and

WHEREAS, the applicant now requests an amendment to permit the construction of a partial sixth floor atop the Bank Building, which will increase the floor area on the site by 4,622 sq. ft. from 595,882 sq. ft. (15.6 FAR) to 600,504 sq. ft. (15.73 FAR), and increase the height of the Bank Building from 71'-0" to 83'-0"; as in the previous grant, this enlargement will: (1) be offset by a deed restriction retiring 4,622 sq. ft. of floor area recorded against 10-12 Cortlandt Street; and (2) require a waiver of the requirement (ZR § 91-43) to relocate the two subway entrances adjacent to the site; and

WHEREAS, the applicant states that Century 21 will use the new sixth floor as an event space, which will allow for: (1) private exhibitions of new vendor merchandise or Century 21-curated merchandise; (2) presentations and functions hosted by Century 21 for their buyers and vendors, including catered dinners or luncheons; and (3) a designated area for executive meetings and sales force conferences; and

WHEREAS, the applicant asserts that the event space is critical to Century 21’s remaining competitive in the shrinking department store market, and in support of this statement, the applicant provided an analysis that reflects that all other large New York City department stores have private event space; and

WHEREAS, the applicant notes that the neighborhood is characterized by high-density mixed commercial and residential uses and that a department store is entirely consistent with such uses; and

WHEREAS, as for the enlargement’s impact upon adjacent properties, the applicant states that it is minimal; specifically, the applicant notes that the only adjacent building

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on the block—the 34-story Tower Building—is partially occupied by Century 21 and otherwise occupied by commercial uses; as such, the modest increase in height will have no impact; and

WHEREAS, as to the required waiver for the relocation of two subway entrances, the applicant states that, as in the original grant, the costs of such relocation far exceed the benefits derived from the enlargement that triggers the relocation requirement; indeed, Century 21’s most valuable selling space—at the cellar and first floor—would be reduced in order to accommodate the subway work; and

WHEREAS, in addition, the applicant asserts that the subway relocation requirement set forth in ZR § 91-43 was intended for major renovations of Lower Manhattan buildings and that minor increases in floor area to accommodate existing uses—the proposed enlargement increases the FAR by 0.13—were not contemplated despite the use of the defined term “enlargement”; and

WHEREAS, at hearing, the Board noted that the deed restriction retiring the floor area at 10-12 Cortlandt Street required under the prior grant had not yet been recorded; accordingly, the Board directed the applicant to record the deed restriction retiring 9,205 sq. ft. of floor area (which represents 4,583 sq. ft. of floor area from the original grant and 4,622 sq. ft. requested under this application); additionally, the Board directed the applicant to clarify the amount of available floor area at 10-12 Cortlandt Street and to clarify the impact of the proposed sixth floor on the Tower Building’s windows; and

WHEREAS, in response, the applicant represented that the deed restriction would be recorded upon approval of this application; and

WHEREAS, as to the amount of available floor area at 10-12 Cortlandt Street, the applicant states that 10-12 Cortlandt Street has a maximum permitted floor area of 92,955 sq. ft., 20,412 sq. ft. of which are built and 9,205 sq. ft. of which are to be retired by the deed restriction discussed above, leaving 63,337 sq. ft. available for development; and

WHEREAS, as to whether the proposed sixth floor would obstruct any windows at the Tower Building, the applicant submitted a letter from the project architect stating that it would not; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated February 15, 2005, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received February 11, 2014’- Five (5) sheets; and *on further condition*:

THAT the Tower Building and the Bank Building will have a maximum of 600,504 sq. ft. of floor area (15.73 FAR);

THAT the Bank Building will have a maximum height of 83’-0”;

THAT prior to DOB’s issuance of a permit, a deed restriction providing for the permanent and irrevocable retirement of 9,205 sq. ft. of floor area as to 10-12 Cortlandt Street will be executed and recorded, and then submitted to DOB, with a copy of same to the Board’s Executive Director for placement in the case file;

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

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

THAT 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.”

Adopted by the Board of Standards and Appeals, March 11, 2014.

240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties, LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of a UG16 auto repair shop with sales, which expired on June 8, 2010; Waiver of the Rules. C2-2(R6B), R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, south side of Northern Boulevard, 350 East of intersection of Northern Boulevard, and 206th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for decision, hearing closed.

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lesaga LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of a UG6 eating and drinking establishment (*McDonald's*), which expired on May 18, 2009; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, north side of Madison Street 184’ east of the intersection of Madison Street and Rutgers Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

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ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

166-12-A

APPLICANT – NYC Department of Buildings.
OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.
SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.
PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for adjourned hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.
SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7-2 zoning district. R7B zoning district.
PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for adjourned hearing.

123-13-A

APPLICANT – Bryan Cave, for Speakeasy 86 LLC c/o Newcastle Realty Services, owner; TSI West 41 LLC dba New York Sports Club, lessee.
SUBJECT – Application April 29, 2013 – Appeal challenging the determination of the Department of Buildings’ to revoke a permit on the basis that (1) a lawful commercial use was not established and (2) even assuming lawful establishment, the commercial use discontinued in 2007. R6 zoning district.
PREMISES AFFECTED – 86 Bedford Street, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for deferred decision.

215-13-A

APPLICANT – Anthony A. Lenza , owner
SUBJECT – Application July 16, 2013 – Appeal challenging denial of the Department of Building’s determination regarding floor area (§12-10 (12) (ii)). R1-1 zoning district.
PREMISES AFFECTED – 300 Four Corners Road, Block 894, Lot 235, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

192-13-BZ

CEQR #13-BSA-163M

APPLICANT – Jesse Masyr, Esq., Fox Rothschild, LLP, for AP-ISC Leroy, LLC, Authorized Representative, owner.
SUBJECT – Application July 2, 2013 – Variance (§72-21) to permit the construction of a residential building with accessory parking, contrary to use regulations (§42-10). M1-5 zoning district.
PREMISES AFFECTED – 354/361 West Street aka 156/162 Leroy Street and 75 Clarkson Street, West street between Clarkson and Leroy Streets, Block 601, Lot 1, 4, 5, 8, 10, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –
WHEREAS, decision of the Manhattan Borough Commissioner, dated June 10, 2013, acting on Department of Buildings Application No. 121330611, reads:

Proposed Residential UG 2 is not permitted in M1-5 District; contrary to ZR 42-10; and

WHEREAS, to permit, within an M1-5 zoning district, the construction of a 12-story mixed residential/commercial building with ground floor retail use and 12 accessory parking spaces, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in the *City Record*, with continued hearings on January 14, 2014 and February 4, 2014, and then to decision on March 11, 2014; and

WHEREAS, the site and surrounding area had site and

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neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the Greenwich Village Society for Historic Preservation and the Greenwich Village Community Task Force provided testimony in opposition to the application, primarily citing concerns about the establishment of a unique hardship; and

