BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:
250 Broadway, 29th Floor, New York, N.Y. 10007.

Volume 100, Nos. 25-26 June 24, 2015

DIRECTORY

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

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

CONTENTS

CONTENTS

New Case Filed Up to June 16, 2015

132-15-A
163 Benedict Road, East side of Benedict road distant 167.93" north of the corner of St. James Avenue and benedict Road, Block 0868, Lot(s) 030, Borough of **Staten Island, Community Board: 2**. Proposed construction of a single family home not fronting on a legally mapped street contrary to Section 36 Article 3 of the General City Law. R1-1 Zoning district . R1-1SNAD district.

133-15-A
147 Benedict Road, East side of Benedict Road distant 268.12" north of the corner of St. James Avenue and Benedict Road, Block 0868, Lot(s) 09, Borough of **Staten Island, Community Board: 2**. Proposed construction of a single family home not fronting on a legally mapped street, contrary to Article 3 Section36 of the General City Law. R1-1 zoning district . R1-1 SNAD district.

134-15-BZ
248 Flatbush Avenue, Located along Flatbush Avenue between St. Marks Place and Prospect Place, Block 0936, Lot(s) 012, Borough of **Brooklyn, Community Board: 6**. Special Permit (73-36) to allow the operation of a Physical Culture establishment(Orange theory Fitness) in the existing building on the first floor and cellar of a one story commercial building, located within an R7A/C2-4 zoning district. R7A/C2-4 district.

135-15-A
50 Oak Point Avenue, north shore of east river, approximately 900 lateral feet east of East 149th Street, Block 02604, Lot(s) 0180, Borough of **Bronx, Community Board: 2**. Proposed construction of a building not fronting on a legally mapped street contrary to Section 36 Article 3 of the General City Law. M3-1 zoning district. M3-1 district.

136-15-A
521 Durant Avenue, , Block 05120, Lot(s) 0062, Borough of **Staten Island, Community Board: 3**. Proposed construction of a building not fronting on a legally mapped street contrary to Section 36 Article 3 of the General City Law. R3X (SRD) district.

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

CALENDAR

JULY 14, 2015, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 14, 2015, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

17-93-BZ
APPLICANT – Fox Rothschild, LLC., for Lincoln Square commercial Holding, owner; Equinox SC Upper West Side, Inc., lessee.
SUBJECT – Application January 15, 2015 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment which expired June 7, 2014; Amendment to reflect a change in ownership; Waiver of the Rules. C4-7 zoning district.
PREMISES AFFECTED – 160 Columbus Avenue aka 1992 Broadway, block bounded by Broadway, Columbus Avenue, West 67th Street and West 68th Street, Block 01139, Lot(s) 24, 7503, Borough of Manhattan.
COMMUNITY BOARD #7M

84-93-BZ
APPLICANT – Sheldon Lobel P.C., 671 Timpson Realty corp./Timpson Salvage Corp., owner.
SUBJECT – Application December 1, 2014 – Extension of Term of a previously Variance (§72-21) permitting the operation of a Use Group 18B scrap, metal, junk, paper or rags, storage sorting, and bailing facility, which expired on November 15, 2015. C8-3 zoning district.
PREMISES AFFECTED – 671-677 Timpson Place, West of the intersection formed by Timpson Place, Bruckner Boulevard and Leggett Avenue, Block 2603, Lot(s) 190, 192, Borough of Bronx.
COMMUNITY BOARD #2BX

122-93-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 895 Broadway LLC, owner.
SUBJECT – Application September 24, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (*Equinox*) which expired on September 20, 2014; Amendment to permit the expansion of the use into the second floor. M1-5M zoning district.
PREMISES AFFECTED – 895 Broadway, west side of Broadway, 27.5' south of intersection of Broadway and E. 20th Street, Block 00848, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #5M

146-96-BZ
APPLICANT – Stroock & Stroock & Lavan, LLP., for Scholastic 557 Broadway, LLC., owner.
SUBJECT – Application February 19, 2015 – Amendment of a previously approved Variance (§72-21) to permit the relocation of the building lobby from Broadway to Mercer Street and the conversion of an existing office lobby to retail space. M1-5B zoning district.
PREMISES AFFECTED – 557 Broadway aka 128-130 Mercer Street, west side of Broadway, 101' south of the corner formed by the intersection of Prince Street and Broadway, Borough of Manhattan.
COMMUNITY BOARD #2M

156-03-BZ
APPLICANT – Goldman Harris LLC., for Flushing Square, LLC., lessee.
SUBJECT – Application March 10, 2015 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the construction of a seventeen story mixed-use commercial/community facility/residential condominium building which expires on January 31, 2016; Amendment. R6/C2-2 zoning district.
PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard, Block 04958, Lot(s) 48,38, Borough of Queens.
COMMUNITY BOARD #7Q

127-15-BZ
APPLICANT – Goldman Harris LLC., for Flushing Square, LLC., owner.
SUBJECT – Application May 29, 2015 – Special Permit (§73-66) to permit the construction of building in excess of the height limits established pursuant Z.R. §§61-211 & 61-22. The proposed building was approved by the Board pursuant to BSA Calendar Number 156-03-BZ. C2-2/R6 zoning district
PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard, Block 04958, Lot(s) 48, 38, Borough of Queens.
COMMUNITY BOARD #7Q

APPEALS CALENDAR

199-14-A
APPLICANT – Alfonso Duarte, for Hector Florimon, owner.
SUBJECT – Application August 20, 2014 – Proposed legalization of accessory parking in open portion of site that lies within a bed of mapped street pursuant to Section 35 , Article 3 of the General City Law.
PREMISES AFFECTED – 102-11 Roosevelt Avenue, North side 175.59' west of 103rd Street, Block 01770, Lot 47, Borough of Queens.

