
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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231-09-BZ 412/414 Greenwich Street, Manhattan

DOCKET

New Case Filed Up to December 13, 2011

185-11-BZ

2538 85th Street, north intersection of 86th Street and Stilwell Avenue., Block 6860, Lot(s) 21, Borough of **Brooklyn, Community Board: 11**. Variance (§72-21) to allow for the use of the premises as voluntary accessory parking for the adjacent as for right retail development (Walgreens), contrary to use regulations ZR §22-00. R5 zoning district. R-5 district.

186-11-A

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187-11-BZ

118 Sandford Street, Sandford Street between Park Avenue and Myrtle Avenue., Block 1736, Lot(s) 32, Borough of **Brooklyn, Community Board: 3**. Application made pursuant to Zoning Resolution Section 72-21 to authorize enlargement and conversion of existing manufacturing building to mixed-use residential and commercial building in M1-1 zoning district. M1-1 district.

188-11-BZ

286 Spring Street, southeast corner of Spring Street and Hudson Street., Block 579, Lot(s) 5, Borough of **Manhattan, Community Board: 2**. Variance of the use regulations of Zoning Resolution Section 42-10 to allow the conversion of floors 2-6 from commercial use to residential use in an M1-6 zoning district. M1-6 district.

189-11-BZ

32-21 46th Street, East side of 46th Street, 200' south to the corner of Broadway., Block 722, Lot(s) 30, Borough of **Queens, Community Board: 1**. Convert existing three (3) story two(2) family house into a four (4) three (3) family house. R-5 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

JANUARY 24, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 24, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

141-66-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rising Wolf Garage LLC, owner.

SUBJECT – Application June 29, 2011 – Extension of Term of a previously granted Variance (72-21) for the continued operation of a UG 8 motor vehicle storage facility (*Rising Wolf Motorcycle Parking Garage*) which expired on July 1, 2010 and Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 338 East 9th Street, Block 450, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #3M

188-78-BZ

APPLICANT – Eric Palatnik, P.C., for Anthony Berardi, owner.

SUBJECT – Application August 4, 2011 – Pursuant to (§11-413) for an Amendment to a previously granted Variance (§72-21) for the added (UG16) uses of automobile body with spray painting booth and automobile sales to an existing (UG16) automobile repair and auto laundry. R-5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81st Street, Block 6313, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #11BK

11-01-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for P.J. Christy, Inc., owner.

SUBJECT – Application August 8, 2011 – Extension of Term for the continued operation of a Gasoline Service Station (*BP British Petroleum*) which expired on August 7, 2011 and Extension of Time to obtain a Certificate of Occupancy which expired on July 26, 2006. C1-2/R5 zoning district.

PREMISES AFFECTED – 586/606 Conduit Boulevard, Pitkin Avenue and Autumn Avenue on the west, Block 4219, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #5BK

58-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner; Quick Fitness, lessee.

SUBJECT – Application November 30, 2011 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Special Permit (73-36) for the operation of a Physical Culture Establishment (Quick Fitness) which expired on August 3, 2011. M1-2/R6A zoning district.

PREMISES AFFECTED – 16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEALS CALENDAR

206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street contrary to General City Law Section 35 . R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

COMMUNITY BOARD #2SI

118-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Jean Scanlon, lessee.

SUBJECT – Application August 18, 2011 – Proposed site and building not fronting a mapped street contrary to Art. 3 Sect. 36 GCL and Sect. 27-291 Admin. Code of the City of New York. The Building is in the bed of a mapped street contrary to Art 3 Sect 35 of the General City Law, private disposal in the bed of a mapped street contrary to Department of Buildings' policy.

PREMISES AFFECTED – 811 Liberty Lane, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

JANUARY 24, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 24, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

129-11-BZ

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building contrary to use regulations. M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3rd Avenue. Block 447, Lot 43. Borough of Brooklyn.

COMMUNITY BOARD #6BK

142-11-BZ

APPLICANT – Goldman Harris LLC, for The Phillippe at W75st NY, LLC, owner.

SUBJECT – Application September 9, 2011 – Variance (§72-21) to allow for a new residential building contrary to height and setback, rear setback and lot coverage requirements. C4-6A zoning district.

PREMISES AFFECTED – 207 West 75th Street, north side of West 75th Street, between Broadway and Amsterdam Avenue, Block 1167, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #7M

159-11-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; JWSTKD II, lessee.

SUBJECT – Application October 21, 2011 – Special Permit (§73-36) to permit the legalization of an existing Physical Culture Establishment. C4-1 zoning district.

PREMISES AFFECTED – 212-01 26th Avenue, 26th Avenue between Bell Boulevard and Corporal Kennedy Street, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, DECEMBER 13, 2011
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

335-59-BZ

APPLICANT – Alfonso Duarte P.E., for 3485 Atlantic Avenue Realty Corp., owner; Royal Motor Mart Inc., lessee.
SUBJECT – Application July 11, 2011 – Extension of Term (§11-411) of a variance permitting the storage and sales of used cars with accessory office (UG 16B) which expired on December 7, 2009; Waiver of the Rules. R5 zoning district.
PREMISES AFFECTED – 3485/95 Atlantic Avenue, North-East corner Nichols Avenue. Block 4151, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term of a previously granted variance to permit the use of the lot for the storage and sale of used cars, with an accessory office building, which expired on December 7, 2009; and

WHEREAS, a public hearing was held on this application on October 18, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

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

WHEREAS, the subject site is located on the northeast corner of Atlantic Avenue and Nichols Avenue, within an R5 zoning district; and

WHEREAS, the site consists of a lot used for the storage and sale of used cars, with an accessory office building; and

WHEREAS, on November 10, 1959, under the subject calendar number, the Board granted a variance to permit the use of the site for the storage and sale of used cars, with an

accessory office building, for a term of five years; and

WHEREAS, the variance was subsequently amended and extended at various times; and

WHEREAS, most recently, on October 17, 2000, the Board granted a ten-year extension of term, which expired on December 7, 2009; and

WHEREAS, the applicant now requests an additional ten-year term; and

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

WHEREAS, at hearing, the Board directed the applicant to remove the graffiti from the fencing and to clarify the site's hours of operation; and

WHEREAS, in response, the applicant submitted photographs reflecting that the graffiti has been removed, and states that the hours of operation for the site are Monday through Friday, from 8:30 a.m. to 6:30 p.m., Saturdays, from 8:30 a.m. to 4:00 p.m., and Sundays, from 10:00 a.m. to 3:00 p.m.; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on November 10, 1959, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from December 7, 2009, to expire on December 7, 2019; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received July 11, 2011"- (1) sheet; and *on further condition*:

THAT this term shall expire on December 7, 2019;

THAT the hours of operation for the site shall be limited to Monday through Friday, from 8:30 a.m. to 6:30 p.m., Saturdays, from 8:30 a.m. to 4:00 p.m., and Sundays, from 10:00 a.m. to 3:00 p.m.;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (Alt NB. 640/59)

Adopted by the Board of Standards and Appeals, December 13, 2011.

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application February 22, 2011 – Amendment (§11-413) of a variance for a UG8 parking garage (*Rapid Park Industries*) to permit the addition of an auto rental

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establishment (UG8) in the cellar level; extension of time to obtain a certificate of occupancy which expired on June 29, 2008. R8B zoning district.

PREMISES AFFECTED – 148-150 East 33rd Street, south side of East 33rd Street, 151.9' east of East 33rd Street and Lexington Avenue. Block 888, Lot 51. Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Hirshman.

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, an amendment to legalize a change in use at the cellar level from a parking garage (Use Group 8) to an auto rental establishment (Use Group 8) pursuant to ZR §11-413, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; 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 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the site is located on the south side of East 33rd Street, approximately 151 feet east of Lexington Avenue; and

WHEREAS, the site is located in an R8B zoning district and is occupied with a four-story and cellar parking garage for not more than 149 cars; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 18, 1961, when, under the subject calendar number, the Board granted a variance for the construction of the parking garage for a term of 20 years; and

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

WHEREAS, most recently, on January 29, 2008, the Board granted an extension of the term of the variance for an additional ten years, to expire on March 3, 2018; a condition of the grant was that a new certificate of occupancy be obtained by June 28, 2008; and

WHEREAS, the applicant states that a new certificate of occupancy was not obtained, and therefore requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, additionally, the applicant now seeks an amendment to legalize a change in use at the cellar level from a parking garage (UG 8) to an auto rental establishment (UG 8); and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use; and

WHEREAS, the applicant states that the proposed auto rental establishment will operate with only 20 spaces; five fewer spaces than the previously-approved use of the cellar as a parking garage; and

WHEREAS, the applicant further states that the remaining five spaces will be relocated to the first floor of the site; therefore the total number of parking spaces at the subject site will remain at 149, as previously approved; and

WHEREAS, the applicant notes that while the parking garage operates 24 hours per day, seven days a week, the proposed hours of operation for the auto rental establishment will be Monday through Friday, from 7:30 a.m. to 7:30 p.m., Saturdays, from 7:30 a.m. to 3:00 p.m., and Sundays, from 8:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant submitted a traffic analysis which reflects that the auto rental establishment generates fewer car trips on an hourly basis than the previously approved parking garage, and therefore the proposed amendment will decrease the number of cars travelling to and from the site; and

WHEREAS, at hearing, the Board directed the applicant to remove the car stackers from the roof of the subject building; and

WHEREAS, in response, the applicant submitted photographs reflecting that the car stackers have been removed; and

WHEREAS, the Board finds that the proposed use will not impair the essential character or the future use or development of the surrounding area; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on July 18, 1961, and as subsequently extended and amended, to permit the change in use at the cellar level from a parking garage (UG 8) to an auto rental establishment (UG 8) pursuant to ZR § 11-413, and to grant an extension of time to obtain a certificate of occupancy, to expire on December 13, 2012; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked “Received November 22, 2011”- (4) sheets; and *on further condition*:

THAT the term of the grant shall expire on March 3, 2018;

THAT the hours of operation for the auto rental establishment use shall be limited to Monday through Friday, from 7:30 a.m. to 7:30 p.m., Saturdays, from 7:30 a.m. to 3:00 p.m., and Sundays, from 8:00 a.m. to 3:00 p.m.;

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

THAT a new certificate of occupancy shall be obtained by December 13, 2012;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

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jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (N.B. 46-61)

Adopted by the Board of Standards and Appeals, December 13, 2011.

252-71-BZ

APPLICANT – Alfonso Duarte, for Alan Pearlstein, owner.
SUBJECT – Application June 23, 2011 – Extension of Term of a variance (§72-21) for the continued sale and installation of automobile seat covers and convertible tops (UG 7), furniture sales (UG 6C), and automotive repairs (UG 16B) which expired on July 13, 2011. R3-2 zoning district.