WHEREAS, the site is located on the east side of West Street between Clarkson Street and Leroy Street, within an M1-5 zoning district; and

WHEREAS, the site has 200 feet of frontage on West Street, 176 feet of frontage on Leroy Street, 106 feet of frontage on Clarkson Street, and a lot area of approximately 28,362 sq. ft.; and

WHEREAS, the site is occupied with five buildings ranging in height from one to three stories, with commercial and industrial use including a 24-hour cabaret lounge, an automobile repair service, a vacant diner, a construction materials sales and hardware center, a vacant automobile laundry and oil change facility with outdoor parking spaces, and a shipping and receiving office; and

WHEREAS, the applicant states that all buildings on the zoning lot will be demolished in anticipation of construction; and

WHEREAS, the applicant proposes to construct a 12-story building with 141,815 sq. ft. of floor area (5.0 FAR), 77 residential units (UG 2) (4.97 FAR), ground floor retail (UG 6) (0.03 FAR), and 12 accessory parking spaces in the cellar; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the history of use and development of the site; (2) poor subsurface conditions including deep bedrock, soft soils, and shallow ground water; and (3) the location within a flood zone; and

WHEREAS, as to the history of development of the site and the existing conditions, the applicant states that the site is at the end of a series of mixed and residential uses and is the last low density underdeveloped site located along West Street within the M1-5 zoning district not developed with residential or mixed use buildings; and

WHEREAS, the applicant notes that the existing buildings, which are occupied by a mix of uses, do not conform to the current Building Code and can be classified as obsolete; and

WHEREAS, the applicant states that an 1879 map reflects that a coal yard and iron works were formerly located on the zoning lot and, later, a motor freight station, smelting and iron works, an automotive repair shop, machine shops, and building materials establishments; and

WHEREAS, as to the soil conditions, the applicant notes that the historic industrial use of the site has resulted in the contamination of the soils that will require extensive clean-up

and increased construction costs; and

WHEREAS, the applicant states that during Super Storm Sandy, the site experienced significant flooding and waste oil and petroleum contaminated oil were required to be removed pursuant to the jurisdiction of the New York State Department of Environmental Conservation; and

WHEREAS, the applicant states that the site also contains multiple recognized environmental conditions ("RECs") as described in the Phase I Environmental Assessment; and

WHEREAS, accordingly, the applicant represents that there are significant premium costs associated with the long history of contamination at the site; and

WHEREAS, as to the subsurface conditions, the applicant notes that the site is at the western edge of the original Manhattan shoreline, which (1) comprises urban fill that is considered unsuitable for load-bearing materials; and (2) has bedrock and subsoil conditions that require a deeper and more extensive pile foundation system; and

WHEREAS, the applicant states that the western portion of the block is located outboard of the historic shoreline (not part of the original outline of Manhattan) on reclaimed land, with the original Manhattan shoreline located at the northeast corner of the site; and

WHEREAS, the applicant asserts that if the site were two blocks north, it would be entirely inboard of the historic shoreline and not subject to the same hardship; and

WHEREAS, the applicant represents that the poor subsurface conditions at the site, including loose soil, shallow groundwater level, and the location within the 100-year flood plain lead to premium construction costs; and

WHEREAS, the applicant states that the urban fill is found about ten to 18 feet below the existing grade and comprises brown and gray coarse to fine sand with varying amounts of silt and gravel; and

WHEREAS, the applicant states that below the fill is an approximately 6'-0" layer of high plasticity clay at depths between 10.5 and 16.5 feet; and

WHEREAS, the applicant states that bedrock was encountered between 90 and 94 feet below grade and groundwater was measured at a depth of 11.5 to 18 feet below grade and about three to five feet below mean sea level; and

WHEREAS, in support of these assertions, the applicant submitted an engineering report that details the subsurface conditions and distinguishes it from nearby sites; and

WHEREAS, the applicant states that the soil and subsurface conditions require a deep pile foundation system and, due to the proximity of nearby buildings, deep piles must be drilled into caissons; and

WHEREAS, the applicant states that the high water table requires the utilization of dewatering and waterproofing measures for a development to resist the effects of hydrostatic pressure; and

WHEREAS, the applicant states that the location primarily within Flood Zone A requires higher base planes, limited uses below grade, and extra waterproofing; and

WHEREAS, the applicant also notes that regulatory

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changes in response to the flooding caused by Super Storm Sandy create new development obligations and requirements that impact development within the newly-adopted FEMA flood zones; and

WHEREAS, the applicant notes that the new flood zone regulations require that a building be raised to the base flood elevation of the new FEMA flood zone maps; and

WHEREAS, for the subject site, the elevation requires the ground floor to be raised five to six feet above the existing grade; and

WHEREAS, as to the uniqueness of the noted conditions, the applicant submitted a technical memorandum prepared by the project engineer, which analyzed seven sites along West Street from Leroy Street (the northern street bordering the subject site) to West 12th Street; and

WHEREAS, the applicant notes that the sites are primarily not in the same zoning district as the subject site, but they are located on West Street and have been recently developed with residential uses; and

WHEREAS, the applicant states that of the seven sites, bedrock was encountered at depths of 80 to 100 feet, comparable to the site, with the exception of 400 West 12th Street (“Superior Ink”) where the bedrock extended on part of the site to approximately 140 feet below grade; and

WHEREAS, however, the applicant notes that three sites are located inboard of the historic shoreline (150 and 165 Charles Street and 176 Perry Street); two sites are located outboard of the historic shoreline (423 West Street and 400 West 12th Street); one is located at the edge (173 Perry Street) and one is split (Morton Square); and

WHEREAS, the applicant states that the three sites that are inboard of the historic shoreline have soil conditions composed of urban fill, underlain by glacial deposits underlain by bedrock; and

WHEREAS, the applicant states that the sites inboard of the historic shoreline lack the presence of organic river deposits and have been (or are currently being) developed with shallow mat foundations; and

WHEREAS, the applicant states that the four sites located outboard, on the edge, or split by the historic shoreline have soil composition similar to the other sites but with the presence of organic river deposits; and

WHEREAS, the applicant represents that the outboard sites have all been developed with deep pile foundations due to the unsuitability of the soil composition primarily due to the presence of organic river deposits; and

WHEREAS, the applicant notes that Morton Square, divided by the historic shoreline and the only site analyzed located within the M1-5 zoning district is also encumbered by the PATH tunnel within Morton Street, which puts additional constraints on the kind of foundation system required with the addition of required drilled piles to protect the integrity of the cast iron encased tunnel; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with

the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will realize a reasonable return; and

WHEREAS, the applicant provided an initial feasibility study analyzing two scenarios: (1) an as-of-right hotel building; and (2) the proposed mixed use residential/commercial building with 5.0 FAR; and