COMMUNITY BOARD #4Q

271-14-A thru 282-14-A
APPLICANT – Eric Palatnik, P.C., for 91 Seguine Avenue LLC, owner.
SUBJECT – Application November 3, 2014 – To permit the proposed development consisting of seven one family homes and one-two family home, contrary Article 3 Section 36 of the General City Law. R3X zoning district.
PREMISES AFFECTED – 15, 25, 26, 35, 36, 45, 46, Patricia Court, bound by Seguine Avenue, MacGregor Avenue, Herbert Street, Holton Avenue, Block 06680, Lot (s) 80, 9, 6, 8, 7, 24, 25, 26 Herbert Court, Block 06680, Lot 23, Borough of Staten Island.
COMMUNITY BOARD #3SI

325-14-A
APPLICANT – Eric Palatnik, P.C., for Michael Esposito, owner.
SUBJECT – Application December 15, 2014 – Proposed construction of a mixed use building located partly within the bed of a mapped street contrary to article 3, Section 35 of the General City Law. C4-2/R6 zoning district.
PREMISES AFFECTED –631 Bay Street, between Canal Street and Thompson Street, Block 00494, Lot 10, Borough of Staten Island.
COMMUNITY BOARD #1SI

JULY 14, 2015, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 14, 2015, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

108-14-BZ
APPLICANT – Sheldon Lobel, P.C., for UD 736 Broadway LLC, owner.
SUBJECT – Application May 22, 2014 –Variance (§72-21) to permit Use Group 6 commercial uses on the first floor and cellar of the existing building. M1-5B zoning district.
PREMISES AFFECTED – 736 Broadway, east side of Broadway approximately 117' southwest of the intersection formed by Astor Pace and Broadway, Block 00545, Lot 22, Borough of Manhattan.
COMMUNITY BOARD #2M

14-15-BZ
APPLICANT – Warshaw Burstein, LLP., for 1566 Westchester Avenue Associates, LLC., owner; 1560 Westchester Avenue Fitness Group, LLC.; lessee.
SUBJECT – Application January 22, 2015 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing building to be enlarged. C4-2 zoning district.
PREMISES AFFECTED – 1560 Westchester Avenue, southeast corner of Ward Avenue and Westchester Avenue, Block 03742, Lot 40, Borough of Bronx.
COMMUNITY BOARD #9BX

15-15-BZ
APPLICANT – Warshaw Burstein, LLP., for 1160 Ward Avenue, LLC, owner; 1560 Westchester Avenue Fitness Group, LLC.; lessee.
SUBJECT – Application January 22, 2015 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing building to be enlarged. C4-2 zoning district.
PREMISES AFFECTED – 1160 Ward Avenue, southeast corner of Ward Avenue and Westchester Avenue, Block 03742, Lot 38, Borough of Bronx.
COMMUNITY BOARD #9BX

Ryan Singer, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JUNE 16, 2015
10:00 A.M.

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

SPECIAL ORDER CALENDAR

619-73-BZ
APPLICANT – Sheldon Lobel, P.C., for CI Gateway LL, owner.
SUBJECT – Application October 23, 2014 – Re-instatement of a variance (§72-21) which permitted the operation of an eating and drinking establishment (UG 6) with an accessory drive thru which expired on February 26, 2004; Amendment to permit the redevelopment of the site; Waiver of the Rules. R4 zoning district.
PREMISES AFFECTED – 2940 Cropsey Avenue, front of Bay 52nd Street, Cropsey Avenue and 53rd Street, Block 6949, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #13BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance permitting an eating and drinking establishment within a residence district, which expired on February 26, 2004 and an amendment of the aforesaid variance to permit the reinstatement of an eating and drinking establishment use and anew drive-in bank use at the subject premises; and

WHEREAS, a public hearing was held on this application on April 28, 2015, after due notice by publication in *The City Record*, with a continued hearing on June 2, 2015, and then to decision on June 16, 2015; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site has frontage on Bay 52nd Street, Cropsey Avenue, and Bay 53rd Street, and is thus a through lot as well as a corner lot, within an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 200 feet of frontage along Cropsey Avenue, 92 feet of frontage along Bay 52nd Street, and 107 feet of frontage along Bay 53rd Street; and

WHEREAS, the site has approximately 19,960 sq. ft. of lot area and is occupied by a vacant one-story eating and drinking establishment with 19 parking spaces; it was operated as a Burger King franchise until November, 2011, and has been vacant since that time; and

WHEREAS, the Board has exercised jurisdiction over the site since February 26, 1974, when, under BSA Cal. No. 619-73-BZ, it granted, pursuant to ZR § 72-21, an application to permit in an R4 zoning district the construction of a one-story building to be operated as an eating and drinking establishment (Use Group 6) with accessory signage and parking, contrary to use regulations, for a term of 10 years, to expire on February 26, 1984; and

WHEREAS, the variance was amended at various times in subsequent years, including on June 5, 1979, when the Board amended the grant to authorize the operation of an accessory drive-through and the reconfiguration of parking spaces at the site; and

WHEREAS, on March 18, 1986, also under the subject calendar number, the Board, upon waiving its Rules of Practice and Procedure, reopened and amended the grant to include an extension of term for a period of ten years, expiring on February 26, 1994; and

WHEREAS, on August 9, 1988, also under the subject calendar number, the Board reopened and amended the grant to permit the enlargement of the existing building, add a vestibule and alter the dining area within the building; and

WHEREAS, on October 20, 1998, also under the subject calendar number, the Board, upon waiving its Rules of Practice and Procedure, reopened and amended the grant to extend the term of the variance for a period of ten years, expiring on February 26, 2004; and

WEHREAS, the applicant now seeks, upon a waiver of the Board's Rules of Practice and Procedure, an extension of the term of the variance for a period of ten years and an amendment of the variance to permit a new eating and drinking establishment and drive-in bank at the site (both of which are proposed to be within the footprint of the existing building); and

WHEREAS, the applicant proposes to maintain the majority of the Use Group 6 eating and drinking establishment within the footprint of the existing building but to eliminate the existing accessory drive-through, thereby reducing the required number of parking spaces at the site and eliminating the outdoor menu board and amplified intercom system; the applicant further proposed to construct a new Use Group 6 drive-in bank with approximately 150 square feet of floor area, also within the footprint of the existing building, which would accessed via the existing drive-through lane; and

WHEREAS, the applicant notes that the site contains 19 parking spaces, four fewer than the 23 spaces which were required under the Board's previous grant, and states that the removal of four spaces resulted from the previous owner's installation of a curb cut at Bay 52nd Street; and

WHEREAS, the applicant proposes to eliminate the curb cut at Bay 52nd Street, restore the four previously eliminated parking spaces and add three additional spaces, increasing the total number of parking spaces on the site to 26, which would comply with the parking regulations applicable in a C1-1 zoning district (which would require 22 parking spaces); and

WHEREAS, the applicant states that the parking spaces will comply with all applicable provisions of ZR § 36-50 with respect to the size of parking spaces, maneuverability, travel lanes and minimum turnarounds, as if the site were located in a C1-1 zoning district; and