PREMISES AFFECTED – 190-18 Northern Boulevard, Southside Northern Boulevard between 189th and 192nd Streets. Block 5513, Lot 22. Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued use of the site partially as an automotive accessory store with installation and repairs and partially as a furniture store, which expired on July 13, 2011; and

WHEREAS, a public hearing was held on this application on October 18, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) the site be kept clean of debris and graffiti; (2) all lighting be pointed away from residences; (3) there shall be no parking on the sidewalks; (4) there shall be no outside storage; (5) there shall be no outdoor automobile repairs or body work; (6) all signs shall be maintained in accordance with the BSA-approved plans; (7) no 24-hour operations; and (8) the site not be operated as a pet shop, drug rehabilitation center, physical culture establishment, or fast food establishment; and

WHEREAS, a representative of the Auburndale Improvement Association provided testimony in support of this application, subject to the additional condition that the site not

be operated as a billiard parlor, amusement arcade, or discotheque; and

WHEREAS, the site is located on the south side of Northern Boulevard between 189th Street and 192nd Street, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 13, 1971 when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story front and rear enlargement to an existing automobile accessory store with installation and repairs, for a term of ten years; and

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

WHEREAS, most recently, on April 23, 2002, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on July 13, 2011, and granted an amendment to permit a change of use on a portion of the lot from automobile supply store (Use Group 6C) to a furniture store (Use Group 6C); and

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

WHEREAS, at hearing, the Board questioned whether the site was in compliance with the previously-approved signage and directed the applicant to clarify which parking spaces were reserved for the automotive use and which spaces were reserved for the furniture store use; and

WHEREAS, in response, the applicant submitted photographs and revised plans reflecting the removal of excess signage, and the addition of new signage indicating parking for the automotive use and parking for the furniture furniture use; and

WHEREAS, as to the conditions requested by the Community Board and the Auburndale Improvement Association, the applicant states that it will maintain the site in compliance with all requested conditions; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 13, 1971, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the expiration of the prior grant, to expire on July 13, 2021; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘June 23, 2011- (1) sheet and ‘November 9, 2011’-(2) sheets; and *on further condition*:

THAT the term of the grant shall expire on July 13, 2021;

THAT the site shall be maintained clean of debris and graffiti;

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

THAT there shall be no parking on the sidewalks;

THAT there shall be no outside storage, automobile repairs or body work;

THAT all signage shall be maintained in accordance with the BSA-approved plans;

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THAT there shall be no 24-hour operation of the site;

THAT the use and occupancy of the site shall not include: pet shops, drug rehabilitation centers, physical culture establishments, fast food establishments, billiard parlors, amusement arcades, and discotheques; and

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 401276490)

Adopted by the Board of Standards and Appeals December 13, 2011.

608-85-BZ

APPLICANT – Sheldon Lobel, P.C., for J.C. Organization, LLC, owner.

SUBJECT – Application July 18, 2011 – Extension of Term of a variance (§72-21) which permitted a custom Woodworking Shop (UG 16) which expired on June 17, 2011; Amendment to permit a change of use to a (UG16) General Contractors Establishment and to allow the expansion of two existing mezzanines to create a full second floor. R5 zoning district.

PREMISES AFFECTED – 33-56 11th Street, located on the west side of 11th Street, 235’ south of 33rd Street, Block 319, Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Jordan Most.

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 re-opening, an extension of term of a previously granted variance to permit, within an R5 zoning district, the construction of a woodworking building (UG 16), and an amendment to permit certain modifications to the previously-approved plans and the operation of the site; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; 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 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of 11th Street between 33rd Road and 34th Avenue, within an R5 zoning district; and

WHEREAS, the site has 50 feet of frontage on 11th Street and a total lot area of 4,258 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story plus mezzanine building containing a general contractor’s establishment (UG 16) and accessory offices, with a total floor area of 3,792 sq. ft. (0.89 FAR); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 17, 1986 when, under the subject calendar number, the Board granted a variance under ZR § 72-21 to permit the construction of a one-story and mezzanine building for use as a commercial woodworking and cabinetry shop (UG 16) with accessory offices, for a term of fifteen years; and

WHEREAS, most recently, on October 28, 2003, the Board granted a ten-year extension of term and an amendment to legalize the construction of a second mezzanine at the rear of the subject building, which expired on June 17, 2011; and

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

WHEREAS, the applicant also seeks an amendment to permit the following modifications to the site: (1) the legalization of a change in use from a woodworking shop (UG 16) to a contractor’s establishment (UG 16) which includes woodworking; (2) the expansion and connection of the two existing mezzanines, to create a full second floor; (3) a change in the hours of operation; and (4) minor deviations from the previously-approved plans, including the removal of the stair enclosure, the installation of a ladder to the roof, the relocation of acetylene tanks (used for welding) to an enclosure at the rear of the property, and the modification of the landscaping approved on the site; and

WHEREAS, as to the change in use, the applicant states that subsequent to the Board’s 2003 grant, the owner has operated the building as a general contractor’s establishment (UG 16) rather than as a custom woodworking shop (UG 16) because the company performs other carpentry work in addition to woodworking, and stores materials for ongoing contracting jobs within the building; and

WHEREAS, as to the second floor, the applicant proposes to connect the two existing mezzanines, currently occupied by offices, to create a full second floor within the building; and

WHEREAS, the applicant states that the expansion of the second floor will add an additional 534 sq. ft. of floor area to the existing building, for a total floor area of approximately 4,327 sq. ft. (1.02 FAR), which is less than the permitted floor area for both residential and community facility use; and

WHEREAS, the applicant further states that the additional floor area created at the second floor will be occupied by an additional accessory office; and

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WHEREAS, as to the hours of operation, the applicant proposes to change the hours of operation from Monday through Friday, from 8:00 a.m. to 5:30 p.m. to Monday through Friday, from 7:30 a.m. to 3:30 p.m.; the applicant proposes to maintain the approved Saturday hours, from 9:00 a.m. to 1:00 p.m.; and

WHEREAS, as to the modifications to the landscaping, the applicant states that the evergreen plantings at the rear of the site were not provided because a stucco wall with a height of eight feet provides screening and negates the need for such plantings, which would not be visible to the adjacent neighbor to the rear; and

WHEREAS, the applicant further states that the evergreen plantings along the south side of the site were not planted because the existing fruit trees provide adequate buffering for the adjacent residential neighborhood, and therefore make it both difficult and unnecessary to plant evergreens; and

WHEREAS, at hearing, the Board directed the applicant to clean up the stored materials in the side yard and to provide an area for storage at the rear of the site; and

WHEREAS, in response, the applicant submitted photographs and revised plans reflecting that the side yard has been cleared and a storage area will be provided at the rear corner of the site; and

WHEREAS, based upon the above, the Board finds the requested extension of term and amendments are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on June 17, 1986, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 17, 2011, to expire on June 17, 2021, and to permit the noted modifications to the previous grant; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘July 18, 2011’-(6) sheets and ‘November 28, 2011’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 17, 2021;

THAT the hours of operation shall be: Monday through Friday, from 7:30 a.m. to 3:30 p.m., Saturday, from 9:00 a.m. to 1:00 p.m., and closed on Sunday;

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

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 401390990)

Adopted by the Board of Standards and Appeals,

December 13, 2011.

185-05-BZ

APPLICANT – John C. Chen for 62-02 Roosevelt Avenue Corporation, owner; Lapchi, Incorporated, lessee.

SUBJECT – Application April 20, 2011 – Extension of Term of a Variance (§72-21) for an eating and drinking establishment with dancing (UG12A) which expired on January 10, 2008; Amendment to permit the enlargement of the dance floor and kitchen; Extension of Time to complete construction which expired on January 10, 2009; waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 62-02 Roosevelt Avenue, south side of Roosevelt Avenue 192.59' west side of intersection of 63rd Street/Roosevelt Avenue. Block 1294, Lot 58. Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: John C. Chen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of term of a previously granted variance to permit the conversion of the first floor of an existing two-story building from an eating and drinking establishment (UG 6) to an eating and drinking establishment with entertainment and dancing (UG 12), an amendment to permit modifications to the previously-approved plans, and an extension of time to complete construction; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2011, and then to decision on December 13, 2011; 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 2, Queens, recommends disapproval of this application; and

WHEREAS, at hearing, a representative of the Community Board provided testimony regarding inconsistencies between the applicant’s proposal before the Board and the proposal it provided to the State Liquor Authority (“SLA”) in seeking an extension of their liquor license, specifically related to the proposed hours and operations; and

WHEREAS, the subject site is located on the south side of Roosevelt Avenue, between the Long Island Railroad and 63rd Street, within a C1-2 (R6) zoning district; and

WHEREAS, the site has 22’-8” of frontage on Roosevelt

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Avenue and a total lot area of 7,435 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story building with an eating and drinking establishment (UG 6) at the first floor; the second floor is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 10, 2006, when, under the subject calendar number, the Board granted a variance under ZR § 72-21 to permit the conversion of the first floor from an eating and drinking establishment (UG 6) to an eating and drinking establishment with entertainment and dancing (UG12), for a term of two years; and

WHEREAS, the applicant states that, due to financing difficulties, the work permitted under the variance was never completed and the first floor continues to operate as a UG 6 eating and drinking establishment; and

WHEREAS, the applicant now requests an extension of term for the variance and an extension of time to complete construction; and

WHEREAS, the applicant also seeks an amendment to legalize certain modifications to the site which do not comport with the previously-approved plans; and

WHEREAS, specifically, the applicant requests to legalize the following changes to the previously-approved plans: the enlargement of the existing kitchen, the construction of a bar within the designated waiting area, the enlargement of the dance floor and an increase in the maximum occupancy of the dance floor from 50 persons to 65 persons, and a modification to the seating layout; and

WHEREAS, the applicant states that the previously-approved waiting area will also be enlarged to compensate for the floor area occupied by the bar; and

WHEREAS, the applicant states that although the first floor has continued to operate as a UG 6 eating and drinking establishment since the Board's grant, the subject alterations to the UG 6 eating and drinking establishment, for which the applicant now seeks an amendment, were undertaken by an interim lessee who has since abandoned the site due to financing difficulties; and

WHEREAS, the applicant represents that the current lessee now seeks to operate the site in accordance with the Board's grant, while incorporating the subject alterations made by the interim lessee; and

WHEREAS, the applicant states that, despite the proposed amendments, the site will comply with the following conditions from the previous grant: (1) a maximum total occupancy of 269 persons; (2) a maximum floor area at the first floor of 5,960 sq. ft., including a waiting area of 1,076 sq. ft.; (3) a minimum of one security guard from 8:00 p.m. until closing on Thursday through Sunday, to ensure patrons do not congregate on the sidewalk near the entrance; and (4) hours of operation of Monday through Wednesday, from 8:00 a.m. to 2:00 a.m., and Thursday through Sunday, from 8:00 a.m. to 4:00 a.m.; and

WHEREAS, at hearing, the Board directed the applicant to remove graffiti from the façade and side walls of the building, and to provide a partition to separate the bar area from the waiting area; and

WHEREAS, in response, the applicant submitted

photographs reflecting that the graffiti has been removed, and submitted revised plans reflecting that a glass partition will be installed to separate the bar area from the waiting area; and

WHEREAS, as to the testimony provided by the Community Board representative, the applicant states that it previously filed a liquor license renewal application with the SLA to extend the hours of operation for the current UG 6 eating and drinking establishment use; and

WHEREAS, the Board notes that the SLA renewal application is not relevant to the subject application, but that the applicant states that it will revise the application at the SLA to reflect the proposed hours of operation after obtaining the Board's approval; and

WHEREAS, based upon the above, the Board finds the requested extension of term, extension of time, and amendments are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on January 10, 2006, so that as amended this portion of the resolution shall read: "to extend the term for a period of three years from the date of this grant, to expire on December 13, 2014, to permit the noted modifications to the previously approved plans, and to grant a two-year extension of time to complete construction, to expire on December 13, 2013; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received 'October 31, 2011-(9) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 13, 2014;

THAT the hours of operation shall be: Monday through Wednesday, from 8:00 a.m. to 2:00 a.m., and Thursday through Sunday, from 8:00 a.m. to 4:00 a.m.;

THAT the maximum total occupancy of the first floor shall be 269 persons;

THAT there shall be a maximum of 65 persons on the dance floor, as indicated on the BSA-approved plans;

THAT the first floor shall have a maximum floor area of 5,960 sq. ft., including a waiting area of 1,076 sq. ft. (with a rate of 4 sq. ft. per occupant);

THAT from 8:00 p.m. until closing, Thursday through Sunday, a minimum of one security guard shall provide security services and ensure that patrons do not congregate on the sidewalk near the entrance;

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

THAT construction shall be completed and a certificate of occupancy obtained by December 13, 2013;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

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

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laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 420178202)

Adopted by the Board of Standards and Appeals, December 13, 2011.

789-45-BZ

APPLICANT – Walter T. Gorman, P.E., for Woodside 56 LLC, owner; Getty Properties Corp., lessee.

SUBJECT – Application July 6, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a (UG16) gasoline service station (*Getty*) which expired on July 13, 2006; Extension of Time to Obtain a Certificate of Occupancy which expired February 4, 2005; Waiver of the Rules. M1-1/R5 zoning district.