WHEREAS, the applicant’s financial analysis reflected that only the initial proposal would realize a reasonable rate of return; and

WHEREAS, the Board directed the applicant to also analyze (1) a lesser variance alternative with 4.0 FAR and (2) an as-of-right office alternative; and

WHEREAS, the applicant’s analysis concluded that neither supplemental alternative would realize an acceptable rate of return; and

WHEREAS, the revised financial analysis reflects that only the current proposal provides the applicant with a reasonable rate of return; and

WHEREAS, based upon its review of the applicant’s financial analysis, the Board has determined that because of the subject site’s unique physical conditions, there is no reasonable possibility that use in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(b); and

WHEREAS, the applicant notes that the site is bordered by three streets: West Street, a major arterial highway; Leroy Street, a west-moving narrow local street; and Clarkson Street, an east-moving narrow local street providing one of the few signalized left turn exits off of the southbound West Street; and

WHEREAS, the applicant notes that opposite the site across West Street is the Hudson River Park and Pier 40, which includes a mix of offices, recreational fields, and parking; and

WHEREAS, the applicant notes that north of the site is Morton Square, a mixed-use primarily residential building occupying the entire block; and

WHEREAS, the applicant asserts that Morton Square defines the beginning of a residential and mixed-use corridor extending along West Street north to the Meatpacking District at Little West 12th Street; and

WHEREAS, the applicant notes that within the M1-5 zoning district is a Special Mixed Use District – MX6, which pairs a residential R7X zoning district with the underlying M1-5 zoning district for a portion of the two blocks northeast of the site; this area includes apartment buildings and commercial art galleries; and

WHEREAS, the applicant states that adjacent to the site

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to the east is an at-grade parking facility on Leroy Street and wrapping around Clarkson Street to Washington Street is a Federal Express parking facility; and

WHEREAS, the applicant states that in the immediate vicinity are a mix of uses including (1) south of the site across Clarkson Street, the St. John's Terminal building, a four-block long terminal and warehouse building; and (2) a UPS trucking and shipping terminal; and

WHEREAS, the applicant notes that the M1-5 district extends along West Street one block south, but that block is fully occupied by the St. John's Terminal Building; and

WHEREAS, the applicant states that south and east of the site is the newly-adopted mixed-use Special Hudson Square District, where infill residential use is permitted within the manufacturing area; and

WHEREAS, accordingly, the applicant asserts that the proposed residential use, with 77 units, an accessory parking garage at the cellar level, and retail use on a portion of the first floor is compatible with the nearby uses within the far West Village on West Street; and

WHEREAS, the applicant asserts that the current condition of the zoning lot lacks cohesiveness and is not reflective of the context of the surrounding area; and

WHEREAS, as to the building form, the applicant notes that the proposed 12-story building will have a height of approximately 155 feet with a curvilinear façade, occupying the full West Street block front and extending down Leroy Street and Clarkson Street; and

WHEREAS, the applicant states that the design with its undulating wall without a setback is intended to help activate the street level of the building and engage with the sidewalk; and

WHEREAS, the applicant notes that the proposed 5.0 FAR is consistent with the bulk regulations in the M1-5 zoning district and the nearby MX6 district; and

WHEREAS, the applicant states that the buildings in the area range in height from one-, two-, and three-story buildings between Christopher Street and Charles street to the Westbeth with a height of 185 feet; and

WHEREAS, the applicant notes that Morton Square on the other side of Leroy Street has 14 stories and a height of 155 feet; and

WHEREAS, the applicant notes that the as-of-right hotel building could have a height of 233 feet; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 77 dwelling units is compatible with the neighborhood character; and

WHEREAS, the Board notes that there are no bulk regulations for a residential building in an M1-5 zoning district, but that the proposed FAR of 5.0 and all other bulk parameters are consistent with zoning district regulations; and

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

WHEREAS, the Board finds that, consistent with ZR §

72-21(d), the hardship herein was not created by the owner or a predecessor in title but is rather due to the inherent conditions of the site; and

WHEREAS, the applicant represents that the proposed use and bulk, which is consistent with the bulk for a conforming use, reflect the minimum waivers necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief, as set forth in ZR 72-21(e); and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA163M, dated June 27, 2013; and

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

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

WHEREAS, DEP recommends that an (E) Designation for hazardous materials be placed on the subject property, with the understanding that the New York City Office of Environmental Remediation may request additional data collection; and

WHEREAS, DEP recommends that the (E) Designation also encompass noise to ensure tracking and enforcement of the noise attenuation requirements; and

WHEREAS, the Board has obtained (E) Designation number E-332 from the Department of City Planning; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

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1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5 zoning district, the construction of a 12-story mixed residential/commercial building with ground floor retail use and 12 accessory parking spaces, which is contrary to ZR § 42-10; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received March 10, 2014”– Thirteen (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of 12 stories; 77 residential units; a total floor area of 141,815 sq. ft. (5.0 FAR); a maximum height of 155 feet; and a maximum of 12 accessory parking spaces;

THAT the development of the site is subject to the conditions of (E) Designation E-332;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 11, 2014.

236-13-BZ

CEQR #14-BSA-021M

APPLICANT – Warshaw Burstein, LLP by Joshua J. Rinesmith, for 423 West 55th Street, LLC, owner; 423 West 55th Street Fitness Group, LLP, lessee.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on the first and mezzanine floors of the existing building, and Special Permit (§73-52) to allow the fitness center use to extend 25’-0” into the R8 portion of the zoning lot. C6-2 & R8 zoning district.

PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, 275’ east of the intersection formed by 10th Avenue and West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 21, 2014, acting on Department of Buildings (“DOB”) Application No. 104325776, reads in pertinent part:

Proposed use as a physical culture establishment . . . is contrary to ZR 32-10;

Proposed extension of physical culture establishment use into R8 portion of zoning lot is contrary to ZR 22-10 and 77-11; and

WHEREAS, this is an application under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C6-2 zoning district and partially within an R8 zoning district, within the Special Clinton District, the operation of a physical culture establishment (“PCE”) in portions of the first floor and mezzanine level of an existing 12-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R8 portion of the zoning lot, contrary to ZR § 77-11; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

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

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped zoning lot located on the north side of West 55th Street between Ninth Avenue and Tenth Avenue, partially within a C6-2 zoning district and partially within an R8 zoning district, within the Special Clinton District; and

WHEREAS, the site has approximately 225 feet of frontage along West 55th Street and 24,603 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the proposed PCE will occupy portions of the first floor (20,412 sq. ft. of floor area), and mezzanine level (1,777 sq. ft. of floor area), for a total PCE floor area of 22,189 sq. ft.; and