WHEREAS, pursuant to 2 RCNY § 1-07.3(b)(4)(ii), the Board may reinstate a use variance granted pursuant to a post-1961 variance where, as here, the grant is limited to a term that is specified only as a condition in the Board's resolution as, an amendment to modify such term; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, allow an extension of the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant to: provide for signage directing

WHEREAS, at hearing, the Board directed the applicant to add signage directing drivers to yield for pedestrians; and

WHEREAS, the applicant provided the Board with updated plans depicting four signs, located at the entrance and exist to the drive-in bank lane, directing drivers to yield for pedestrians; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made for an extension of term under ZR §§ 72-01 and 72-22.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure*, reopens* and *amends* the resolution, dated February 11, 2003, so that as amended the resolution reads: "to permit an extension of the term of the variance for an additional ten years to expire on June 16, 2025; *on condition* that all work will substantially conform to drawings, filed with this application marked "Received, June 4, 2015" – (11) sheets; and on further condition:

THAT the term of the variance shall expire on June 16, 2025;

THAT the signage shall comply with the C1 regulations;

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

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

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

THAT a certificate of occupancy shall be obtained by June 16, 2016;

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

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

Adopted by the Board of Standards and Appeals, June 16, 2015.

584-55-BZ

APPLICANT – Nasir J. Khanzada, PE, for Gurnam Singh, owner.

SUBJECT – Application June 11, 2014 – Amendment (§11-412) of a previously approved variance which permitted the alteration of an existing Automotive Service Station (UG 16B). The amendment seeks to permit the conversion of the accessory auto repair shop to a convenience store and alter the existing building. C2-4/R7-2 zoning district.

PREMISES AFFECTED – 699 Morris Avenue, southwest corner of East 155th Street and Park Avenue, Block 2422, Lot 65, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Laid over to July 21, 2015, at 10 A.M., for continued hearing.

705-81-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Fraydun Enterprises, LLC, owner; Fraydun Enterprises, LLC, lessee.

SUBJECT – Application November 10, 2014 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a physical culture establishment which expired on May 10, 2013; Extension of Time to obtain a Certificate of Occupancy; Waiver of the Rules. R10 zoning district.

PREMISES AFFECTED – 1433 York Avenue, northeast corner of intersection of York Avenue and East 76th Street, Block 01471, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to July 28, 2015, at 10 A.M., for continued hearing.

169-91-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP., for New York University, owner.

SUBJECT – Application November 15, 2015 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment which expired on May 18, 2013; Amendment to reflect a change in the operator and to permit a new interior layout; Waiver of the Rules. M1-5B zoning district.

PREMISES AFFECTED – 404 Lafayette Street aka 708 Broadway, Lafayette Street and East 4th Street, Block 00545, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to July 21, 2015, at 10 A.M., for continued hearing.

APPEALS CALENDAR

180-14-A
APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for EXG 332 W 44 LLC c/o Edison Properties, owner.
SUBJECT – Application August 1, 2014 – Appeal challenging the Department of Building's determination that the subject façade treatment located on the north wall is an impermissible accessory sign as defined under the ZR Section 12-10. C6-2SCD zoning district.
PREMISES AFFECTED – 332 West 44th Street, south side West 44th Street, 378 west of the corner formed by the intersection of West 44th Street and 8th Avenue and 250' east of the intersection of West 44th Street and 8th Avenue, Block 1034, Lot 48, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: ……..……..0
Negative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination, dated July 3, 2014, by the Department of Buildings ("DOB") (the "Final Determination"); and

WHEREAS, the Final Determination states, in pertinent part:

> The request to accept the proposed façade treatment that reads "BRAVO!" located on the north wall of a public parking garage located in the C6-2 zoning district as a display that is not a "sign" as defined by New York City
> Zoning Resolution 12-10, is hereby denied; and

WHEREAS, a public hearing was held on this appeal on December 9, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 3, 2015, April 21, 2015 and April 28, 2015, and then to decision on June 16, 2015; and

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

WHERAS, this appeal is filed on behalf of EXG 332W44, LLC (the "Appellant"), which owns 332 West 44th Street, Manhattan; the Appellant contends that DOB's issuance of the Final Determination was erroneous; and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the subject site is located on the south side of West 44th Street, between Eighth Avenue and Ninth Avenue, within a C6-2 zoning district, within the Special Clinton District; a portion of the site extends to West 43rd Street, making a portion of the site an interior lot and a portion of the site a through lot; and

WHEREAS, the site has 172 feet of frontage along West 44th Street, 25 feet of frontage along West 43rd Street, and approximately 19,783 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story public parking garage (Use Group 8) for 273 automobiles; the Appellant notes that the garage levels are currently open to the air and covered by half-height metal cladding; and

PROCEDURAL HISTORY

WHEREAS, on January 7, 2014, the Appellant submitted a determination request to DOB, seeking confirmation that a design treatment on the north façade of the building incorporating the word "BRAVO!" would not constitute a "sign" per the Zoning Resolution ("ZR") § 12-10 definition; and

WHEREAS, on January 21, 2014, DOB issued a determination stating that the proposed installation constituted a "sign" according to ZR § 12-10; and

WHEREAS, on April 7, 2014, the Appellant submitted a second determination request seeking reversal of the January 21, 2014 determination; DOB responded by issuing the Final Determination on July 3, 2014; and

WHEREAS, accordingly, the narrow question on appeal is whether the BRAVO! installation is a "sign," as that term is defined in ZR § 12-10; and

WHEREAS, the Appellant asserts that it is not; DOB maintains that it is; both parties claim support for their position in the Zoning Resolution; and

WHEREAS, by letter dated January 29, 2015, the Department of City Planning ("DCP") states that it supports DOB's position; and

PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the Appellant and DOB agree that the Zoning Resolution provision at issue is the definition of "sign" set forth in ZR § 12-10, which provides in pertinent part:

> Sign
> A "sign" is any writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or pennant), or any other figure of similar character, that:
> (a) is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a building or other structure;
> (b) is used to announce, direct attention to, or advertise; and
> (c) is visible from outside a building.1

DISCUSSION

A. THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that the BRAVO! installation does not satisfy subsection (b) of the ZR § 12-10 definition of "sign," which provides that an installation must, among other things, be "used to announce, direct attention to,