PREMISES AFFECTED – 56-02/56-20 Broadway, south east corner of 56th Street, Block 1195, Lot 44, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: John Ronan.

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 January 10, 2012, at 10 A.M., for decision, hearing closed.

248-75-BZ

APPLICANT – Alfonso Duarte, P.E., for 444 East 86th Street Owners Corp., owner; Quick Park, lessee.

SUBJECT – Application August 8, 2011 – Extension of Term permitting the use of a maximum of 50 transient parking spaces within an accessory garage granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law, which expired on October 14, 2010; Waiver of the Rules. R8B, R10 and C1-5 zoning districts.

PREMISES AFFECTED – 1621 York Avenue aka 436 East 86th Street, west side of York Avenue, Block 1565, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 10 A.M., for continued hearing.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Jovkiss Management, LLC, owner; East Manor Restaurant, lessee.

SUBJECT – Application November 1, 2011 – Extension of Time to obtain a Certificate of Occupancy for a UG6 Eating and Drinking Establishment (*Eastern Pavilion Chinese Restaurant*) which expired on October 5, 2011. C2-2/R3-2 zoning district.

Extension of Time to obtain a Certificate of Occupancy for a UG6 Eating and Drinking Establishment (*Eastern Pavilion Chinese Restaurant*) which expired on October 5, 2011. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 10 A.M., for continued hearing.

188-96-BZ

APPLICANT – Mitchell S. Ross, Esq., for 444 Soundview Services Stations, Incorporated c/o William McCombs, owner; Scott Greco, lessee.

SUBJECT – Application June 22, 2010 – Extension of Term (§11-411) of a variance for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expired January 6, 2008; Waiver of the rules. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, north side of Soundview Avenue and west of Underhill Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for continued hearing.

280-98-BZ

APPLICANT – Rampulla Associates Architects, LLP, for MARS Holding, LLC, owner.

SUBJECT – Application November 1, 2011 – Extension of Time to obtain a Certificate of Occupancy for a Variance (§72-21) for the continued operation of a UG4 dental office which expired on June 15, 2011. R2 zoning district.

PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100’ north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

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 January 10, 2012, at 10 A.M., for decision, hearing closed.

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18-09-BZ

APPLICANT – Stuart A. Klein, for Ascot Properties Ltd., owner; Gold’s Gym, lessee.

SUBJECT – Application October 6, 2011 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Gold’s Gym*) which expired on November 1, 2011. C6-5 zoning district. PREMISES AFFECTED – 250 West 54th Street, between Broadway and 8th Avenue, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Jay Goldstein.

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 January 24, 2012, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

138-11-A

APPLICANT – Sheldon Lobel, P.C., for 64-01 Woodside Realty, Inc., owner.

SUBJECT – Application September 7, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 64-01 Woodside Avenue, between 64th and 65th Street, Block 1295, Lot 75, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jordan Most.

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 appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a seven-story mixed-use residential/community facility building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; 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 2, Queens, recommends disapproval of this application; and

WHEREAS, Council Member Jimmy Van Bramer recommends disapproval of this application; and

WHEREAS, the site is located on the north side of Woodside Avenue, between 64th Street and 65th Street, and has a lot area of 6,563 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed-use residential/community facility building with a floor area of 24,022 sq. ft. (3.66 FAR), and 27 dwelling units (the “Building”); and

WHEREAS, the subject site is currently located within an R5D zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically with respect to floor area and density; and

WHEREAS, however, on July 28, 2011 (the “Enactment Date”), the City Council voted to adopt the Sunnyside-Woodside Rezoning, which rezoned the site to R5D, as noted above; and

WHEREAS, the Building does not comply with the R5D zoning district parameters as to floor area and density; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, the applicant states that Permit No. 420251355-01-FO (the “Foundation Permit”), permitting construction of the subject building’s foundation was issued to the owner by the Department of Buildings (“DOB”) on June 24, 2011; and

WHEREAS, the applicant states that the Foundation Permit was based on complete plans and specifications examined and approved by DOB and was filed in conjunction with New Building Application No. 420251355; and

WHEREAS, the Foundation Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R5D zoning district regulations and DOB determined that the Building’s foundation was not complete; and

WHEREAS, by letter dated November 22, 2011, DOB stated that the Foundation Permit was lawfully issued, authorizing construction of the foundation prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Foundation Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the applicant cites to Glenel Realty Corp. V. Worthington (4 A.D.2d 7002, 703 (2d Dep’t 1957), for the proposition that a vested right in the foundation of a structure “must connote a vested right to the erection and use of the specific superstructure for which the foundation was designed;” and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the

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

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

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

WHEREAS, as to substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following work on: the excavation of 800 cubic yards of total fill, or 100 percent of the required excavation work; the installation of 1.67 tons of rebar, or six percent of the required rebar; and the pouring of 100 percent of the concrete required for the underpinning and elevator pit, 31 percent of the concrete required for the footing work, and 16 percent of the concrete required for the strap beams, constituting a total of 102 cubic yards of concrete, or 28 percent of the total required concrete for the foundation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction log, construction contracts, an affidavit from the project engineer, concrete pour tickets, an excavation and foundation diagram, and photographs of the site showing the amount of work completed prior to the Enactment Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$400,939, including hard and soft costs and irrevocable commitments, out of \$5,038,355

budgeted for the entire project; and

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

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$287,275 for the work performed at the site as of the Enactment Date, representing 32 percent of the foundation-related hard costs; and

WHEREAS, the applicant further states that the owner paid an additional \$63,664 in soft costs related to the work performed at the site as of the Enactment Date, representing 56 percent of the total soft costs; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately eight percent of the projected total cost; and

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

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

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

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 zoning, the floor area would decrease from the proposed 24,022 sq. ft. (3.66 FAR) to 13,127 sq. ft. (2.0 FAR); and

WHEREAS, the applicant further states that complying with the R5D zoning would result in a reduction of units from 27 to 17; and

WHEREAS, the applicant represents that the 10,895 sq. ft. loss in floor area and the loss of ten units would reduce the annual rental income from approximately \$713,000 to \$316,000; and

WHEREAS, the applicant states that the existing foundation and related underpinning are built to the property's lot lines, and the proposed R6 building will rise from the perimeter foundation walls along three sides, with the exception of the Woodside Avenue frontage where there is a front yard setback; and

WHEREAS, however, the applicant states that, due to the front and side yard regulations in the R5D district, it cannot re-use the existing foundation and related underpinning for an R5D building without undertaking costly and burdensome design solutions to correct misalignments between the cellar foundations and the first floor walls; and

WHEREAS, the Board agrees that the reduction in floor area of the Building, coupled with the loss of actual expenditures and outstanding fees that could not be recouped and the need to redesign, constitutes a serious

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economic loss, and that the evidence submitted by the applicant supports this conclusion; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 420251355, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, December 13, 2011.

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application September 8, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 69-17 & 69-19 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64 & 65, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jordan Most.

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:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of two four-story residential buildings under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; 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, Council Member Jimmy Van Bramer recommends disapproval of this application; and

WHEREAS, the site is located on the north side of 38th Avenue between the Brooklyn-Queens Expressway and 69th Street; and

WHEREAS, the site consists of Lot 64 (tentative lots 64 and 65), a triangular-shaped parcel with 50 feet of frontage on 38th Avenue and a total lot area of 6,950 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with two four-story residential buildings with four units each (the “Buildings”); and

WHEREAS, the subject site is currently located within an R5D zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Buildings comply with the former R6 zoning district parameters, specifically with respect to floor area; and

WHEREAS, however, on July 28, 2011 (the “Enactment Date”), the City Council voted to adopt the Sunnyside-Woodside Rezoning, which rezoned the site to R5D, as noted above; and

WHEREAS, the Buildings do not comply with the R5D zoning district parameters; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the applicant states that New Building Permit Nos. 420370217-01-NB and 420370208-01-NB were issued on July 26, 2011 (the “New Building Permits”), authorizing the development of two four-story residential buildings pursuant to R6 zoning district regulations; and

WHEREAS, the New Building Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R5D zoning district regulations and DOB determined that the Building’s foundation was not complete; and

WHEREAS, by letter dated November 9, 2011, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the Buildings prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance”; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163

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A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as to substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following work related to the proposed building at 69-17 38th Avenue (tentative lot 65): excavation of 430 cubic yards of total fill, or 100 percent of the required excavation work; installation of 100 percent of the soldier piles, shoring, and rebar; and the pouring of 29.6 cubic yards of concrete out of the approximately 62.7 cubic yards of concrete required for the foundation, or 47 percent of the total concrete; and

WHEREAS, the applicant further states that the owner had completed the following work related to the proposed building at 69-19 38th Avenue (tentative lot 64) prior to the Enactment Date: excavation of 400 cubic yards of total fill, or 100 percent of the required excavation work; installation of 100 percent of the soldier piles, shoring, and rebar; installation of 64 linear feet, or 40 percent, of the forms; and the pouring of approximately seven cubic yards of concrete out of the approximately 55.6 cubic yards of concrete required for the foundation, or 11 percent of the total concrete; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction log, construction contracts, an affidavit from the general contractor, concrete pour tickets, an excavation and foundation diagram, and photographs of the site showing the amount of work completed prior to the Enactment Date; and

WHEREAS, the applicant states that certain work continued on the site until DOB’s issuance of a stop work order on July 29, 2011, including the pouring of 30 cubic yards of concrete on the Enactment Date; and

WHEREAS, the Board notes that all of the work performed on or after the Enactment Date, including the pouring of 30 cubic yards of concrete, has been discounted from the substantial construction analysis; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant’s analysis; and

WHEREAS, the applicant states that prior to the

Enactment Date, the owner expended \$237,379, including hard and soft costs and irrevocable commitments, out of \$1,689,189 budgeted for the entire project; and

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

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$85,000 for the work performed at the site as of the Enactment Date, representing 64 percent of the foundation-related hard costs; and

WHEREAS, the applicant further states that the owner paid an additional \$116,879 in soft costs related to the work performed at the site as of the Enactment Date, representing 47 percent of the total soft costs; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 14 percent of the projected total cost; and

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

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

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

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 zoning, the floor area would decrease from the proposed 9,476 sq. ft. (2.58 FAR) to a maximum realizable floor area, given the constraints and limitations on the site, of 5,399 sq. ft. (1.47 FAR); and

WHEREAS, the applicant further states that complying with the R5D zoning would result in a reduction of units from eight to six; and

WHEREAS, the applicant represents that the 4,077 sq. ft. loss in floor area and the resultant loss in unit count would reduce the annual rental income from approximately \$147,600 to \$93,600; and

WHEREAS, the applicant submitted a foundation diagram reflecting that the zoning change from R6 to R5D would also preclude the use of virtually all of the installed foundation elements, thus requiring the foundations to be redesigned and rebuilt; and

WHEREAS, the Board agrees that the reduction in floor area of the Buildings, coupled with the loss of expenditures and outstanding fees that could not be recouped and the need to redesign, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures

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made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Buildings had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit Nos. 420370217-01-NB and 420370208-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, December 13, 2011.

233-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Alco Builders Incorporated, owners.

SUBJECT – Application December 23, 2010 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 61(tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to January 31, 2012, at 10 A.M., for continued hearing.

86-11-A

APPLICANT – Cozen O’Connor, for Perl binder Holdings, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeal of the Department of Buildings’ revocation of an approval to permit a non-conforming sign. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2nd Avenue, northwest corner of East 36th Street and 2nd Avenue, Block 917, Lot 21, 24-31, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Howard Hornstein.

For Opposition: Lisa M. Orrentia, Department of Buildings.

ACTION OF THE BOARD – Laid over to February 7, 2012, at 10 A.M., for continued hearing.

170-11-A & 171-11-A

APPLICANT – Randy M. Mastro of Gibson, Dunn & Crutcher, LLP, for Win Restaurant Equipment and Supply Corporation, owner; Fuel Outdoor, LLC, lessee.