WHEREAS, the applicant notes that the Board has exercised jurisdiction over the site since July 25, 2006, when, under BSA Cal. No. 46-06-BZ, it granted a special permit pursuant to ZR § 73-36 to permit the operation of a PCE unaffiliated with the applicant for a term of ten years, to expire on July 25, 2016; and

WHEREAS, the applicant represents that although the prior grant did not authorize extension of the PCE into the R8 portion of the lot, it is believed that such extension occurred; in any event, the prior PCE has since vacated the space; and

WHEREAS, the applicant states that the proposed PCE will operate as a Planet Fitness; and

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WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C6-2 portion of the site 24 feet into the R8 portion of the site; and (2) pursuant to ZR § 73-36, obtain a special permit for the operation of the PCE in portions of the first floor and mezzanine of the existing commercial building at the site; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided that: (1) without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (2) such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold issue of single ownership, the applicant submitted documents reflecting the history of ownership of the subject site and adjoining sites showing that the zoning lot was in single ownership prior to December 15, 1961; and

WHEREAS, as to the 50-percent lot area requirement, the applicant submitted a site plan indicating that approximately 22,594.5 sq. ft. of the site's 24,603 sq. ft. of lot area (92 percent) is located within a C6-2 zoning district; and

WHEREAS, accordingly, the Board finds that the site meets the threshold requirements for ZR § 73-52; and

WHEREAS, as to economic feasibility, the applicant represents that it would not be economically feasible to use or develop the R8 portion of the site for a permitted use; specifically, the applicant states that the residential portion of the site is occupied with a portion of the existing building that is too small to accommodate an independent, viable residential or community facility tenant; and

WHEREAS, in addition, the applicant states that the portion of the site and the building within the R8 district is at the rear of the site and does not have access to a public street; therefore, developing the R8 portion of the site with a community facility or residential use is infeasible; and

WHEREAS, the applicant notes that, under Article V, commercial use is permitted as a non-conforming use within the R8 portion of the site; however, the construction of a non-PCE commercial use is constrained for the same reasons that as-of-right uses are constrained: the R8 portion of the site is landlocked and, accordingly, undesirable to most commercial uses; as such, providing the costly improvements to operate as an independent commercial space—partitions, mechanicals, and a wheelchair lift for accessibility—would not be economically feasible since the space would have to be offered at significantly discounted rents; and

WHEREAS, accordingly, absent the requested extension of the PCE into the residential space, a substantial portion of the first floor of the building would be unusable

and remain vacant; and

WHEREAS, the Board agrees that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R8, for a permitted use; and

WHEREAS, as to the extension's effect on the surrounding area, the applicant states that the proposed extension is consistent with existing land use conditions and anticipated projects in the immediate area, in that the area surrounding the site is predominated by high-density commercial and residential uses; further, the proposed PCE will be entirely within the existing building; and

WHEREAS, the applicant also notes that the PCE does not have any windows on entrances facing the residential district, and that commercial and industrial uses have existed at the site for approximately 100 years; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C6-2 zoning district portion of the lot into the R8 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-52; and

WHEREAS, turning to the findings for ZR § 73-36, the applicant represents that the services at the PCE include facilities for group training, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

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

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

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

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

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

WHEREAS, at hearing, the Board questioned whether the mezzanine was required to be made accessible for persons with certain physical disabilities; and

WHEREAS, in response, the applicant represented that the mezzanine level was not required to be made accessible because the amenities offered on that level are available on one or more accessible levels of the PCE; and

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings

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pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA021M, dated August 6, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C6-2 zoning district and partially within an R8 zoning district, within the Special Clinton District, the operation of a PCE in portions of the first floor and mezzanine level of an existing 12-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R8 portion of the zoning lot, contrary to ZR § 77-11; *on condition* that all work will substantially conform to drawings filed with this application marked “December 23, 2013” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 11, 2024;

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

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

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

THAT substantial construction will be completed in

accordance with ZR § 73-70;

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

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

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

Adopted by the Board of Standards and Appeals, March 11, 2014.

274-13-BZ

CEQR #14-BSA-045M

APPLICANT – Sheldon Lobel, P.C., for SKP Realty, owner; H.I.T. Factory Approved Inc., owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the operation of a physical culture establishment (*H.I.T. Factory Improved*) on the second floor of the existing building. C1-3/R6B zoning district.

PREMISES AFFECTED – 7914 Third Avenue, west Side of Third Avenue between 79th and 80th Street, Block 5978, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated September 9, 2013, acting on DOB Application No. 320782630, reads, in pertinent part:

Proposed physical culture establishment use is not permitted in a C1-3 zoning district, per ZR 32-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment (“PCE”) within the second story of a two-story residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in the *City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

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

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WHEREAS, Community Board 10, Brooklyn, recommends approval of the application, provided that the hours of operation are limited to daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the subject site is located on the west side of Third Avenue, between 79th Street and 80th Street, within a C1-3 (R6B) zoning district within the Special Bay Ridge District; and

WHEREAS, the site has approximately 60 feet of frontage along Third Avenue and 6,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with approximately 11,500 sq. ft. of floor area (1.9 FAR); and

WHEREAS, the applicant notes that the first floor of the building is occupied by a grocery store and the second floor is vacant; and

WHEREAS, the applicant notes that the building was constructed in or around 1931 and that the site has been subject to the Board's jurisdiction since July 24, 1959, when, under BSA Cal. No. 398-58-BZ, it granted a variance permitting a factory contrary to use regulations; in addition, later that year, on September 29, 1959, under BSA Cal. No. 399-58-A, the Board granted an appeal waiving the live load requirements for the second story; and

WHEREAS, the applicant states that the manufacturing use remained on the second story until around 1972, when the manufacturer vacated the space, and remained vacant until around 2000, when a martial arts studio leased the space and occupied it until March 2012; and

WHEREAS, the applicant acknowledges that a martial arts studio is a PCE and concedes that a variance was not obtained for the operation of the studio; however, the applicant represents that both the building owner and the martial arts studio were unaware that a martial arts studio is considered a PCE and that PCEs are not permitted within a C1-3 (R6B) district; and

WHEREAS, the applicant now seeks a variance to operate the subject PCE, which will be known as H.I.T. Factory, occupy 5,400 sq. ft. of floor area on the second story, and operate daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the second floor in conformance with applicable regulations: (1) the second floor's configuration, depth, and size; and (2) its absence of street-level exposure; and

WHEREAS, the applicant states that the historic configuration, depth, and size of the second floor—the characteristics that made it suitable for historic manufacturing use—render it unsuitable for modern conforming uses; and

WHEREAS, specifically, the applicant states that the second floor has a large open floorplate, which would require utilities upgrades and partition construction in order to accommodate a modern business or professional office, at significant cost; and