1 Neither party disputes that the BRAVO! installation satisfies subsections (a) and (c) of the definition in that the word "bravo" is a writing and that the installation would be attached to and incorporated as an element within the façade of the subject building and, therefore, would be visible from outside the subject building.

or advertise" in order to be classified as a sign; and

WHEREAS, the Appellant states that the BRAVO! installation does not "announce, direct attention to, or advertise" anything other than itself; therefore, it is not a "sign"; and

WHEREAS, the Appellant states that DOB's position is that 'all words announce'; thus, the Appellant contends that DOB is erroneously conflating subsection (a) of the Zoning Resolution's definition of "sign," which states that a "sign" is "any writing (including letter, word, or numeral)," with subsection (b) of the definition, which requires that the writing is "used to announce, direct attention to or advertise," rendering subsection (b) superfluous; and

WHEREAS, the Appellant notes that according to standard principles of statutory construction, a statute should be construed so as to give effect to all its provisions, so that no part will be inoperative or superfluous; the Appellant asserts that DOB's position directly contradicts this fundamental principle; and

WHEREAS, the Appellant observes that in BSA Cal. No. 90-12-A (111 Varick Street, Manhattan), the Board determined that in order for a sign to be an advertising sign, there must be a "reasonable nexus" between the installation (the alleged sign) and something other than the installation itself (in that case, a use located off the zoning lot); and

WHEREAS, the Appellant also notes that in BSA Cal. No. 90-12-A, the Board acknowledged that "there are examples of writing, pictorial representation, emblems, flags or other characters which announce, direct attention to, or advertise and there are those that do not do any of those things yet may satisfy the other elements of the definition" and the Board found that "the complete criteria for signs is enumerated so as to make clear that a writing or pictorial representation along with being located on a wall alone [i.e., without satisfying requirement (b) of the definition] do not meet the criteria for a sign and would fit into some other category not regulated by DOB"; and

WHEREAS, the Appellant contends that implicit in the Board's decision in BSA Cal. No. 90-12-A is the idea that some writings, pictorial representations, emblems, etc. announce, direct attention and/or advertise, and some do not; accordingly, the Appellant states that the Board properly adopted a "reasonable nexus" test to determine whether the writing, pictorial representation or emblem has an *identifiable relationship* with—i.e., announces, directs attention or advertises—something other than itself; and

WHEREAS, the Appellant states that while the issue presented in this appeal is not whether the installation at the subject site is an "advertising sign," the Board's reasoning that there must be a "reasonable nexus" between an installation and something other than the installation itself, in order for it to qualify as a "sign," is equally valid here; and

WHEREAS, the Appellant contends that proper application of the Board's reasonable nexus standard requires a case-by-case determination; and

WHEREAS, the Appellant asserts that there is no reasonable nexus between the BRAVO! installation and anything other than itself, including the public parking garage that operates at the site; thus, the Appellant likens the BRAVO! installation to the art installation at issue in BSA Cal. No. 90-12-A, which DOB argued directed attention only to itself;2 and

WHEREAS, the Appellant states that although there may be some relationship or association between the word bravo and the theater or Theater District (the site is in close proximity to the Theater Subdistrict of the Special Midtown District), such relationship is too attenuated to constitute a reasonable nexus between the BRAVO! installation and parking, even if the parking garage may be utilized by theater patrons; and

WHEREAS, likewise, the Appellant asserts that DOB did not demonstrate that subsection (b) could be satisfied by an installation that uses a word that refers to or celebrates a particular neighborhood, industry or general notion, such as "congratulations, you made it to Manhattan" or "congratulations, you have found parking"; and

WHEREAS, the Appellant also disagrees with DOB that the word "bravo" by its very nature is a "congratulatory remark between a business and its customer or potential customer" and therefore inherently has a reasonable nexus with any business located on a site at which the word is displayed; and

WHEREAS, the Appellant rejects DOB's assertion that the BRAVO! installation is, at a minimum, subject to regulation as a non-commercial sign which directs attention to the Theater District or announces a general congratulatory statement; rather, the Appellant contends that the BRAVO! installation is an art and design piece, akin to other decorative façade treatments or artistic expressions; and

WHEREAS, in response to DOB's position that, pursuant to the 1998 amendment to the Zoning Resolution, DOB is required to regulate artwork or other displays on buildings that include words, the Appellant notes that, historically, non-commercial signs were treated as advertising signs if they related to an activity conducted off the zoning lot; however, in *City of New York v. Allied Outdoor Adv. Inc.*, 172 Misc 2d 707, 659 N.Y.S. 2d 390 (Sup. Ct. Kings Co. 1997), the court held that by regulating non-commercial copy more stringently than commercial business signs, the Zoning Resolution ran counter to constitutional prohibitions favoring commercial speech over non-commercial speech; consequently, in 1998, the Zoning Resolution was amended to make a distinction between advertising signs and all other signs; in effect, the amendments made it clear that signs with non-commercial copy could be regulated only as stringently as business signs (signs promoting

2 On appeal pursuant to Article 78 of the CPLR, the court disagreed with DOB that the art installation directed attention only to itself and found that it directed attention to the work of the artist, making the installation a "sign," *see Van Wagner Communications, LLC v. Board of Standards and Appeals*, Sup. Ct. N.Y. County, July 22, 2014, Rakower, J., Index No. 10085/2014; however, nothing in Judge Rakower's decision suggests that BSA erred in applying a "reasonable nexus" standard in determining whether subsection (b) was satisfied. The City of New York appealed from Judge Rakower's July 22, 2014 decision. The City's appeal is currently pending before the Appellate Division, First Department.

an activity occurring on the zoning lot, which have come to be known as accessory signs); and

WHEREAS, the Appellant disputes that the purpose or effect of the 1998 amendments was to expand the coverage of the sign regulations to include artwork or design displays that include words on the basis that words, by definition, announce something, even when such words are non-commercial, and therefore disagrees with DOB's position that the BRAVO! installation may be regulated as non-commercial speech; and

WHEREAS, to the contrary, the Appellant states that, viewed in their historical context, the 1998 amendments had no effect on subsection (b) of the sign definition; and

WHEREAS, in short, the Appellant contends that DOB's classification of the BRAVO! installation as a non-commercial sign ignores that the installation is not a sign in the first instance because, the Appellant argues, despite its use of a word that is commonly known, the installation does not announce, direct attention to or advertise any readily identifiable thing and, therefore, is not a sign, non-commercial or otherwise; and