SUBJECT – Application October 28, 2011– Appeal seeking a common law vested right for a sign under the prior zoning regulations, which were amended on February 27, 2001. M1-5B

PREMISES AFFECTED – 318 Lafayette Street, north west corner of Houston and Lafayette Streets, Block 522, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Trevis D. Lenkner.

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 January 24, 2012, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 13, 2011
1:30 P.M.**

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

ZONING CALENDAR

31-11-BZ

CEQR #11-BSA-070X

APPLICANT – Goldman Harris LLC, for Bronx Sheperds Restoration Corporation, owner.

SUBJECT – Application March 28, 2011 – Variance (§72-21) to allow a mixed use community facility and commercial building, contrary to use (§32-12), floor area (§33-123), rear yard (§33-292), and height and setback (§33-432) regulations. C8-3 zoning district.

PREMISES AFFECTED – 1665 Jerome Avenue, west side of Jerome Avenue between Featherbed Lane and Clifford Lane, Block 2861, Lot 35, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Nadia Alexis.

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 Bronx Borough Commissioner, dated March 3, 2011, acting on Department of Buildings Application No. 220105449, reads, in pertinent part:

ZR 32-15 Proposed use of Use Group 3 is not permissible in C8-3 district.

ZR 33-123 Proposed total building FAR...is greater than maximum allowed FAR of 6.50 (65,000 sq. ft.) for a community facility in a C8-3 district.

ZR 33-432 Proposed building setback of 10'-0" is less than 15'-0" minimum required front setback.

ZR 33-432 Provide sky exposure plane (slope). Proposed project does not comply with the required sky exposure plane (slope); and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C8-3 zoning district, the proposed construction of a 13-story mixed-use community facility (including a portion with sleeping accommodations)/commercial building which does not comply with the underlying zoning regulations for use, floor area ratio ("FAR"), front setback, and sky exposure plane, contrary to ZR §§ 32-15, 33-123 and 33-432; and

WHEREAS, a public hearing was held on this

application on July 12, 2011 after due notice by publication in *The City Record*, with a continued hearing on November 15, 2011, and then to decision on December 13, 2011; and

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

WHEREAS, Community Board 5, Bronx, submitted a resolution stating that it waived its hearing for this application, but noted that it previously issued a letter in support of the subject project; and

WHEREAS, this application is brought on behalf of the Bronx Shepherds Restoration Corp. (the "Bronx Shepherds"), a not-for-profit entity organized to provide affordable housing, community programs and other social services to the Bronx community; and

WHEREAS, the applicant submitted letters in support of the project from the following elected officials: Bronx Borough President Ruben Diaz, Jr., City Council Member Helen Diane Foster, City Council Member G. Oliver Koppel, New York State Assembly Member Vanessa L. Gibson, New York State Senator Ruben Diaz, Sr., and Congressman Jose E. Serrano; and

WHEREAS, the site is located on the west side of Jerome Avenue, between Featherbed Lane and West Clifford Place, within a C8-3 zoning district; and

WHEREAS, the subject site has a width of 100 feet, a depth of 100 feet, and a total lot area of 10,000 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a 13-story mixed-use community facility (including a portion with sleeping accommodations)/commercial building on the subject site; and

WHEREAS, the proposed building will have the following uses: (1) Use Group 6 retail use on the ground floor; (2) a Use Group 4 job training center on the second floor and a portion of the third floor; and (3) a Use Group 3 non-profit institution with sleeping accommodations on floors three through 13, consisting of 71 dwelling units (57 units of affordable housing for low-income families and 14 special needs units for young adults aging out of foster care); and

WHEREAS, the proposed Use Group 3 non-profit institution with sleeping accommodations is not permitted in the subject C8-3 zoning district; therefore a use variance is required; and

WHEREAS, in addition, the proposed building has the following non-complying parameters: a total floor area of 75,221 sq. ft. (7.52 FAR) (the maximum permitted total floor area is 65,000 sq. ft. (6.5 FAR)), including 70,598 sq. ft. of community facility floor area (7.06 FAR) and 4,623 sq. ft. of ground floor retail floor area (0.46 FAR); a setback of 10'-0" above a height of 36'-0" (a minimum setback of 15'-0" is required above a height of 60'-0"); and encroachment into the sky exposure plane; and

WHEREAS, the applicant originally proposed to construct a 13-story building with a total floor area of 80,200 sq. ft. (8.02 FAR) and a rear yard with a minimum depth of only 10'-0", which resulted in an additional non-compliance

MINUTES

with the minimum buffer requirement of 30'-0" under ZR § 33-292; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting the current proposal, with a total floor area of 75,221 sq. ft. (7.52 FAR) and a complying rear yard with a minimum depth of 30'-0"; and

WHEREAS, because the proposed Use Group 3 use is not permitted in the subject C8-3 zoning district and relief from the bulk requirements of the underlying zoning district is necessary, the applicant seeks a variance to permit construction of the proposed building; and

WHEREAS, the applicant states that the following are unique physical conditions which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the site's shallow bedrock condition; (2) the presence of a 60-ft. high rock outcropping at the rear of the site; and (3) the adjacency of an elevated subway line; and

WHEREAS, as to the subsurface conditions, the applicant states that the presence of bedrock just five feet below grade impedes construction on the subject site; and

WHEREAS, the applicant submitted a report from a geotechnical and environmental consultant stating that, after analyzing boring samples from the bedrock, it determined that the bedrock is in "good" to "excellent" condition, and therefore the ability of standard excavation equipment to excavate the bedrock will be very limited; and

WHEREAS, the applicant represents that constructing a foundation with a conventional depth would require blasting the bedrock, which is cost prohibitive; and

WHEREAS, the applicant states that the depth of the bedrock also prevents the developer from constructing a typical concrete slab on footings foundation; and

WHEREAS, specifically, the applicant states that a typical concrete slab foundation would be on footings that would sit on bearable soil three to five feet below ground, and that due to the location of the bedrock at the site, this construction is not possible and the applicant will instead need to drill piles and caissons into the bedrock and place a concrete slab on top of these piles and caissons; and

WHEREAS, the applicant states that drilling piles and installing caissons is significantly more expensive than a typical concrete slab foundation, and therefore it will add substantial additional costs to the project; and

WHEREAS, in addition to the added costs associated with presence of the bedrock, the applicant states that the inability to excavate the shallow bedrock also prevents the applicant from constructing a cellar to locate some of its program space below grade, which would have enabled it to reduce the FAR of the subject building; and

WHEREAS, specifically, the applicant represents that if not for the location of the bedrock, it could relocate approximately 8,000 sq. ft. of space associated with the proposed retail market, job training facility and/or mechanical equipment for the building into the cellar, which would not count towards the FAR calculations; and

WHEREAS, as to the presence of the rock outcropping,

the applicant states that a 60-ft. high rock outcropping at the rear of the site juts out ten feet from the rear lot line into the site; and

WHEREAS, the applicant submitted a letter from its architect stating that the rock outcropping, in combination with the bedrock underlying the site, creates significant soil and runoff issues; and

WHEREAS, the letter from the architect further states that rainwater will be expressed from the face of the rock outcropping, which will combine with the infiltration of rainfall reaching the site and penetrating the overlying soil, and that extraordinary stormwater management controls will be required to prevent water from entering the lowest level of the building due to the site specific topography, proximity of bedrock to the surface, and shallow depth of the soils; and

WHEREAS, specifically, the stormwater management controls will be comprised of a two-part system: (1) a retention tank placed in the back yard of the building to minimize the runoff into the sewage system, and (2) a sewage pipe running from the retention tank to the stormwater system located in the bed of Jerome Avenue; and

WHEREAS, as to the site's location adjacent to an elevated subway line, the applicant states that it will need to take several measures to mitigate the impact of the development on the subway line; and

WHEREAS, the applicant states that it will drill the piles and caissons needed for the foundation into the bedrock, which will reduce the vibration impact to the elevated subway by more than 20 percent as compared to the typical method of driving the piles; and

WHEREAS, the applicant represents that, although driving the piles would be less expensive, the vibration from driving the piles could disturb the foundation and piers of the adjacent elevated subway line; and

WHEREAS, the applicant states the owner will also provide shoring for the Jerome Avenue side of the subject site, which will protect the foundations and piers of the adjacent elevated subway line from vibrations caused by the drilling of piles and other construction work; and

WHEREAS, the applicant further states that it will take several measures to mitigate the impact of the elevated subway line on the proposed building; and

WHEREAS, specifically, the applicant states that in order to mitigate noise issues emanating from the elevated tracks and impacting the tenants of the building, it will install double hung aluminum windows that will protect residents against noise levels as high as 35 dBA; and

WHEREAS, the applicant represents that any as-of-right development at the site would be burdened by the shallow bedrock, the presence of a 60-ft. high rock outcropping at the rear of the site, and the need to protect the elevated subway structure; and

WHEREAS, the Board agrees that these unique physical conditions create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant also states that a variance is requested based on Bronx Shepherds' programmatic need to

MINUTES

provide 71 units of affordable housing, including 14 units for young adults aging out of foster care; and

WHEREAS, the applicant states that Bronx Shepherds is seeking financing for the proposal from City, State, and Federal programs including the New York City Department of Housing, Preservation and Development (“HPD”), the New York City Housing Development Corporation’s LAMP program, Resolution A Funds allocated by the Bronx Borough President and City Council that subsidize affordable housing developments throughout the Bronx, the New York State Department of Homes and Community Renewal (“HCR”), the New York State Weatherization Assistance Program, and Federal Low Income Housing Tax Credits; and

WHEREAS, a letter dated September 23, 2011 from the HPD Assistant Commissioner confirms that financing of the proposed development is contemplated by the agency; and

WHEREAS, a letter dated December 1, 2011 from the HCR Vice President of Multifamily Finance confirms that financing of the proposed project is contemplated by the agency; and

WHEREAS, the applicant also submitted a letter from Bronx Borough President Ruben Diaz, Jr., confirming that financing of the proposed project is contemplated by his office; and

WHEREAS, the applicant represents that the financing sources for the housing component of the project require a minimum of 50 units for an affordable housing project, and they require such projects to be able to support themselves without a deficit, using the rent subsidy programs that are available; and

WHEREAS, however, the applicant states that the Bronx Shepherds have a programmatic need to provide 14 special needs units for young adults aging out of foster care; and

WHEREAS, the applicant submitted a letter from the Executive Director of the Bronx Shepherds stating that after the age of 18, many of the services available to foster children through various service providers are terminated, and that by providing 14 special needs units in the building where these young adults will be encouraged to live for one to two years before identifying their own apartment, the Bronx Shepherds will extend these services to young adults between the ages of 18 to 21 and prepare them for independent living; and

WHEREAS, the letter from the Bronx Shepherds further states that there is a significant need for this program, as more than 1,100 children age out of the foster care system in the Bronx annually, and that in order to facilitate these young adults’ transition to independent living the proposed building will provide services customary for foster children below the age of 18, including GED training, emotional and spiritual support, life skills, and medical services, as well as providing job training services and home economics training; and

WHEREAS, the applicant states that the occupants of the 14 special needs units will be in the lowest income bracket of the proposal’s population and will not be able to carry the cost of their units; therefore the rents paid by the 14 special needs units will be lower than the rents paid by the occupants of the other affordable housing units, and the minimum number of affordable non-special needs units that the proposal must

provide to be financially viable is 57; and

WHEREAS, accordingly, the applicant states that the Bronx Shepherds have a programmatic need to provide a total of 71 affordable housing units in the subject building; and

WHEREAS, the applicant states that the requested setback and sky exposure plane waivers are required in order to provide adequately sized floor plates to accommodate the 71 units, as a complying building would require a building with smaller floor plates and a height above the proposed 13 stories in order to satisfy Bronx Shepherds’ programmatic need of providing 71 units of affordable housing; and