WHEREAS, the applicant also asserts that the large size (approximately 6,000 sq. ft.) and depth (approximately 92

feet) of the second floor make residential use infeasible; and

WHEREAS, in particular, the applicant states that the second floor would be able to provide a rear yard depth of only ten feet, which is 20 feet less than the minimum required for habitable rooms; accordingly, all dwelling units must use the Third Avenue frontage of the building for required light and ventilation, which effectively prohibits the rear of the building from being converted to residences; and

WHEREAS, the applicant also states that the lack of light and ventilation owing to the building's depth would further decrease its attractiveness to modern business or professional offices, which prefer natural light; and

WHEREAS, similarly, the second floor's absence of street-level exposure makes it undesirable for local retail and service establishment uses, which rely primarily on pedestrian visibility and convenience of access in order to attract customers; as such, the rent for the second floor must be heavily discounted in order to offset the limitations of the space; and

WHEREAS, the applicant notes that the second floor's unattractiveness to tenants is evidenced by its 28-year vacancy, which, as noted above, began in 1972 and ended when a martial arts studio (a PCE) began occupying the space in 2000; and

WHEREAS, to support its claim of unique hardship, the applicant provided an area study of the 92 buildings within 600 feet of the site; and

WHEREAS, based on the study, only one other building has a second floor commercial use: 7819 Third Avenue, which has a Rite-Aid store on the first floor and "Tutor Time," an infant child care and preschool, on the second floor; and

WHEREAS, however, the applicant asserts that the Tutor Time building is distinguishable from the site, in that it has significantly more lot area (approximately 9,600 sq. ft.) and is located on a corner, where light and ventilation are available for residential or modern office uses; and

WHEREAS, the Board agrees with the applicant that the aforementioned unique physical conditions, when considered together, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in addition to the proposal, the applicant examined the economic feasibility of constructing a conforming office for a single user on the second floor; and

WHEREAS, the applicant concluded that the offices resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable

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return; and

WHEREAS, the applicant represents that the proposed PCE will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that a PCE occupied the building (albeit without the required variance, as noted above) from approximately 2000 until 2012, and that this application has received letters of support from various community organizations as well as the community board; and

WHEREAS, the applicant represents that the surrounding community is characterized by low- to medium-density mixed residential and commercial uses, with many small business that are geared to local residents, and that the proposed PCE is consistent with such uses and will provide a valuable service; and

WHEREAS, as to the PCE's impact, the applicant represents that although light music may be played during workouts, the building's double concrete walls and extra padding will provide ample sound attenuation for both the neighboring buildings, and the grocery store use at the first floor; and

WHEREAS, in addition, consistent with the community board's request, as noted above, the hours of operation for the PCE will be limited to daily, from 7:00 a.m. to 10:00 p.m.; and

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

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the history of manufacturing use on the second floor and the building's depth; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

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

WHEREAS, the Board notes that because the use authorized herein is classified as a PCE, the variance will be granted for a term of ten years, to expire on March 11, 2024; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

Assessment Statement (EAS) CEQR No. 14BSA045M, dated September 23, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment ("PCE") within the second story of a two-story residential building, contrary to ZR § 32-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 23, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 11, 2024;

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

THAT all signage at the site will be limited to C1 zoning district regulations;

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

THAT the hours of operation for the PCE will be limited to seven days per week, from 7:00 a.m. to 10:00 p.m.;

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

THAT a new certificate of occupancy will be obtained within two years of the date of this grant, on March 11, 2016;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

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

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

THAT DOB must ensure compliance with all other

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applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 11, 2014.

54-12-BZ

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

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

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

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

211-12-BZ

APPLICANT – Rothkrug Rohkrug & Spector LLP, for Jessica and Matthew Sheehan, owners.

SUBJECT – Application July 27, 2012 – Variance (§72-21) to permit the proposed re-establishment of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street, Block 585, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for deferred decision.

214-12-BZ

APPLICANT – Phillips Nizer, LLP, for Shea Max Harris, LLC, owner.

SUBJECT – Application July 10, 2012 – Variance (§72-21) to permit the operation of an auto laundry (UG 16B), contrary to use regulations. C2-2/R5 zoning district.

PREMISES AFFECTED – 2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

124-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district. PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for adjourned hearing.

125-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 97 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district. PREMISES AFFECTED – 97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

179-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for East 24 Realty LLC by Sarah Weiss, owner.

SUBJECT – Application June 19, 2013 – Special Permit (§73-622) for the enlargement of a single-family home contrary to floor area, open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 933-939 East 24th Street, East side of East 24th Street between Avenue I and Avenue J, Block 7588, Lot 29 & 31 (31 tentative), Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for continued hearing.

193-13-BZ

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts.

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

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COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for adjourned hearing.

228-13-BZ

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 45 W 67th Street Development Corporation, owner; CrossFit NYC, lessee.

SUBJECT – Application August 1, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Cross Fit*) located in the cellar level of an existing 31-story building. C4-7 zoning district.

PREMISES AFFECTED – 157 Columbus Avenue, northeast corner of West 67th Street and Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

246-13-BZ

APPLICANT – Rothkurg Rothkrug & Spector LLP, for Lutheran Medical Center, owner.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit the enlargement of an existing ambulatory diagnostic treatment health facility (UG4), contrary to floor area (§24-11) and rear yard (§24-36) regulations. R6B/C4-3A zoning districts.

PREMISES AFFECTED – 514 55th Street, south side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

269-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for Robert Malta, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-42) to permit the expansion of UG6 restaurant (*Arte Café*) across zoning district boundary lines. R8B zoning district.

PREMISES AFFECTED – 110 West 73rd Street, south side of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

276-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Adams Tower Limited Partnership, owner; Fastbreak, owner.

SUBJECT – Application September 27, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fastbreak*). C1-9 zoning district.

PREMISES AFFECTED – 1629 First Avenue aka 1617 First Avenue and 341 East 84th Street, west side First Avenue between East 84th & East 85th Street, Block 1547, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

290-13-BZ

APPLICANT – Herrick, Feinstein LLP, by Arthur Huh, for Church Avenue Development LLC, owner; New Fitness Holdings LLC, lessee.

SUBJECT – Application October 21, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*) located on the second floor of a four-story building. C4-4A zoning district.

PREMISES AFFECTED – 2244 Church Avenue, south side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot 42, 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 April 8, 2014, at 10 A.M., for decision, hearing closed.

306-13-BZ

APPLICANT – Lewis E. Garfinkel for Howard Berglas, owner.

SUBJECT – Application November 20, 2013 – Special Permit (§73-622) for the enlargement of an existing two-family home to be converted to a single-family home, contrary to floor area, lot coverage and open space (§23-141); and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 3766 Bedford Avenue, west side of Bedford Avenue, 350' south of corner of Bedford Avenue and Avenue P, Block 6787, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

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Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

*CORRECTION

These resolutions adopted on January 28, 2014, under Calendar Nos. 131-13-A & 132-13-A and printed in Volume 99, Bulletin Nos. 4-5, is hereby corrected to read as follows:

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 & R1-1 (SHPD) zoning districts.