WHEREAS, the Appellant states that the BRAVO! installation is not intended to serve as a logo or emblem to advertise or announce the PARK*FAST* brand that operates the subject parking garage; likewise, the Appellant asserts that the installation is not an extension of the broader PARK*FAST* marketing campaign; and

WHEREAS, the Appellant disagrees with DOB's assertion that the use of yellow and black in the BRAVO! installation and in the PARK*FAST* branded accessory signage suggests that the BRAVO! installation is an extension of the PARK*FAST* branding efforts; and

WHEREAS, in response to DOB's assertion that both the PARK*FAST* logo and the BRAVO! installation employ a version of the Helvetica typeface, the Appellant notes that Helvetica is widely acknowledged as the most commonly used typeface in all of graphic design; further, the Appellant notes that the BRAVO! installation actually employs Helvetica-Neue rather than Helvetica; and

WHEREAS, the Appellant states that the use of a color and font for the BRAVO! installation that are similar to those of the PARK*FAST* logo was an aesthetic decision made by a design architect, whose intent was to create a pleasing view of a parking garage façade; and

WHEREAS, in addition, the Appellant states that it does not conduct or market its parking operations under the name "bravo" and the word "bravo" is not a trademark of the Appellant, its parent company or the Appellant's affiliates; accordingly the Appellant asserts that any similarities between the BRAVO! installation and the PARK*FAST* branding (including the accessory signage at the site) are coincidental and inconsequential on the question of whether the BRAVO! installation satisfies subsection (b); and

WHEREAS, the Appellant contends that the accessory signage is distinguishable from the BRAVO! installation primarily on the ground that the accessory signage announces, directs attention to, and advertises the availability of parking at the site and the BRAVO! installation announces, directs attention to, and advertises itself alone; the Appellant states that while the existing signs and the BRAVO! installation may share a whimsical quality and a sense of humor, the installation is categorically distinct in that it does not direct attention to the availability of parking or to the existing signs; the Appellant also notes that the accessory signage is temporary and will be removed in connection with the design upgrades that include the construction of the BRAVO! installation; and

WHEREAS, the Appellant contrasts the word "bravo" with the words DOB identifies in various signs displayed at other sites operated by the PARK*FAST* brand and submits that in each instance, the PARK*FAST* brand sign expressly announces, directs attention to or advertises the availability of parking; and

WHEREAS, finally, the Appellant contends that DOB's apparent approach to determining whether a particular installation that includes words is a form of speech within its regulatory authority: (1) is unconstitutionally vague and contrary to the Fourteenth Amendment of the United States Constitution; (2) a prior restraint on speech in violation of the First Amendment of the United States Constitution; and (3) a content-based restriction on protected non-commercial speech in violation of the First Amendment; the Appellant identifies various United States Supreme Court cases in support of this contention; and

B. DOB'S POSITION

WHEREAS, DOB states that that the Final Determination was properly issued because the BRAVO! installation satisfies subsection (b) of the definition of "sign," in that: (1) the word "bravo" is a congratulatory sentiment which necessarily relates to any on-premises commercial use and, in this context, states "congratulations, you have found parking"; (2) the word "bravo" is used to announce, direct attention to, and advertise the public parking garage that operates at the site which is within the vicinity of the Theater District; (3) the word "bravo" is a celebratory remark that, due to the installation's proximity to the Theater District, evokes, celebrates or draws attention to the Theater District itself; and (4) that the installation of the word "bravo" is part of a marketing strategy by the owner of the subject premises to promote the parking use located within the premises; and

1. DOB's argument that the word "bravo" necessarily relates to any on-premises commercial use

WHEREAS, with respect to DOB's assertion that the word "bravo" is a congratulatory sentiment which, when displayed at a premises containing a commercial use, necessarily relates to such commercial use and, as such, is a writing which, under any circumstances, announces said commercial use so as to satisfy subsection (b) of the ZR § 12-10 definition of sign, DOB argues, the BRAVO! installation is akin to signs stating "Welcome," "Thank you," "Have a nice day," "Open," and "Closed" all of which DOB states are subject to the zoning regulations governing commercial signs; and

WHEREAS, DOB further maintains that even if there is *no* nexus between the word displayed and a particular business, profession, commodity or idea, it has the authority to regulate the word's display as non-commercial speech, citing the 1998

amendments to the sign regulations and case law; and

WHEREAS, thus, DOB observes that even if use of the word "bravo" in this case has no nexus to a particular business, the word is akin to broad policy statements such as "End Illiteracy!" and "Smoking Kills!," hence it is a "sign" because it is a word that announces and directs attention to something; DOB notes that even the symbol for "peace"—because its meaning is so well-established—constitutes a "sign" because its announcement can be understood; and

2. DOB's argument that the word "bravo" announces and directs attention to the parking use at the premises because it speaks to theater-going motorists

WHEREAS, with respect to DOB's assertion that the BRAVO! installation announces, directs attention to, and advertises the public parking garage at the site, DOB states that the word "bravo" conveys a particular and universally comprehended message that relates to theater and, therefore, directs the attention of motorists whose destination is the Theater District to the parking use at the subject premises; and

WHEREAS, DOB notes that the site is located in close proximity to the Theater District and asserts that the BRAVO! installation is not an example of a work of art that could have varying meaning depending on the interpreter but that, to the contrary, it communicates to the viewer a universally accepted meaning and directly relates to the Theater District location of the parking garage; and

WHEREAS, further, DOB observes that the Appellant concedes that the word "bravo" was chosen because it is a well-known theater term and that the garage's proximity to the Theater District makes it a likely choice for motorists going to the theater; and

WHEREAS, based upon the foregoing, DOB contends that the proposed installation—the word "bravo" in bold, capital letters with an exclamation point at the end of the word, attached to and forming a part of the façade with a surface area of approximately 4,650 sq. ft., with voids in the façade revealing parked cars—is an attempt to arouse the desires of potential Theater District customers in need of parking who may be familiar with the word's connection to the theater and performance arts in general; and

WHEREAS, as such, DOB contends that there is a reasonable nexus between the word "bravo" and the parking garage at the site; and

3. DOB's argument that the word "bravo" celebrates a neighborhood, the Theater District, and, as such, announces or directs attention to something as contemplated in subsection (b) of the ZR § 12-10 definition of sign