WHEREAS, the applicant states that there is also a programmatic need to provide the proposed job training center at the site, as job training is a crucial part of the Bronx Shepherds’ mission; and

WHEREAS, the applicant states that \$500,000 has been allocated by Assembly Member Gibson to fund programmatic needs for the job training center, which will occupy 10,398 sq. ft. of floor area on the second and third floors, and will provide the following job training programs: GED preparatory program; a commercial drivers license course; a computer training program; training for the New York State weatherization program; and training in food preparation; and

WHEREAS, the applicant represents that the programmatic need for the job training center, combined with the inability to construct a cellar and provide a portion of the job training space below grade, contributes to the requested FAR waiver; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in conjunction with the programmatic need of the applicant, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

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

WHEREAS, however, the applicant analyzed an as-of-right alternative consisting of a three-story commercial building with 20,000 sq. ft. of floor area; and

WHEREAS, the financial analysis indicates that the as-of-right scenario is not financially viable due to the premium costs associated with the unique conditions of the site, while an as-of-right commercial building without the associated premium costs would be financially viable; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is characterized by a mix of residential, commercial and community facility uses; and

WHEREAS, the applicant states that the ground floor retail space and the job training center on the second and a portion of the third floor are permitted as-of-right in the subject zoning district, and are consistent with other retail and Use Group 4 community facility uses along Jerome Avenue; and

WHEREAS, the applicant further states that the use of

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the remainder of the building for Use Group 3 non-profit institution with sleeping accommodations will not negatively affect the adjacent uses in the area, which includes a significant amount of Use Group 2 residential use; and

WHEREAS, as to bulk, the applicant states that the proposed building complies with the underlying zoning regulations for street wall height, total height, yards, and parking, and that the waivers requested for FAR, setback and encroachment into the sky exposure plane are minimal; and

WHEREAS, the applicant submitted a map and a corresponding chart identifying buildings within a one-quarter mile radius of the site with heights equal to or greater than 175 feet above mean sea level, which is the height of the proposed building; and

WHEREAS, the map submitted by the applicant reflects that there are 29 buildings within the study area which have a greater height above mean sea level than the subject site; and

WHEREAS, the Board notes that, due to the 60-ft. high rock outcropping at the rear of the site, the six-story buildings located along Davidson Street, which are situated atop the rock outcropping at the rear of the site, appear similar in height to the subject building when viewed from the street; and

WHEREAS, as to the FAR, the Board notes that the proposed retail and UG 4 community facility space, which represents approximately 15,000 sq. ft. of floor area in the subject building, are permitted as-of-right in the subject C8-3 zoning district; and

WHEREAS, the Board further notes that the requested FAR waiver is largely necessitated by the inability to construct a cellar, as certain uses that could normally be located below grade must be located above grade in the subject building, where they count towards the floor area calculations; and

WHEREAS, based upon the above, 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 the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as discussed above, the applicant submitted an analysis of an as-of-right alternative and determined that it could not be supported financially; and

WHEREAS, as discussed above, the applicant initially proposed a building with a total floor area of 80,200 sq. ft. (8.02 FAR) and a rear yard with a minimum depth of only 10'-0", which was non-compliant with the buffer requirement under ZR § 33-292 and which the Board was not persuaded was required as a result of the site's unique physical conditions or programmatic needs; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting the current proposal, with a total floor area of 75,221 sq. ft. (7.52 FAR) and a complying rear yard with a minimum depth of 30'-0"; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Bronx Shepherds to carry out its stated needs; and

WHEREAS, thus, 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 conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 11BBSA070X, dated November 22, 2011; and

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

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

WHEREAS, DEP reviewed and accepted the October 2011 Remedial Action Plan and Construction Health and Safety Plan; and

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

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

WHEREAS, DEP reviewed the results of noise monitoring, which determined that a window-wall noise attenuation rating of 36.8 dBA OITC) and an alternate means of ventilation (central air conditioning or air conditioning sleeves containing air conditioners) should be provided on the proposed building's north, south and east facades; 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, 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 C8-3 zoning district, the proposed construction of a 13-story mixed-use community facility (including a portion with sleeping accommodations)/commercial building which does not comply with the underlying zoning regulations for use, FAR, front setback, and sky exposure plane, contrary

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to ZR §§ 32-15, 33-123 and 33-432, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 9, 2011"- sixteen (16) sheets; and *on further condition*:

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

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

THAT the parameters of the proposed building shall be: a total floor area of 75,221 sq. ft. (7.52 FAR); a community facility floor area of 70,598 sq. ft. (7.06 FAR); a commercial floor area of 4,623 sq. ft. (0.46 FAR); a total height of 136'-0"; a setback of 10'-0" above a height of 36'-0"; and encroachment into the sky exposure plane, as illustrated on the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

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

THAT the proposed windows shall have a noise attenuation rating of 36.8 dBA OITC on the proposed building's north, south and east facades, and an alternate means of ventilation (central air conditioning or air conditioning sleeves containing air conditioners) shall be provided to maintain a closed window condition;

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

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

THAT construction shall proceed in accordance with ZR § 72-23; 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, December 13, 2011.

82-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Livaho Choueka, owner.

SUBJECT – Application June 8, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141); side yard (§23-461); rear yard (§23-47) regulations. R5 zoning district.

PREMISES AFFECTED – 2020 Homecrest Avenue, west side of Homecrest Avenue, 165' south of Avenue T, Block 7316, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 7, 2011, acting on Department of Buildings Application No. 3197918, reads:

ZR 23-141 – Proposed floor area exceeds permitted.

ZR 23-461 – Proposed side yard is less than required minimum.

ZR 23-47 – Proposed rear yard is less than required minimum; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, side yards, and rear yard contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, with continued hearings on October 25, 2011 and November 22, 2011, and then to decision on December 13, 2011 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 this application; and

WHEREAS, the subject site is located on the west side of Homecrest Avenue, south of Avenue T within an R5 zoning district; and

WHEREAS, the subject site has a lot area of 3,414 sq. ft. and is occupied by a single-family home with 1,761 sq. ft. of floor area (0.52 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,761 sq. ft. (0.52 FAR) to 4,484 sq. ft. (1.34 FAR); the maximum permitted floor area is 4,268 sq. ft. (1.25 FAR); and

WHEREAS, the applicant proposes to provide one side yard with a width of 5'-0" and to maintain the pre-existing non-complying side yard with a width of 4'-5" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required); and

WHEREAS, the applicant proposes to provide a rear yard with a depth of 20'-0" (a rear yard with a minimum depth of 30'-0" is required); and

WHEREAS, the Board initially asked the applicant to provide a side yard with a width of 8'-0", rather than 5'-0" so that the proposal could more closely comply with the requirement for a total width of 13'-0" for both side yards; and

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WHEREAS, in response, the applicant asserted that the text of ZR § 73-622 permits the proposed side yards; and

WHEREAS, specifically, the relevant text at ZR § 73-622(1) states that

Any enlargement within a side yard shall be limited to an enlargement within an existing non-complying side yard and such enlargement shall not result in a decrease in the existing minimum width of open area between the building that is being enlarged and the side lot line; and

WHEREAS, the applicant asserts that its proposal to maintain one pre-existing non-complying side yard and to provide one complying side yard with a width of 5'-0" is consistent with the special permit text as it would not decrease the minimum width within the non-complying side yard; and

WHEREAS, further, the applicant considers the unique conditions of the subject site, which include a lot depth of 85 feet (opposed to the standard 100 feet) and adjacency to a non-complying multi-family building which does not provide a front yard, but does provide a side yard with a width of 10'-0" along the shared lot line; and

WHEREAS, the applicant also asserts that a side yard with a width of 5'-0" is consistent with the character of the neighborhood; and

WHEREAS, the Board considered the applicant's request to provide a side yard with a width of 5'-0" as its complying yard and agrees that it is appropriate in the subject case; and

WHEREAS, the Board finds that it has jurisdiction, pursuant to ZR § 73-622 to approve the reduction of a complying side yard to a width of 5'-0"; and

WHEREAS, the Board notes that its conclusion is compatible with other side yard provisions in the Zoning Resolution such as ZR § 23-49 which allows property owners in certain residential zoning districts and under certain circumstances to build directly along one side lot line as long as a side yard with a width of at least 8'-0" is provided along the other side lot line, resulting in a failure to meet the total required width of 13'-0"; and

WHEREAS, generally, in consideration of the side yard requirements, including those set forth at ZR § 23-49, the Board finds a complying side yard with a width of 8'-0" to be the required complying side yard when the second side yard has a non-complying width less than 5'-0"; and

WHEREAS, however, the Board notes that a side yard with a width of 5'-0" is, on its own, a complying side yard condition; and

WHEREAS, the Board also notes that other side yard provisions, such as ZR § 23-49, already allow for the reduction of the side yard total to a width less than 13'-0"; and

WHEREAS, the Board notes that the reduction of the complying side yard from 8'-0" to 5'-0" may be warranted in certain cases and when there is compliance with all of the special permit findings; and

WHEREAS, the Board is persuaded that the site and surrounding conditions in the subject case are

distinguishable from other cases with standard lot depths of 100 feet, which allow for a larger building footprint, and thus finds that the special permit findings, including that the proposal is compatible with the character of the neighborhood, are met; and

WHEREAS, in conclusion, the Board finds that when one side yard has a non-complying width of less than 5'-0", it would require that the second side yard have a width of at least 8'-0" except in certain instances when a second side yard with a width of less than 8'-0" but at least 5'-0" would be appropriate; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, side yards, and rear yard contrary to ZR §§ 23-141, 23-461, and 23-47; *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 October 13, 2011"-(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,484 sq. ft. (1.34 FAR); side yards with minimum widths of 4'-5" and 5'-0", and a rear yard with a minimum depth of 20'-0" as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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

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

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

THAT the Department of Buildings must ensure

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

Adopted by the Board of Standards and Appeals, December 13, 2011.

89-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie and Kfir Ribak, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461) and perimeter wall height (§23-631). R3-2 zoning district.

PREMISES AFFECTED – 2224 Avenue S, south west corner of Avenue S and East 23rd Street, Block 7301, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 25, 2011, acting on Department of Buildings Application No. 320269669, reads:

1. Contrary to ZR 23-141 in that the proposed floor area exceeds the maximum permitted.
2. Contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required.
3. Contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted.
4. Contrary to ZR 23-631 in that the perimeter wall height exceeds the maximum permitted.
5. Contrary to ZR 23-461 in that the proposed side yards are less than the minimum required; and

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

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, with continued hearings on November 22, 2011 and December 6, 2011, and then to decision on December 13, 2011 and

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

Ottley-Brown; and

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

WHEREAS, the subject site is located on the southwest corner of Avenue S and East 23rd Street within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft. and is occupied by a single-family home with 1,946 sq. ft. of floor area (0.65 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,946 sq. ft. (0.65 FAR) to 3,027 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 42 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space ratio of 58 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain a perimeter wall with a height of 22'-0", which is a pre-existing non-compliance; and

WHEREAS, the applicant proposes to provide one side yard with a width of 20'-0" and to maintain the pre-existing non-complying side yard with a width of 1'-6"; and

WHEREAS, the Board raised concerns about whether the proposed height and setback comply with zoning district regulations and are confined to the permitted building envelope; and

WHEREAS, in response, the applicant provided axonometric drawings to confirm that the proposal (other than the pre-existing non-complying perimeter wall height) did not exceed the permitted building envelope; and

WHEREAS, the Board determined that the axonometric drawings were not conclusive and stated that DOB should confirm full compliance; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2)

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and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space ratio, perimeter wall height, and side yards contrary to ZR §§ 23-141, 23-631, and 23-461; *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 November 9, 2011”-(8) sheets and “November 30, 2011”-(4) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,027 sq. ft. (1.01 FAR); a lot coverage of 42 percent; an open space ratio of 58 percent; a maximum perimeter wall height of 22 feet; and side yards with widths of 20’-0” and 1’-6”, as illustrated on the BSA-approved plans;

THAT DOB shall review that the height and setback comply with all regulations related to the permitted building envelope;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 13, 2011.