PREMISES AFFECTED – 43 & 47 Cecilia Court, Block 615, Lots 210 and 205, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated May 6, 2013 and April 24, 2013, acting on Department of Buildings Application Nos. 520117506 and 520117490 read, in pertinent part:

The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law
- B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to Section 502.1 of the 2008 NYC Building Code; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, with continued hearings on October 22, 2013, November 26, 2013, and December 17, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, City Councilmember Debbie Rose submitted testimony in opposition to the application, citing fire safety concerns; and

WHEREAS, certain members of the surrounding community, including a community group known as the Serpentine Art & Nature Commons, Inc. (the “Opposition”), provided written and oral testimony in opposition to the application citing the following concerns: (1) the slope of the roadway and its distance will interfere with firefighting operations; (2) the proposal is contrary to a private agreement

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(a November 1950 restrictive covenant) concerning the site and other nearby parcels; and (3) the Board previously denied a GCL § 36 waiver application concerning the site in part because the Fire Department disapproved the application; and

WHEREAS, the subject site is located on Cecilia Court off of Howard Avenue, partially within an R1-1 zoning district and partially within an R2 zoning district, within the Special Hillside Preservation District; and

WHEREAS, the applicant states that the site does not front a mapped street, but has access to Howard Avenue, a mapped street, via a private utility and access easement formerly known as Howard Lane and now known as Cecilia Court, which was recorded on December 12, 1950 but does not appear on the City Map; the applicant notes that Cecilia Court has a width of 16 feet, a slope of approximately 12.2 percent and that the distance between the proposed building and Howard Avenue along Cecilia Court is 550 feet; and

WHEREAS, the applicant states that the site is vacant; however, it has been the subject of a series of Board and City Planning actions over the years; specifically, on February 28, 1989, under BSA Cal Nos. 26-86-A, 27-86-A and 28-86-A, the Board denied applications filed pursuant to GCL § 36 to permit construction of three single-family residences not fronting on a mapped street; on January 6, 1998, under BSA Cal. No. 209-07-A, the Board granted an application filed pursuant to GCL § 36 to permit the construction of one single-family residence not fronting on a mapped street; in 2001, the Department of City Planning approved an authorization application filed under ULURP No. N000523 ZAR to allow the construction of a single-family residence on former Lot 210; and

WHEREAS, the applicant now seeks to construct two, three-story, single-family residences contrary to GCL § 36; and

WHEREAS, by letter dated August 26, 2013, the Fire Department stated that the residences are proposed on a private roadway having a substandard width, contrary to the Fire Code, but that it would not object to their construction provided that the residences are fully-sprinklered in accordance with New York City Building Code § 903 and the Fire Interim guidelines, which state that the Fire Department will grant a modification for construction of new occupancy group R-3 (one-family and two-family) dwellings with modified fire apparatus access if the building is designed, constructed, and maintained in accordance with New York City Building Code § 903; and

WHEREAS, on September 3, 2013, the applicant submitted a revised site plan to address the request of the Fire Department; and

WHEREAS, at hearing, the Board raised concerns regarding the slope of the roadway and the firefighting apparatus access; and

WHEREAS, in response, the applicant submitted a letter, a survey, and a site plan, which contends that: (1) the existing roadway was constructed prior to the current Fire Code requirements and Special Hillside Preservation District regulations and has served as access for emergency services to

the existing homes fronting the roadway for many years; and (2) the Fire Department firefighting manual indicates that the maximum roadway slope for a tower ladder is 15 percent, which is more than the existing mean slope of 12.2 percent and significantly more than the proposed slope of 7.3 percent for the proposed cul-de-sac; therefore, the applicant asserts that either slope is within the acceptable slope for firefighting purposes; and

WHEREAS, by letter dated October 22, 2013, the Opposition raises concerns regarding the information provided by the applicant as to the length and slope of the grade; and

WHEREAS, by letter dated October 28, 2013, the Fire Department informed the Board that, based on additional information regarding the site, it now objected to the proposed roadway because it included grades substantially in excess of ten percent, contrary to Fire Code § 503.2.7; and

WHEREAS, following a series of discussions and letters among the parties, the Fire Department approved the revised proposal, subject to the following conditions: (1) the residences will be fully-sprinklered; (2) a Fire Code-compliant apparatus turnaround will be installed; (3) two new fire hydrants will be installed; (4) a new eight-inch water main from Howard Avenue to the northerly end of the private road will be installed; and (5) the applicant will provide satisfactory evidence to the Department of Buildings that there is unrestricted permanent access along the length of the private road to the applicant's property line; and

WHEREAS, in response to the issues identified by the Opposition regarding Cecilia Court, which is a private easement, the applicant acknowledged that it would be required to seek authorization from the other parties to the 1950 restrictive covenant in order to implement certain Fire Department conditions; and

WHEREAS, on January 15, 2014, the applicant submitted a revised site plan that was reviewed and approved by the Fire Department; and

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

Therefore it is Resolved, that the decisions of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application Nos. 520117506 and 520117490 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawings filed with the application marked "Received January 15, 2014" (2) sheets; and *on further condition*

THAT the proposal will comply with all applicable zoning district requirements and all other applicable laws, rules, and regulations;

THAT all required approvals from the Department of City Planning will be obtained prior to the issuance of building permits;

THAT the building will be fully sprinklered in accordance with BSA-approved plans;

THAT a Fire Code-compliant apparatus turnaround will

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be installed;

THAT two new fire hydrants will be installed;

THAT a new eight-inch water main from Howard Avenue to the northerly end of the private road will be installed;

THAT the applicant will provide satisfactory evidence to the Department of Buildings that there is unrestricted permanent access along the length of the private road to the applicant's property line;

THAT there will be "No Parking" along the entire length of the easement;

THAT the conditions requested by the Fire Department be implemented before the Temporary Certificate of Occupancy and Certificate of Occupancy are issued;

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

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

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; 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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals on January 28, 2014.

The resolutions have been amended. Corrected in Bulletin No. 11, Vo. 99, dated March 19, 2014.

*CORRECTION

The resolution adopted on January 28, 2014, under Calendar No. 292-13-BZ and printed in Volume 99, Bulletin Nos. 4-5, is hereby corrected to read as follows:

292-13-BZ

CEQR #14-BSA-060K

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow the development of a Use Group 4A house of worship (*Congregation Bet Yaakob*), contrary to floor area, open space ratio, front, rear and side yards, lot coverage, height and setback, planting, landscaping and parking regulations. R5, R6A and R5/OP zoning districts.