WHEREAS, DOB contends that subsection (b) could be satisfied by an installation that uses a word that refers to or celebrates a particular neighborhood, industry or general notion, such as "congratulations you made it to Manhattan" or "congratulations, you have found parking"; and

WHEREAS, with respect to its argument that the word "bravo" satisfies subsection (b) of the ZR § 12-10 definition of sign in this instance, DOB maintains that in addition to the purported nexus between the BRAVO! installation and the parking garage at the site, there is a reasonable nexus between the word "bravo" and the Theater District in general; and

WHEREAS, specifically, DOB argues that the well-established connection between the word "bravo" and the theater, even if insufficient to form a reasonable nexus with a parking garage that caters to Theater District patrons, is a reasonable nexus to the district or neighborhood itself and, as such, the BRAVO! installation falls within the sign regulations of the Zoning Resolution; and

WHEREAS, DOB maintains that nothing about the text of subsection (b) requires that the announcement take the form of a specific identifiable use, business, or idea, and that as such, making reference to—announcing—a neighborhood (here, the Theater District) is sufficient to satisfy the text of subsection (b); and

4. DOB's Argument that the Bravo! installation is part of a marketing strategy by the owner of the subject premises

WHEREAS, with respect to its argument that the word "bravo" is part of a marketing scheme to promote parking at the subject premises, DOB asserts that the BRAVO! installation is intended to serve as an emblem to advertise or announce the PARK*FAST* brand that operates the subject parking garage, and that similarities between the branding for the latter and the former further demonstrates the reasonable nexus between the installation and the parking garage; and

WHEREAS, DOB observes that both the PARK*FAST* logo and the BRAVO! installation employ a version of the Helvetica typeface and a highlighter yellow and black motif; and

WHEREAS, DOB asserts that the use of the same color and typeface in the BRAVO! installation and in the PARK*FAST* branded accessory signage suggests that the BRAVO! installation is an extension of the PARK*FAST* branding efforts; and

WHEREAS, DOB contends that the similarities between the BRAVO! installation and the PARK*FAST* branding are striking, cannot be a mere coincidence, and are, contrary to the Appellant's explanations, a thinly-veiled attempt to invoke the PARK*FAST* brand without using the word "parkfast"; and

WHEREAS, in addition, DOB identified accessory signage—namely, a sign that states "park here for: Times Square, theaters, hotels" and another that states "save the drama for the stage"—that DOB asserts gives further context to the use of the word "bravo" in the façade installation and demonstrate the reasonable nexus between the BRAVO! installation and the parking garage; and

WHEREAS, lastly, as to the Appellant's arguments based on the United States Constitution, DOB asserts that its ability to regulate signage, including in instances where a subjective judgment must be made, is well-established, and DOB cited a number of cases in support of this assertion; and

WHEREAS, based on all of the foregoing arguments, DOB requests that the Board deny the appeal and affirm the Final Determination; and

C. DEPARTMENT OF CITY PLANNING'S POSITION

WHEREAS, as noted above, by letter dated January 29, 2015, the Department of City Planning ("DCP") states that it supports DOB's position; and

WHEREAS, in pertinent part, DCP's letter provides that

> DCP agrees with DOB's determination that the façade treatment which is the subject of this appeal announces, directs attention to and attracts people to the building as a public parking garage location, and thus is a #sign#. The façade treatment conveys a message and discernibly makes a connection to the commercial enterprise of the garage. We do not agree that the use of the word "Bravo!" as set forth in the Karnovsky submission of 12/23/14 "simply evokes the building's location in the Theater District, but is not an advertisement or promotion of anything whatsoever." Nor do we agree that it "simply draws attention to itself as an art or design object."
>
> Appellant acknowledges that the parking garage is located close to the Theater Subdistrict and that "Bravo!" is a "theater term," but refutes [sic] that the use of such term therefore advertises the availability of parking to theater patrons.
>
> * * *
>
> [A]lthough BSA need not reach the question of whether the use of words in and of themselves creates a #sign#, since in this case, the word "Bravo!" does announce, direct, or advertise the parking garage, it is DCP's position that words are not always signs. We do not agree with Appellant that in this instance, DOB has improperly conflated the portion of the ZR Section 12-10 definition of #sign# . . . . Rather, here each prong is individually met, under the facts set forth.
>
> * * *
>
> If the Board were to accept Appellant's argument, it could have far reaching and severe consequences. Furthermore, this drastic change in the application of sign regulations across all boroughs of the City would have occurred absent the City-wide public review process which would normally accompany such a change. (emphasis in original); and

CONCLUSION

WHEREAS, the Board notes its agreement with DOB and the Applicant that the BRAVO! Installation satisfies subsections (a) and (c) of the ZR § 12-10 definition of "sign"; and

WHEREAS, thus, the Board finds that the BRAVO! installation is a sign because it satisfies subsection (b) of the ZR § 12-10 definition of "sign" and as such, the Final Determination is affirmed and the appeal is denied; and

WHEREAS, the Board notes that it previously examined the meaning of subsection (b) of the ZR § 12-10 definition of "sign" in BSA Cal. No. 90-12-A; in that case, the Board observed that while writings often do announce, direct attention to, or advertise, sometimes they do not; implicit in the Board's observation is the notion that the first paragraph of the definition (which brings within the ambit of the sign definition "any writing") and subsection (b) (which requires that the writing be "used to announce, direct attention to, or advertise") both have meaning; and

WHEREAS, the Board finds that interpreting the definition so as to give meaning to all portions of the provision is consistent with standard principles of statutory construction; and

WHEREAS, thus, the Board identifies the issue as whether or not the BRAVO! installation is "used to announce, direct attention, or advertise" within the meaning of the definition; and

WHEREAS, the Board notes that in BSA Cal. No. 90-12-A, it examined whether painted plywood on a building wall announced, directed attention to, or advertised; in answering that question, the Board determined that there must be a connection—a reasonable nexus—between the painted plywood and something else, be it an idea, a profession, or a commodity; the Board found none and thus determined that the plywood directed attention only to itself; and

WHEREAS, the Board agrees with the Appellant that the Board's reasoning in BSA Cal. No. 90-12-A applies with equal force in the instant appeal; thus, the Board finds that the issue is whether or not there is a reasonable nexus between the BRAVO! installation and something other than the BRAVO! installation that would satisfy subsection (b) of the "sign" definition and bring the installation within the purview of the sign regulations; and