123-11-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for Harrison Retail Associates LLC, owner, SoulCycle 350 Amsterdam, LLC, lessee.

SUBJECT – Application August 24, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (*SoulCycle*). C2-7A & C4-6A zoning districts. PREMISES AFFECTED – 350 Amsterdam Avenue, west side Amsterdam Avenue between West 76th Street and West 77th Street. Block 1168, Lots 1001/7501, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ellen Hay

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 August 19, 2011, acting on Department of Buildings Application No. 120750277, reads in pertinent part:

Proposed ‘physical culture establishment’ at zoning C2-7A, C4-6A district is not permitted contrary to section ZR 32-10 and a special permit by the Board of Standards and Appeals is required; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-7A zoning district and partially within a C4-6A zoning district, the establishment of a physical culture establishment (PCE) on a portion of the first floor of a mixed-use commercial/residential building with a 13-story and an 18-story tower, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 15, 2011, after due notice by publication in *The City Record*, and then to decision on December 13, 2011; and

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

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

WHEREAS, the subject site is located on the west side of Amsterdam Avenue, between West 76th Street and West 77th Street; and

WHEREAS, the site is occupied by a mixed-use commercial/residential building with a 13-story and 18-story tower; and

WHEREAS, the applicant notes that there is an existing PCE at the subject site, granted pursuant to BSA Cal. No. 272-07-BZ; and

WHEREAS, the applicant states that the proposed PCE will occupy approximately 2,052 sq. ft. of floor area on the first floor of the building, and will be located in a different location than the existing PCE at the site; and

WHEREAS, the PCE will be operated as Soul Cycle; and

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

WHEREAS, the hours of operation for the proposed PCE will be 5:30 a.m. to 10:00 p.m., daily; and

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

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

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satisfactory; and

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

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

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

WHEREAS, the project is classified as an Type II action pursuant to 6 NYCRR Part 617.12 and 617.5; 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 Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-7A zoning district and partially within a C4-6A zoning district, the establishment of a physical culture establishment (PCE) on a portion of the first floor of a mixed-use commercial/residential building with a 13-story and an 18-story tower, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 26, 2011"- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 13, 2021;

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

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

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

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

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

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

THAT the Department of Buildings must ensure compliance with all 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,
December 13, 2011.

124-11-BZ

CEQR #12-BSA-016X

APPLICANT – Sheldon Lobel, P.C., for Wagner Associates LLC, owner, 2480 Grand Concourse Fitness Group, LLC, lessee.

SUBJECT – Application August 24, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2488 Grand Concourse, located on the east side of Grand Concourse between East 188th Street and Fordham Road. Block 3153, Lot 9, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Nora Martins.

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 Bronx Borough Commissioner, dated July 25, 2011, acting on Department of Buildings Application No. 200971706, reads in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in C4-4 zoning district pursuant to ZR section 32-10 and therefore requires a special permit from the Board of Standards and Appeals per ZR section 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4 zoning district, the operation of a physical culture establishment (PCE) at portions of the cellar, first floor and second floor of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 15, 2011, after due notice by publication in *The City Record*, and then to decision on December 13, 2011; and

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

WHEREAS, the subject site is an irregular-shaped lot located on the southeast corner of the intersection of Grand Concourse and East Fordham Road, within a C4-4 zoning district; and

WHEREAS, the site has 222.8 feet of frontage on Grand Concourse, 108.8 feet of frontage on East Fordham Road, and a total lot area of 24,186 sq. ft.; and

WHEREAS, the subject site is occupied by a five-

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story commercial building; and

WHEREAS, the proposed PCE will occupy 8,949 sq. ft. of floor area on portions of the first and second floor, with an additional 6,199 sq. ft. of floor space located in a portion of the cellar; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the proposed PCE will be open 24 hours per day, seven days per week; and

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

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA016X, dated August 24, 2011; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the

Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4 zoning district, the operation of a physical culture establishment at portions of the cellar, first floor and second floor of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 24, 2011" - (5) sheets, and *on further condition*:

THAT the term of this grant shall expire on December 13, 2021;

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

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

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

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

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

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

THAT the Department of Buildings must ensure compliance with all 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, December 13, 2011.

152-11-BZ

CEQR #12-BSA-026M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 240 East 38th Street Condominium on behalf of New York University, owner.

SUBJECT – Application September 19, 2011 – Variance (§72-21) to allow modifications to the existing plazas and arcades associated with the partial re-use of an existing building for a community facility (*NYU Langone Medical Center*), contrary to §37-625. C1-9 zoning district.

PREMISES AFFECTED – 240 East 38th Street, East 37th Street, Second Avenue, East 38th Street and Tunnel Exit Street, Block 918, Lot 1001-1026, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elise Wagner.

ACTION OF THE BOARD – Application granted on condition.

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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 September 16, 2011, acting on
Department of Buildings Application No. 120803746, reads, in
pertinent part:

1. Certain changes to existing plazas are not in greater accordance with the standards set forth in ZR 37-70, and therefore certification by the Chair of the City Planning Commission cannot be obtained, contrary to the requirements of ZR 37-625.
2. Proposed passenger drop-off and a driveway are located within and within 10 feet of arcade, contrary to ZR 37-80.
3. Proposed planters and seating are located within arcades beneath a height of 12 feet, contrary to ZR 37-80; and

WHEREAS, this is an application under ZR § 72-21, by NYU Langone Medical Center to permit, on a site in a C1-9/C1-9 Transit Land Use District (TA) zoning district, the modification to existing plazas and arcades including the introduction of a driveway and other obstructions, contrary to ZR §§ 37-625 and 37-80; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in the *City Record*, and then to decision on December 13, 2011; 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 6, Manhattan, recommends approval of the application with the recommendation that the Medical Center post signage and paint curbs and the drop-off driveway to make it clear that there is no parking or standing and that the Medical Center employ a concierge to help direct vehicles; and

WHEREAS, this application is brought on behalf of the NYU Langone Medical Center (the “Medical Center”); and

WHEREAS, the site is located on a through lot with frontage on East 38th Street and East 37th Street, between Third Avenue and Second Avenue within a C1-9/C1-9 (TA) zoning district; and

WHEREAS, the site is part of a single zoning lot with the adjacent site at 221 East 37th Street (Block 918, Lot 14) (the “Zoning Lot”); and

WHEREAS, the adjacent site is owned by Verizon New York and is occupied with a nine-story building constructed in 1912 and subsequently enlarged pursuant to a bulk variance (BSA Cal. No. 304-38-BZ), because it exceeds floor area and height regulations; and

WHEREAS, the adjacent building is not proposed to be changed and is not part of the subject application except that it shares the subject Zoning Lot; and

WHEREAS, the Building has a plaza and arcade on East 37th Street (the “South Plaza” and “South Arcade”) and a plaza and arcade on East 38th Street (the “North Plaza” and “North Arcade”); and

WHEREAS, NYU owns a condominium interest in the building (the “Building”) for the benefit of the Medical Center, which will occupy 13 of the 24 non-mechanical floors of the Building for use as an Ambulatory Care Center; and

WHEREAS, Verizon owns a condominium interest in the Building and occupies the portions that are not occupied by the Medical Center; the current certificate of occupancy lists all floors above the first floor as offices and/or mechanical equipment (Use Group 6); and

WHEREAS, the Building was developed in the mid-1960s pursuant to the 1961 Zoning Resolution’s plaza regulations, which allowed bonusable plazas with broad standards about dimensions and openness to the sky; arcades were subject to standards similar to those in effect today, including minimum dimensions and that they be open along their entire length; and

WHEREAS, pursuant to ZR § 37-625, design changes to existing plazas may be made only upon certification by the Chair of the City Planning Commission that such changes would result in a plaza that is in greater accordance with the public plaza standards set forth in ZR § 37-70; and

WHEREAS, the subject variance is required because some of the proposed design changes to the plazas, including the driveway, canopy, and baffle wall, would result in new non-compliances or increased degrees of non-compliance with the public plaza standards and therefore require a waiver of the ZR § 37-625 certification requirement and because the proposed driveway, planters, and movable seating do not comply with the arcade standards of ZR § 37-80 and also require waivers; and

WHEREAS, the Department of City Planning (DCP) has reviewed the changes and supports the plan submitted with this application as Drawings A-02.00 through A-026.00 and L-001.00 through L-520.00; and

WHEREAS, by letter dated September 14, 2001, DCP Counsel stated that a certification under ZR § 37-625 is unavailable for the proposed changes and that it would be appropriate to seek a variance from the Board to waive the requirement that the design changes must be in greater accordance with the public plaza standards and that a certification be obtained; and

WHEREAS, the applicant has acknowledged that the proposed passenger drop-off and driveway located within, and within ten feet of, the North Arcade is the Medical Center’s primary need which triggers the remainder of the non-compliances (ZR § 37-80); and

WHEREAS, the applicant has identified the following specific non-compliances which necessitate the variance for the North Plaza: (1) the proposed driveway and passenger drop-off are not permitted obstructions (ZR § 37-726(d)); (2) the proposed canopy exceeds the area, projection, and height limitations for permitted obstructions (ZR § 37-726(c)); (3) more than 50 percent of the sidewalk frontage area is obstructed, and no portion of the unobstructed area has a width

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of at least eight feet (ZR § 37-721(a)); (4) the circulation paths at their narrowest points are five feet in width, less than the minimum eight feet required (ZR § 37-723); and (5) there are fewer than four trees (ZR § 37-742); and

WHEREAS, the applicant has identified the following specific non-compliances which necessitate the variance for the South Plaza: (1) the proposed baffle wall within the South Plaza is not a permitted obstruction and obstructs the visibility of the major portion of the plaza (ZR §§ 37-726 and 37-715); (2) less than 50 percent of the trees are planted flush at grade (ZR § 37-742); (3) the lawns at the west end exceed a height of six inches above the plaza surface (ZR § 37-742); and (4) permitted obstructions including planting beds and walls and expanded seating exceed 40 percent of the plaza area (ZR § 37-726(b)); and

WHEREAS, the Board agrees with DCP that this case, involving the modification of plaza and arcade conditions for a non-profit institution is a rare example of when a variance is an appropriate means of modifying a site under CPC's jurisdiction and there is limited applicability of such practice; and

WHEREAS, further, the Board notes that the proposed modifications are within the spirit of the plaza and arcade text; and

WHEREAS, the Medical Center proposes to occupy the building with its Ambulatory Care programs including the following: (1) the first floor and mezzanine will be occupied primarily by registration and pre-admission testing; (2) the 11th and 12th floors will be occupied by Dermatology; (3) the 13th floor will be occupied by Dialysis, Nephrology, and Hyperbaric services; (4) the 15th through 17th floors will be occupied by Rusk Home, a rehabilitation program; the 18th and 19th floors will be occupied primarily by the Cancer Center and Infusion; (5) the 20th floor will be occupied by Clinical Services; (6) the 22nd floor will be occupied by Clinical Labs; (7) the 23rd floor will be occupied by Endoscopy; and (8) the 2nd and 24th floors will be occupied by Infrastructure; and

WHEREAS, the applicant states that the following are the programmatic needs of the Medical Center: (1) to provide reasonable access to the building for Ambulatory Care Center patients who are visit the building for out-patient services but who may be frail and have mobility impairment; and (2) to enhance the open space environment for patients and the community; and

WHEREAS, the applicant states the following existing conditions limit the ability of the building to satisfy the Medical Center's programmatic needs: (1) the existing plazas and arcades designed nearly 50 years ago provide minimal amenities and landscaping; (2) both plazas have significant change in grade which impede access (the South Plaza is approximately four feet above the sidewalk, requiring a flight of stairs and a portion of the North Plaza is located 2'-6" below the sidewalk, requiring steps); (3) critical components of the Building's infrastructure and Verizon's facilities are located within the cellar, which precludes a re-grading of the South Plaza; (4) there is a distance of 56 feet between the North Plaza and the main entrance at East 38th Street; and (5) an existing exhaust vent faces the South Plaza and discharges large volumes of hot air from Verizon's generators, negatively

affecting its habitability; and

WHEREAS, additionally, the applicant notes that there are unique vehicular traffic conditions adjacent to the site including that a portion of East 38th Street is a heavily used access route to the Queens-Midtown Tunnel and that MTA buses use the lane in front of the buildings; and