PREMISES AFFECTED – 2085 Ocean Parkway, northeast corner of the intersection of Ocean Parkway and Avenue U, Block 7109, Lots 56 & 50 (Tentative Lot 56), Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 21, 2013, acting on Department of Buildings Application No. 320345710 reads, in pertinent part:

1. Proposed Floor Area exceeds the maximum allowed pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-22
2. Proposed Open Space is less than minimum required pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-23
3. Proposed Lot Coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-24
4. Proposed Front Yard is less than minimum required pursuant to ZR Sections 113-12, 23-45 and does not comply with planting requirements in ZR Section 23-451
5. Proposed Level of Front Yard is higher than level permitted pursuant to ZR Section 23-42
6. Proposed Front Yard does not comply with landscaping regulations per ZR 113-30
7. Proposed Rear Yard is less than rear yard required pursuant to ZR Sections 113-11b and 24-36
8. Proposed Side Yards are less than required pursuant to ZR Sections 113-11, 23-464
9. Proposed new building exceeds maximum Height and Setback requirements pursuant to

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ZR Sections 113-11, 23-631d, 24-17, 24-593, 23-633a2, 77-28

10. Proposed Side and Rear Yard Setbacks are less than required pursuant to ZR Sections 113-11 and 23-662
11. Proposed development provides less than required parking spaces pursuant to ZR Sections 113-561, 25-31, 25-35
12. Proposed clerestory exceeds max height for permitted obstructions pursuant to ZR Sections 113-11 and 23-62(l); and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR §§ 23-141(b), 23-17, 23-45, 23-451, 23-464, 23-631(a), 23-62(1), 23-633(a)2, 23-662, 24-11, 24-17, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-561 and 23-42; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2013, and then to decision on January 28, 2014; and

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

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

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing concerns about the bulk and potential impact on light and air and potential noise impact associated with the building's mechanicals; and

WHEREAS, this application is being brought on behalf of Congregation Bet Yaakob (the "Synagogue"), a non-profit religious entity which will occupy the proposed Edmond J. Safra Synagogue building; and

WHEREAS, the subject site is located on the northeast corner of Ocean Parkway and Avenue U within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts; and

WHEREAS, on October 16, 2012, the Board granted a variance application pursuant to ZR § 72-21, under BSA Cal. No. 168-11-BZ, to permit the construction of a four-story synagogue on Block 7109, Lot 50 (formerly Lots 48 and 50) (the "Prior Variance"); the Prior Variance reflected

a building with a maximum floor area of 20,461 sq. ft. (2.3 FAR), a maximum wall height of 60'-0" and a total height of 62'-4", a minimum open space of 1,866 sq. ft., and a maximum lot coverage of 6,968 sq. ft. (79 percent); and

WHEREAS, the applicant represents that construction pursuant to the Prior Variance has not commenced; and

WHEREAS, the applicant represents that subsequent to the Prior Variance, the Congregation purchased the adjacent Lot 56, which resulted in a redesign of the building and requires a new approval for the synagogue on combined Lots 50 and 56 that more fully meets the needs of the growing Congregation; and

WHEREAS, the merged lot has a total lot area of 14,840 sq. ft.; it was formerly occupied by a two-story home on former Lot 50 and a two-story home on former Lot 48, both of which were unoccupied and sealed at the time of purchase, and the newly-acquired Lot 56 is currently occupied by a two-story residence; and

WHEREAS, the inclusion of Lot 56 increases the lot area of the zoning lot from 8,840 sq. ft. to 14,840 sq. ft., which allows for construction of a larger synagogue building with a more accommodating layout; and

WHEREAS, the applicant proposes the following parameters: two/three stories; a floor area of 22,314 sq. ft. (1.5 FAR) (a maximum community facility floor area of 21,815 sq. ft. and an aggregate between the R5 and R6A zoning districts of 1.47 FAR is permitted); a lot coverage of 63 to 72 percent (maximum permitted lot coverage ranges from 45/55 to 60 percent); an open space of 28 to 36 percent (the minimum required open space ranges from 38 to 45 percent); a maximum wall height of 47'-10" and a maximum total height of 62'-0" (the maximum permitted height ranges from 35'-0" (R5) to 50'-0" (R6A)); the clerestory (skylight over the third floor) to a height of 57'-3", which is 9'-5" above the roof of the three-story front portion of the building (exceeds the maximum height of a permitted obstruction); the proposed level of the front and rear yards 3'-4" above the permitted curb level; and no parking spaces (a minimum of 23 parking spaces are required); and

WHEREAS, under the current application, the applicant initially proposed a new building height of 70'-0"; and

WHEREAS, however, in response to concerns raised by the Board at public hearing, the applicant reduced the building height to 59'-5" at the roof ridge in the R5 corner portion of the lot and to 62'-0" in the R6A interior lot portion of the site; and

WHEREAS, as to yards, the applicant notes that the site is partially a corner lot and partially an interior lot, thus the yard requirements vary across the site; however, it will provide a front yard with the required depth of 30'-0" along Ocean Parkway but no front yard along Avenue U (a front yard with a depth of 10'-0" is required); a side yard with a width of 8'-0" on the corner portion adjacent to the neighbor on Ocean Parkway; and a rear yard with a depth of 30'-0" on the L-shaped portion of the lot within the subdistrict, but

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no front yard in the interior portion of the lot; and

WHEREAS, the proposal provides for the following uses: (1) a social hall, men's mikvah, and a kitchen at the cellar level; (2) the main men's sanctuary and Bet Midrash (accessory prayer room) and a Brit Milah at the first floor; (3) the women's sanctuary balcony, a kitchenette (warming pantry), boys' and girls' minyans (accessory prayer room) on the second floor; and (4) a young adult minyan, a board room, and two offices at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 600 worshippers; (2) to provide a separate worship space for male and female congregants; (3) to provide sufficient separation of space so that multiple activities may occur simultaneously; and (4) to provide accessory space including offices and a social hall; and

WHEREAS, the applicant states that the as-of-right building would have the following restrictions: a total height of 49'-0", a front yard of 30'-0" along Ocean Parkway, a front yard of 10'-0" along Avenue U, and a side yard of 13'-10"; it would allow for a social hall of only 3,090 sq. ft.; a main men's sanctuary of 1,250 sq. ft. (to accommodate 208 people); and a main women's sanctuary of 645 sq. ft. (to accommodate 120 people) – all of which are far too small to accommodate the Congregation; and

WHEREAS, further, the applicant asserts that only one Bet Midrash could be provided, instead of three, and a men's mikvah space could not be provided; and

WHEREAS, the applicant states that the height and setback waivers permit the double-height ceiling of the second floor main synagogue which is necessary to create a space for worship and respect and an adequate ceiling height for the second floor women's balcony; and

WHEREAS, the applicant states that the parking waiver is only related to the portion of the site within the R5 zoning district and that there is not a parking requirement for a house of worship under R6A zoning district regulations; and