WHEREAS, ultimately, the Board rejects DOB's arguments that the BRAVO! installation is a sign because of its purported congratulatory sentiment, because of its purported direction of attention to parking for patrons of the Theater District, and because of its purported celebration of theater or the Theater District, but credits and finds dispositive DOB's argument that the BRAVO! installation, by virtue of its design, including color, text and placement on the façade, is a deliberate textual and visual reference to the existing signage at the premises and the PARK*FAST* marketing program, which signage is directly related to the parking use at the premises and as such, constitutes a sign; and

WHEREAS, the Board finds that the BRAVO! installation is not, as the Appellant contends, purely self-referential, with no direct relationship to any profession, commodity, use, or idea located on or off the zoning lot; and

WHEREAS, the Board agrees with the Appellant that the word "bravo" has a nexus to a multitude of things, including the theater and performing arts (and thus has no reasonable nexus to any one thing); however, the characteristics of the BRAVO! installation at this site create the reasonable nexus that the Board has identified as an element of subsection (b) of the definition of "sign"; and

WHEREAS, specifically, the Board is persuaded that the font, color, and whimsical nature of the BRAVO! installation

are too similar to the PARK*FAST* branding and marketing campaign to be a coincidence; the Board finds particularly illustrative DOB's pictorial comparison of the PARK*FAST* brand signs and the BRAVO! installation and the visual and textual relationship between the signage currently displayed at the garage and the BRAVO! installation;in that context, the similarity between the BRAVO! installation and the PARK*FAST* logo and signage is striking; and

WHEREAS, accordingly, the Board finds that because the BRAVO! installation evokes the well-established PARK*FAST* brand, there is a reasonable nexus between the installation and the parking garage use at the site; thus, the installation satisfies subsection (b) of the ZR § 12-10 definition of "sign"; and

WHEREAS, the Board emphasizes that it is not the word "bravo" but the manner in which it is displayed that is dispositive; and

WHEREAS, the Board reiterates its disagreement with DOB's position that whenever a writing is visible from outside a building and has an identifiable relationship with *anything*, including even the neighborhood in which the writing is located, such writing necessarily directs attention as contemplated in subsection (b) and is therefore a "sign"; and

WHEREAS, indeed, to the contrary, and as the Board observed in BSA Cal. No. 90-12-A, there must be a reasonable nexus between the writing and the alleged referent – where there is sufficient ambiguity, the writing does not direct attention within the meaning of ZR § 12-10; and

WHEREAS, thus, the Board reiterates its previous reasoning that in order to determine if a writing satisfies subsection (b) of the definition of "sign," it must (1) direct or refer the reader's attention to something other than itself and (2) must have a reasonable nexus to the alleged referent; and

WHEREAS, the Board does not accept DOB's position that the word "bravo" is inherently commercial in nature and, as such, is a "writing" which, under any circumstance, "announces" so as to satisfy subsection (b) and explicitly rejects any interpretation of the Zoning Resolution which renders a particular word a "writing" on those grounds as an improper conflation of subsections (a) and (b) of the definition of "sign"; and

WHEREAS, as to the Appellant's assertion that the United States Constitution and federal case law prohibit regulation of the BRAVO! installation, the Board disagrees and acknowledges DOB's well-established authority to regulate signs; and

WHEREAS, for the reasons set forth above, the Board finds that the proposed BRAVO! installation is a "sign"; and

Therefore it is Resolved, that the subject appeal, seeking a reversal of the Final Determination, dated July 3, 2014, is hereby *denied*.

Adopted by the Board of Standards and Appeals, June 16, 2015.

230-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anthony and Linda Colletti, owners.

SUBJECT – Application May 19, 2015 – Proposed construction of a one-family residence located partially within the bed of a mapped street pursuant to Section 35 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 20 Pelton Avenue, northwest corner of intersection of Pelton Avenue and Pelton Place, Block 00149, Lot 20, Borough of Staten Island

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated August 25, 2014, acting on DOB Application No. 520187280, reads in pertinent part:

1. Proposed construction located partly within the bed of a mapped street is contrary to section 35 of the General City Law…
2. Proposed new building has bulk non-compliances resulting from the location of such mapped street. Obtain Board of Standards and Appeals waiver pursuant to 72-01(g); and

WHEREAS, a public hearing was held on this application on May 19, 2015, after due notice by publication in *The City Record*, and then to decision on June 16, 2015; and

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

WHEREAS, this is an application to allow the construction of a two-story, two-family residential building that will be located partially within the bed of a mapped but unbuilt portion of Pelton Place, in Staten Island;

WHEREAS, Community Board 1, Staten Island, recommends approval of the instant application; and

WHEREAS, the subject site is located at the northwest corner of the intersection formed by Pelton Avenue and Pelton Place, within an R3X zoning district, in Staten Island; and

WHEREAS, the site, which is irregularly shaped and is vacant, has approximately 53 feet of frontage along Richmond Terrace, 91.73 feet of frontage along Pelton Place, and 53 feet of frontage along Pelton Avenue, with a lot area of approximately 4,715 sq. ft.; and

WHEREAS, the proposed development will conform and comply with all zoning regulations applicable in an R3X zoning district and will contain 2,208 sq. ft. of floor area (.47 FAR) (the maximum permitted FAR for the zoning lot is .6) as well as three accessory parking spaces; and

WHEREAS, by letter dated April 13, 2015, the New York City Fire Department ("FDNY") states that it has no objections to the proposed application; and

WHEREAS, by letter dated April 30, 2015, the New York City Department of Environmental Protection ("DEP")

states that it has no objections to the proposed application; and

WHEREAS, by letter dated April 6, 2015, the New York City Department of Transportation ("DOT") states that the improvement of Pelton Place at the site is not presently included in DOT's Capital Improvement Program; and

WHEREAS, the Board notes that pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, the Board notes that pursuant to ZR § 72-01(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, therefore, consistent with GCL § 35 and ZR § 72-01(g), the Board finds that applying the bulk regulations across the portion of the subject lot within the mapped street and the portion of the subject lot outside the mapped street as if the lot were unencumbered by a mapped street is both reasonable and necessary to allow the proposed construction; and

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

Therefore it is Resolved, that the Board modifies the decision of the DOB, dated August 25, 2014, acting on DOB Application No. 520187280, by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "June 11, 2015"- (1) sheet; and *on further condition*:

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt portion of the street were not mapped;

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

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

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

Adopted by the Board of Standards and Appeals on June 16, 2015.