WHEREAS, the applicant states that the noted physical constraints preclude the Medical Center from occupying the site in compliance with applicable zoning regulations in a way that would satisfy its primary programmatic needs of providing the Ambulatory Care Center's patients with appropriate and reasonable access to the building and enhancing the plazas and arcades to provide an improved environment for patients and community members; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant identifies the following insufficiencies of a design that is fully compliant with zoning regulations: (1) the requirement to climb stairs and travel a distance of 56 feet between the main entrance and the East 38th Street curb; (2) the use of the East 38th Street curb lane for patient drop-off/pick-up would exacerbate existing traffic congestion, increase waiting times, and conflict with MTA bus use; and (3) the existing minimal amenities and landscaping is barren and uninviting; and

WHEREAS, the applicant asserts that, in contrast, the proposal will improve the site conditions and allow it to accommodate the Medical Center's programmatic needs; and

WHEREAS, the applicant proposes the following improvements to the plazas and arcades: (1) the North Plaza will include a driveway and canopy to create a convenient all-weather drop-off/pick-up area providing frail, elderly, and/or mobility-impaired patients with appropriate access; (2) an accessible pedestrian ramp in the North Plaza will provide access from the sidewalk to the entrance and an ADA-lift will be installed within the South Plaza to provide access; (3) varied landscaping and seating will be introduced to the plazas to create a more inviting environment for patients and community members, a landscape buffer will separate pedestrians from traffic; (4) the South Plaza will have broad seating terraces and benches and a shaded tree-lined area; (5) a green-screen baffle wall within the South Plaza will protect the adjacent plaza from hot air emitted by the building's exhaust vent, which would improve the environment for landscaping; (6) the plazas will include improved lighting, public information signage, and bicycle racks; (7) the plazas will be resurfaced; and (8) a trellis will be installed in the South Arcade to provide shade and planters and seating will be added; and

WHEREAS, the applicant states that the following conditions which create non-compliances or increase the degree of existing non-compliance are necessitated by the Medical Center's programmatic needs; and

WHEREAS, specifically, the applicant states that the proposed driveway, passenger drop-off, and canopy, which are not permitted plaza obstructions, are needed to provide the Ambulatory Care Center's frail and mobility-impaired patients

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with immediate, protected access to the building from ambulances and other vehicles; and

WHEREAS, the applicant states that the configuration of the driveway, though designed with the minimum dimensions necessary to accommodate patient vehicles, constrains circulation paths within the plaza to widths of approximately five feet (at least one circulation with a width of eight feet is required) and the presence of the driveway contributes to the obstruction of the plaza's sidewalk frontage, and it limits the width of the access areas along this frontage to less than eight feet (the sidewalk obstruction is required to be limited to 50 percent of the sidewalk frontage and at least one unobstructed portion is to have a width of at least eight feet); and

WHEREAS, the applicant states that other modifications are necessitated by the goal of providing an appropriate and welcoming entry and departure for patients and of improving the open space experience for the community; and

WHEREAS, towards those goals, the applicant proposes the following: (1) the North Plaza will be planted with low greenery instead of trees to allow maximum access to sunlight (the text requires trees within the plaza); (2) the baffle wall will block hot air emitted from generators (the text prohibits such obstructions and requires visibility of the major portion of the plaza); (3) less than 50 percent of the trees within the South Plaza will be planted flush at grade because of existing below-grade conditions and the lawns would exceed a height of six inches above the plaza to allow a planting berm for trees; (4) new seating and landscape features within the South Plaza, which along with existing permitted obstructions exceed 40 percent of the plaza area, will significantly improve the plaza environment; and (5) the planters and movable seating in the South Arcade will make the area more inviting (the text requires that an arcade be unobstructed to a height of 12 feet); and

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

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

WHEREAS, the Board finds that the Medical Center's programmatic needs are legitimate, and agrees that the proposed modifications are necessary to address its needs, given the site's current limitations; and

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

WHEREAS, since the Medical Center is a nonprofit educational institution and the variance is needed to further its

non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant represents that the land uses surrounding the site are characterized by a mix of mid- and high-rise residential and mixed-use buildings, with commercial buildings to the north and medical and other institutional uses to the south and east; and

WHEREAS, the applicant asserts that the proposal will not alter the scale or envelope of the Building; and

WHEREAS, the applicant asserts that the proposal will enhance the open space to the benefit of the community by introducing landscaping, comfortable seating, and art to the plazas and arcades; and

WHEREAS, the applicant asserts that the design changes would transform the plazas and arcades from their current inaccessible and uninviting appearance to lush and diverse public spaces which are comfortable and aesthetically pleasing; and

WHEREAS, the applicant notes that the proposal has been reviewed by DCP to ensure that the plazas and arcades are as consistent as possible with the public policies served by the ZR's current design standards; and

WHEREAS, the applicant states that the proposed driveway within the North Plaza would reduce vehicular traffic congestion in the area around the Zoning Lot by replacing on-street patient drop-off/pick-up and reducing lane-changing maneuvers; and

WHEREAS, the applicant asserts that the driveway will have little effect on pedestrians as pedestrian volumes on the block are relatively low for the area; and

WHEREAS, the applicant has agreed to comply with all of the Community Board's requests including that it will post signage and paint curbs and the drop-off driveway to make it clear that there is no parking or standing and employ a concierge to help direct vehicles; and

WHEREAS, the applicant has also agreed to keep the site well-lit; and

WHEREAS, the applicant asserts that the proposal will serve the goals of the 197-a Plan for the Eastern Section of Community District 6, including increasing the amount of useful public open space in the district; maintaining the character of the neighborhood while accommodating "specialized non-residential uses such as Bellevue/NYU Hospitals;" and

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

WHEREAS, the applicant states that the hardship was not self-created, and that no proposal that would meet the programmatic needs of the Medical Center could occur

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given the existing conditions; and

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

WHEREAS, as to the minimum variance, the applicant states that it designed the driveway with the minimum dimensions necessary to satisfy the Medical Center's programmatic need for a patient drop-off area and that the curb cuts are of the minimum width to accommodate the turning radii of ambulances and other large medical transport vehicles, and the 22-ft. width of the internal driveway area is the minimum needed for two vehicle lanes – one for patient drop-offs/pick-ups and one for passing; and

WHEREAS, further, the applicant asserts that the dimensions of the canopy relate to those of the driveway and the existing arcade and were calculated to provide an adequate amount of weather protection for patients; and

WHEREAS, the applicant states that the other non-complying modifications to the plazas and arcades are the minimum necessary to enhance the open space environment for patients and community members within the design constraints created by the existing building; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA026M, dated September 15, 2011; 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 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 determination, 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, on a site in a C1-9/C1-9 Transit Land Use District (TA) zoning district, the modification to existing plazas and arcades including the introduction of a driveway and other obstructions, contrary to ZR §§ 37-625 and 37-80, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 18, 2011" – eighteen (18) sheets; and *on further condition*:

THAT any change in control or ownership of the Medical Center's condominium interest be reviewed and approved by the Board;

THAT the Medical Center post signage and paint curbs and the driveway to make it clear that there is no parking or standing and that the Medical Center provide a concierge to help direct vehicles;

THAT the above-noted conditions be noted on the certificate of occupancy;

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

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

THAT construction shall proceed in accordance with ZR § 72-23; 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, December 13, 2011.

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

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 January 24, 2012, at 1:30 P.M., for decision, hearing closed.

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231-10-BZ

APPLICANT – Eric Palatnik, PC, for WIEDC (Williamsburg Infant & Early Childhood Development Center), owners.

SUBJECT – Application December 17, 2010 – Variance (§72-21) to permit the development of a six-story school (*Williamsburg Infant and Early Childhood Development center*), contrary to use regulations (§42-11); floor area (§43-122), rear yard (§43-26), and wall height, total height, number of stories, setback, and sky exposure plane (§43-43). M1-1 zoning district.

PREMISES AFFECTED – 430-440 Park Avenue, Between Kent Avenue and Franklin Avenue. Block 1898, Tent. Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Gilly Youner.

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 January 31, 2012, at 1:30 P.M., for decision, hearing closed.

35-11-BZ

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

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

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

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Fredrick A. Becker, Sholem Lipsker, A. Refson and David Schtierman.

For Opposition: Council Member Leroy Comrie, Assembly Member Barbara M. Clark, Lawrence McClein, Community Board 13, Steven Taylor, Edgar Moore, Doris Bodine and Kelli M. Singleton.

ACTION OF THE BOARD – Laid over to February 28, 2012, at 1:30 P.M., for continued hearing.

66-11-BZ

APPLICANT – Jesse Masyr, Wachtel & Masyr LLP, for Whole Foods Market Group, owner.

SUBJECT – Application May 13, 2011 – Variance (§72-21) to permit a UG6 food store (*Whole Foods*) larger than 10,000 square feet, contrary to use regulations (§42-12). M2-1 zoning district.

PREMISES AFFECTED – 172-220 Third Street, block bounded by 3rd Street, 3rd Avenue, 4th Street Basin and

Gowanus Canal, Block 978, Lot 1, 7, 16, 19, 23, 30, 32, Borough of Brooklyn.

APPEARANCES –

For Applicant: Jerry Johnson, Craig Hammerman, Community Board 6, Bill Appel, Carl Hum and Zenab El-Kady.

For Opposition: A. K. Kelly, Claire Michaels, Ariel Krasnow, Victoria Hagman, Jessica Fain, Abraham Adams, Martin Bisi, Mark Elijah Rosenberg, Mike Cocknell, Marlene Donnelly, Patrick Fenton, Syrie Moskowitz, Christine Bamford Vasan, Rosemarie Padovano, Cassandra Weston and others.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for continued hearing.

92-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Eugene and Margaret Loevinger, owners.

SUBJECT – Application June 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1349 East 26th Street, east side of East 26th Street, 390' south of Avenue M, block 7662, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for continued hearing.

106-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Tag Court Square, LLC, owner; Long Island City Fitness Group, LLC, owner.

SUBJECT – Application August 2, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). M1-5/R7-3/Long Island City zoning district.

PREMISES AFFECTED – 27-28 Thomson Avenue, triangular zoning lot with frontages on Thomson Street and Court Square, adjacent to Sunnyside Yards. Block 82, Lots 7501 (1001), Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Nora Martins.

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 January 24, 2012, at 1:30 P.M., for decision, hearing closed.

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121-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Convent Avenue Baptist Church, owners.

SUBJECT – Application August 22, 2011 – Variance to legalize a two story and basement rear yard enlargement to a church (*Convent Avenue Baptist Church*), contrary to permitted rear yard regulations (§24-33), and lot coverage (§24-11). R7-2 zoning district.

PREMISES AFFECTED – 351 Convent Avenue, aka 420 West 145th Street and 418 West 145th Street, southeast corner of Convent Avenue and West 145th Street, Block 2050, Lot 42 & 47, Borough of Manhattan.

COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Fredrick A. Becker, Joseph Hand and Tony Taylor.

For Opposition: Sarah Martin, Andrew Romeo, William Nance and Jessica Martinez.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for continued hearing.

128-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Levana Pinhas and David Pinhas, owners.

SUBJECT – Application August 31, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1860 East 23rd Street, west side of East 23rd Street, between Avenue R and Avenue S, Block 6828m Kit 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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 January 24, 2012, at 1:30 P.M., for decision, hearing closed.

134-11-BZ

APPLICANT – Eric Palatnik, P.C., for 335 Madison Avenue LLC, owner, Madison Spa Castle, Inc., lessee.