WHEREAS, the applicant notes that approximately 95 percent of congregants live within walking distance of the site and must walk on certain days for reasons of religious observance; and

WHEREAS, the applicant states that 76 percent of the congregation lives within a three-quarter-mile radius of the site, which exceeds the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship; and

WHEREAS, the applicant states that it requests a waiver of the Special Ocean Parkway District's special landscaping requirements for the front yard along Ocean Parkway as the front yard is necessary for a ramp and the main entrance; and

WHEREAS, the applicant notes that the site will be landscaped with trees and shrubbery along Avenue U, where the proposed building has 143'-0" of frontage, as well as along Ocean Parkway; and

WHEREAS, the applicant states that the congregation

has occupied a nearby rental space for the past three years, which accommodates only 275 seats and is far too small to accommodate the current membership of 600 adults; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, space for religious counseling, and a multipurpose room for educational and social programming; and

WHEREAS, as far as the changes from the proposal associated with the Prior Variance and the current proposal, the applicant states that the current proposal decreases the relief sought for FAR from 2.3 to 1.5 (1.47 FAR is the maximum permitted), open space, and lot coverage; and

WHEREAS, the applicant asserts that the proposed more uniform floor plate allows for a more functional floor layout and better circulation between the social hall, kitchen, and accessory storage; and

WHEREAS, further, the applicant notes that the modified proposal will allow for a total occupancy of 329 people in the social hall, rather than 221 people as approved by the Prior Variance; the current proposal also allows for a larger men's mikvah to be located at the cellar level rather than the first floor, as approved by the Prior Variance; and

WHEREAS, the applicant states that Jewish Law prescribes that congregants face east while praying, thus, the circular shape and downward sloping angle of the main sanctuary is designed in such a way to observe this religious requirement while also increasing the floor area from the main sanctuary previously approved, which was located on the second floor; and

WHEREAS, the applicant notes that the new first floor design allows for a Bet Midrash (accessory prayer room) and a Brit Milah room, which are critical spaces for an Orthodox synagogue but could not be accommodated in the smaller building approved through the Prior Variance; and

WHEREAS, the applicant states that now the women's sanctuary balcony is on the second, rather than third floor and has an increase in occupancy of 31 people from 192 to 223 people and that the new design allows for three prayer rooms for young people; and

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

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

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

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WHEREAS, in addition to its programmatic needs, the applicant states that there are unique physical conditions of the site – including its L-shape; the narrow yet deep easternmost portion (formerly Lot 48); the location of multiple zoning district and special district boundary lines within the site; and the high groundwater condition; and the requirements for mechanical space, which contribute to the hardship at the site; and

WHEREAS, the applicant acknowledges that the Congregation created the irregular L-shape by merging two adjacent lots (former Lots 50 and 48), but that this lot area is critical to providing adequate space for a synagogue building with sufficient size to meet the programmatic needs; and

WHEREAS, further, the applicant notes that absent the lot merger, the 130'-0" depth and 18'-0" width of the easternmost portion of the site fronting on Avenue U presents unique physical conditions which support the request for waivers; and

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

WHEREAS, the Board notes that certain of the site conditions contribute to the hardship associated with the site such as the irregularity of the long narrow easternmost portion; and

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

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

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

WHEREAS, as to bulk, the applicant performed a study of buildings within approximately a ½-mile radius of the site, which reflects that there are 18 buildings that are taller, contain more floor area and/or have a higher FAR than the proposed building; and

WHEREAS, specifically, the applicant states that there are eight buildings with a height of 62'-0" or greater within its study area; and

WHEREAS, further, the applicant notes that DOB has approved plans for a six-story 20-unit apartment building with a height of 70'-0" for the site adjacent to the east at 623 Avenue U; and

WHEREAS, as to yards, the applicant notes that the side yard and front yard conditions were existing longstanding non-compliances with the historic residential use of the site; and

WHEREAS, specifically, the applicant notes that the former homes had non-complying yard conditions, including that the home on Lot 50 was built to the front lot line along Avenue U and the home on Lot 48 only provided a front yard with a depth of 1'-11" on Avenue U and was built to the side

lot line; and

WHEREAS, further, the applicant notes that although the yards do not meet the minimum yard requirements for a community facility, the proposal does reflect a front yard with a depth of 30'-0" along Ocean Parkway, a side yard with a width of 8'-0" adjacent to the neighboring site on Ocean Parkway, and a rear yard with a depth of 30'-0" is provided on former Lot 48; and

WHEREAS, the applicant also notes that unlike in the Prior Variance, no portion of the current proposal is located in the R5 (Special Ocean Parkway Subdistrict) portion of the site located to the rear of the adjacent homes; and

WHEREAS, as to the Special Ocean Parkway District's landscaping and front yard planting requirements, the applicant asserts that it will maintain landscaping and provide trees and shrubbery along Avenue U, where the Synagogue has 143'-0" of frontage, as well as plantings along Ocean Parkway; and

WHEREAS, in response to concerns the Board raised about the planting requirement along Ocean Parkway, the applicant increased the percentage of yard plantings from 41 percent to 50.1 percent; and

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

WHEREAS, further, as noted above, the applicant represents that 76 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the Board notes that, based on the applicant's representation, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship - but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, in response to questions raised about the proposed emergency generator, the applicant responded that it will only be used in the event of an emergency (and subject to a test for functioning once per month) and the sound level will be similar to existing sound levels in the surrounding neighborhood; and

WHEREAS, the applicant also notes that it proposed baffling with a height of 12'-0", which is the minimum height to adequately buffer the HVAC equipment on the roof, thus, lowering the height is not feasible; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet

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the programmatic needs of the Synagogue could occur on the existing lot; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14BSA060K, dated October 23, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR ZR §§ 23-141(b), 23-17, 23-45, 23-451, 23-464, 23-631(a), 23-62(1), 23-633(a)2, 23-662, 24-11, 24-17, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-561 and 23-42; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 3, 2013" – Seventeen (17) sheets; and

on further condition:

THAT the building parameters will be: two/three stories; a maximum floor area of 22,314 sq. ft. (1.5 FAR); a maximum wall height of 47'-10" and total height of 62'-0"; a minimum open space ratio of 36 percent on the corner portion of the lot and 28 percent on the interior portion of the lot; and a maximum lot coverage of 63 percent on the corner portion of the lot and 72 percent on the interior portion of the lot, as illustrated on the BSA-approved plans;

THAT sound attenuation measures be installed and maintained as reflected on the BSA- approved plans;

THAT landscaping be maintained as reflected on the BSA-approved plans;

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

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

THAT no commercial catering will take place onsite;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

The resolution has been amended. Corrected in Bulletin No. 11, Vo. 99, dated March 19, 2014.