SUBJECT – Application September 7, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (*Spa Castle*). C5-3 zoning district.

PREMISES AFFECTED – 335 Madison Avenue, corner of Madison Avenue and East 43rd Street. Block 1278, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

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 January 10, 2012, at 1:30 P.M., for decision, hearing closed.

158-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for C and A Capital, LLC, owner; Blink Nostrand, Inc., lessee.

SUBJECT – Application October 11, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*Blink*). C4-4A zoning district.

PREMISES AFFECTED – 2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76’ south of intersection of Nostrand Avenue and Flatbush Avenue, Block 7557, Lot 124, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on January 12, 2010, under Calendar No. 231-09-BZ and printed in Volume 95, Bulletin Nos. 1-3, is hereby corrected to read as follows:

231-09-BZ

CEQR #10-BSA-131M

APPLICANT – Valerie G. Campbell, Esq. c/o Kramer Levin Naftalis & Frankel LLP for 71 Laight Street, LLC, owner.

SUBJECT – Application July 21, 2009 – Variance (§72-21) to allow for the construction of a six-story mixed use building, contrary to use and parking regulations (ZR §42-10, §13-10). M1-5/TMU Special District.

PREMISES AFFECTED – 412-414 Greenwich Street, Southwest corner of Laight and Greenwich Streets, on the block bounded by Greenwich, Laight, Washington and Hubert Streets. Block 217, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Michael Sillerman.

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 July 6, 2009, acting on Department of Buildings Application No. 120081614, reads:

“Proposed Use Group 2 (residential) in M1-5 (TMU) zoning district is contrary to ZR 42-10. Refer to Board of Standards and Appeals . . .

Proposed 12 accessory parking spaces in M1-5 (TMU) zoning district is contrary to ZR 13-10. Refer to Board of Standards and Appeals.

Proposed FAR is contrary to ZR 43-12 in that it exceeds the maximum of 5.0 FAR in M1-5 (TMU-Area B2) zoning district;” and

WHEREAS, to permit, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B2) and the Tribeca North Historic District, the construction of a six-story and penthouse residential building with limited ground floor retail use and 12 accessory parking spaces, which is contrary to ZR §§ 42-10 and 13-10; and

WHEREAS, a public hearing was held on this application on November 10, 2009, after due notice by publication in the *City Record*, with a continued hearing on December 8, 2009, and then to decision on January 12, 2010; and

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

WHEREAS, Community Board 1, Manhattan,

recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of Greenwich Street and Laight Street, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B2) and the Tribeca North Historic District; and

WHEREAS, the site has 125 feet of frontage on Greenwich Street, 80 feet of frontage on Laight Street, and a lot area of approximately 9,968 sq. ft.; and

WHEREAS, the site is occupied by a one-story (1.0 FAR) freight loading building currently used for parking, which will be demolished in anticipation of construction (the “Existing Building”); and

WHEREAS, the applicant initially proposed to construct a six-story and penthouse building with 55,055 sq. ft. of floor area (5.52 FAR), 18 residential units (UG 2), unrestricted ground floor retail (UG 6), and 12 accessory parking spaces in the cellar (six parking spaces is the maximum number permitted within the subject zoning district); and

WHEREAS, during the hearing process, the applicant revised the application to reflect 54,824 sq. ft. of floor area (5.5 FAR) and limited retail use on the ground floor; the other parameters remained as initially proposed; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the Existing Building is small and obsolete for modern commercial or manufacturing use; and (2) there are poor subsurface conditions, including loose to medium-dense soil, shallow groundwater level, and pockets of compressible material; and

WHEREAS, the applicant represents that the Existing Building, which was built in 1956 as an adjunct to the historic six-story warehouse building located at 401 Washington Street is functionally obsolete; and

WHEREAS, specifically, the applicant represents that the one-story, non-fireproof Existing Building, with an FAR of 1.0 significantly underutilizes the site in terms of use and floor area; a maximum FAR of 5.0 is permitted for a conforming use in the subject zoning district; and

WHEREAS, the applicant represents that the one-story Existing Building cannot structurally sustain any vertical enlargement without a complete reworking of the foundation system, including adding new columns and a new foundation; and

WHEREAS, the applicant submitted letters from an architect and an engineer that support the assertions about the Existing Building’s inability to feasibly support an enlargement; and

WHEREAS, the applicant represents that there are only three other potential development sites within a 400-ft. radius of the site, which are occupied by similarly small buildings or are otherwise built out to a significant amount below the available bulk of 5.0 FAR as the subject site; these include a total of eight tax lots within three assemblage parcels on blocks 223 and 224; there is only one vacant lot within the 400-ft. radius; and

WHEREAS, specifically, the applicant distinguishes the three other sites for either (1) not being wholly within the

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historic district, (2) being within the C6-2A zoning district, or (3) being partially vacant; and

WHEREAS, the applicant represents that the majority of the sites within a 400-ft. radius of the site are occupied by buildings with greater FAR and more stories than the Existing Building and are eligible for conversion to Loft Dwellings or Joint Living-Work Quarters for Artists pursuant to ZR § 111-02; and

WHEREAS, the applicant notes that the current use of the site for parking is a pre-existing non-conforming use which is not permitted as of right in the Special Tribeca Mixed Use District (Area B2); and

WHEREAS, the applicant represents that there are poor subsurface conditions at the site, including loose to medium-dense soil, shallow groundwater level, a portion of the site's location within the 100-year flood plain, and pockets of compressible material, which result in premium construction costs; and

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

WHEREAS, the applicant attributes the subsurface conditions to the site's location at and beyond Manhattan's old shoreline, which is a condition affecting approximately 20 percent of the total Tribeca North Historic District; and

WHEREAS, the applicant represents that a shallow foundation system is not feasible as it would require a site-wide dewatering system and underpinning of adjacent building and the over-excavation of compressible materials; and

WHEREAS, accordingly, the applicant represents that a deep foundation system is required, which will include drilled piles; and

WHEREAS, the applicant represents that a portion of the site is located within the 100-year flood plain and the remainder is located within the 500-year flood plain; the applicant represents that less than 15 percent of the sites within the Tribeca Historic District are within the 500-year flood plain and less than 10 percent of the district is within the 100-year flood plain; and

WHEREAS, specifically, the applicant represents that, within a 400-ft. radius of the site, 23 lots are within the 100-year flood plain, of which six are underdeveloped to a similar degree as the site and of those six, only three are also located within the historic district; and

WHEREAS, the applicant represents that the location within the flood plain requires an additional pressure slab and additional foundation wall strength and that foundation waterproofing would be required up to ground surface, which is normally only required halfway up the cellar wall; and

WHEREAS, the applicant represents that a cellar must be provided for the mechanicals and that there are not any additional costs associated with constructing a full cellar that can also accommodate the parking, which is required to offset the premium construction costs; and

WHEREAS, the applicant submitted an engineering report of the subsurface conditions, which reflects the noted conditions; 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 provided an initial feasibility study analyzing five scenarios: (1) a new as of right commercial building with a courtyard; (2) a new as of right commercial building with a rectangular layout; (3) a residential/commercial building without a penthouse and with an FAR of 5.1; (4) a residential/commercial building with a courtyard and an FAR of 5.0; and (5) the original proposal for a residential/commercial building with an FAR of 5.52; 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 review alternate proposals including (1) a residential/commercial building without a cellar and with the mechanicals relocated, (2) the elimination of the parking waiver, and (3) a residential/commercial building with an FAR of 5.5 to reflect the FAR of the adjacent C6-2A zoning district and that is expected to be adopted with the proposed Tribeca rezoning, and to limit the retail use as permitted as of right under the current Special Tribeca Mixed-Use District (Area B2) regulations; and

WHEREAS, the revised financial analysis reflects that 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; and

WHEREAS, the applicant states that the immediate area is a mix of residential and commercial uses, with some remaining industrial and warehouse uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other such uses, some of which are proposed to occupy the adjacent site at 401 Washington Street; and

WHEREAS, additionally, the applicant notes that there is a five-story store and loft building at 70 Laight Street, a ten-story warehouse with residential uses at 74 Laight Street, a seven-story residential building at 78 Laight Street, and other similarly-sized buildings are under construction and conversion in the area; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 18 dwelling units is compatible with the neighborhood character; and

WHEREAS, the Board notes that there are no bulk

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regulations for a residential building in an M1-5 zoning district, but that the proposed FAR of 5.5 and all other bulk parameters would be permitted in the adjacent C6-2A zoning district and under the provisions of the proposed Tribeca rezoning; and

WHEREAS, the applicant notes that the proposed building is designed to replicate the massing and design of the historic six-story warehouse building, located immediately to the west at 401 Washington Street with details that echo those of the historic building; and

WHEREAS, the Board notes that the floor heights, fenestration, and building height, among other parameters, are aligned with and closely match the 401 Washington Street building; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated March 17, 2008; and

WHEREAS, the applicant states that the majority of the mechanicals will be located in the cellar, in accordance with LPC's direction to maintain them out of view; and

WHEREAS, the applicant asserts that the inclusion of six more parking spaces than are permitted by the zoning district regulations is compatible with the neighborhood character and that the site is currently occupied with a building used exclusively for parking, which is a legal pre-existing use that would not be permitted under the current zoning; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, photographs, and building information reflecting the uses in the immediate vicinity of the site; 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 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 matches the envelope of the 401 Washington Street Building, reflect the minimum waivers necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

WHEREAS, at hearing, the Board directed the applicant to eliminate the request for unlimited retail use and to reduce the FAR request to 5.5 as is contemplated by the C6-2A zoning district regulations and the proposed Tribeca rezoning; and

WHEREAS, in response, the applicant eliminated the request for unlimited retail use on the first floor and reduced the FAR to 5.5; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental

review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 10BSA131M, dated October 28, 2009; 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 impacts; and

WHEREAS, DEP approved the Remedial Action Plan and Construction Health and Safety Plan on December 2, 2009; and

WHEREAS, DEP has concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval; and

WHEREAS, the applicant proposes to fuel the fossil fuel-fired HVAC equipment with natural gas and to locate the equipment's exhaust(s) at least 41 feet from the southern lot line of the subject site to avoid any potential for significant air quality impacts at adjacent sites; and

WHEREAS, the applicant proposes 31 dBA of window-wall noise attenuation on the north facade (Laight Street) and 31 dBA of window-wall noise attenuation on the east facade (Greenwich Street) of the proposed building with central air-conditioning as an alternate means of ventilation in order to achieve an interior noise level of 45 dBA in each residential unit; 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 Type I 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 an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B2) and the Tribeca North Historic District, the construction of a six-story and penthouse residential building with limited ground floor retail and 12 accessory parking spaces, which is contrary to ZR §§ 42-10 and 13-10; *on condition* that any and all work shall

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substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received January 6, 2010”– four (4) sheets and “Received January 11, 2010”– seven (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: six stories; 18 residential units; a total floor area of 54,824 sq. ft. (5.5 FAR); a streetwall height of 74’-1””; and a total height of 85’-1””;

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

THAT DOB shall review and confirm compliance for egress, light and air, and all other relevant sections of the Multiple Dwelling Law and Building Code;

THAT all construction shall be performed in conformance with the plans approved by the LPC and associated with the Certificate of Appropriateness, dated March 17, 2008;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Notice of Satisfaction;

THAT the fossil fuel-fired HVAC equipment shall be fueled by natural gas and the equipment’s exhaust(s) shall be located at least 41 feet from the southern lot line of the subject site;

THAT 31 dBA of window-wall noise attenuation shall be provided on the north facade (Laight Street) and 31 dBA of window-wall noise attenuation shall be provided on the east façade (Greenwich Street) of the proposed building with central air-conditioning as an alternate means of ventilation;

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

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

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

Adopted by the Board of Standards and Appeals, January 12, 2010.

***The resolution has been revised to change the dBA of window-wall noise attenuation to 31dBA. Corrected in Bulletin No. 51, Vol. 96, dated December 21, 2011.**