7-15-BZY

APPLICANT – Duval & Stackenfeld, for 180 Orchard LLC c/o Brack Capital Real Estate, owner.

SUBJECT – Application January 14, 2015 – BZY Minor Development (§11-332) to extend the time of construction for a minor development for a period of six months; Determination of common law vested rights. Building permit was obtained in 2005 and development was vested at date of Lower East Side rezoning in 2008. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, bounded by Orchard, East Houston, Ludlow and Stanton Streets, approx. 220' of East Houston, Block 00412, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR §11-331, to renew a building permit and extend the time for the completion of a 24-story, with mezzanine, mixed use building at the subject site; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 8-15-A (the "Appeals Application"), decided as of the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a vested right to continue construction of the building under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure the cases were heard together and the record for both cases is the same; and

WHEREAS, a public hearing was held on this application on June 2, 2015, after due notice by publication in The City Record, and then to decision on June 16, 2015; and

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

WHEREAS, the subject site is an L-shaped through lot with frontage on Orchard Street and Ludlow Street, between Houston Street and Stanton Street, within a C4-4A zoning district; and

WHEREAS, the subject site has 128'-3" of frontage along Orchard Street, 50'-1" of frontage along Ludlow Street, a depth ranging from 87'-10" to 175'-8", and a total lot area of 41,501 sq. ft.; and

WHEREAS, under construction at the site is a 24-story, with mezzanine, mixed commercial and community facility building with 154,153.15 sq. ft. of floor area (the "Building"); and

WHEREAS, the Building will contain retail uses on the cellar and ground floors, community facility uses on the mezzanine and second floor and hotel uses throughout, as

well as an accessory parking garage1; and

WHEREAS, on November 23, 2005, New Building Permit No. 104297850-01-NB (hereinafter, the "Permit") was issued by the DOB permitting construction of the Building; and

WHEREAS, however, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site from C6-1 to C4-4A; and

WHEREAS, accordingly, the Building does not comply with the current zoning with respect to floor area, number of hotel rooms, lot coverage, density, building height and street wall location; and

WHEREAS, the applicant represents that the Building complies with the parameters of the former C6-1 zoning district; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

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

WHEREAS, in the two years subsequent to the Enactment Date, construction was not completed and a certificate of occupancy was not issued; and

WHEREAS, accordingly, an application was filed with the Board for an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 15, 2011, the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy under BSA Cal. No. 201-10-BZY; and

WHEREAS, accordingly, the applicant had until March 15, 2013 to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 19, 2013, also under BSA Cal. No. 201-10-BZY, the Board granted a subsequent two-year extension of time to complete construction and obtain certificate of occupancy; and

WHEREAS, accordingly, the applicant had until March 19, 2015 to complete construction of the Building and obtain a certificate of occupancy; and

WHEREAS, as a consequence, on March 19, 2015, the Permit lapsed; and

WHEREAS, the applicant now seeks a one-year extension to complete construction pursuant to ZR § 11-30 et seq., which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the Board notes its previous determination under BSA Cal No. 201-10-BZY that the Permit lawfully issued prior to the Enactment Date; and

WHEREAS, moreover, by letter dated May 26, 2015, DOB confirmed that the Permit was lawfully issued, authorizing construction of the Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

1 Pursuant to a special permit issued by the Department of City Planning on March 4, 2015, pursuant to ZR § 13-561, the applicant has increased the size of the accessory parking garage to accommodate 99 cars.

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the original permit includes: 100 percent of the excavation, footings and foundation; the full construction and enclosure of all permitted zoning floor area (154,153.15 sq. ft.); five internal elevators operational and hoist removed; all mechanical equipment and plumbing equipment installed (less heat pumps for upper floors and electrical wiring); finishes on sub-cellar and floors 2-5; 90-percent finishes on floors 6-8; 50-percent finishes on floors 9-11; 30-percent finishes on floors 12-13; 40-percent finishes on floors 14-18; 20-percent finishes on floors 19-24; and

WHEREAS, additionally, the applicant has substantially revised the plans to comply with changes in applicable codes since 2005, including: the 2010 ADA Code; the life safety provisions of the 2008 NYC Construction Codes; and the NYC Energy Conservation Code; and

WHEREAS, in support of these statements, the applicant has referred the Board to its submission in connection with BSA Cal. No. 201-10-BZY and submitted a breakdown of the construction costs by line item; plans showing construction work; copies of cancelled checks; invoices; photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is $75,572,757, or 100-percent of the total costs of construction; and

WHEREAS, further as to costs, the applicant represents of the $75,572,757 expended to date, $51,367,621 has been expended since the Board's March 19, 2013 extension of time to complete construction; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; and

WHEREAS, the applicant contends that this constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permit, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a one-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104297850-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of one year from the date of this resolution, to expire on June 16, 2016.

Adopted by the Board of Standards and Appeals, June 16, 2015.

8-15-A

APPLICANT – Duval & Stackenfeld, for 180 Orchard LLC c/o Brack Capital Real Estate, owner.

SUBJECT – Application January 14, 2015 – BZY Minor Development (§11-332) to extend the time of construction for a minor development for a period of six months; Determination of common law vested rights. Building permit was obtained in 2005 and development was vested at date of Lower East Side rezoning in 2008. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, bounded by Orchard, East Houston, Ludlow and Stanton Streets, approx. 220' of East Houston, Block 00412, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the subject premises has obtained a vested right under the common law to the construction of a 24-story, with mezzanine, mixed use building at the subject site; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 7-15-BZY (the "BZY Application"), decided as of the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction of the building pursuant to ZR § 11-332; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure the cases were heard together and the record for both cases is the same;

and

WHEREAS, a public hearing was held on this application on June 2, 2015, after due notice by publication in The City Record, and then to decision on June 16, 2015; and

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

WHEREAS, the subject site is an L-shaped through lot with frontage on Orchard Street and Ludlow Street, between Houston Street and Stanton Street, within a C4-4A zoning district; and

WHEREAS, the subject site has 128'-3" of frontage along Orchard Street, 50'-1" of frontage along Ludlow Street, a depth ranging from 87'-10" to 175'-8", and a total lot area of 41,501 sq. ft.; and

WHEREAS, under construction at the site is a 24-story, with mezzanine, mixed commercial and community facility building with 154,153.15 sq. ft. of floor area (the "Building"); and

WHEREAS, the Building will contain retail uses on the cellar and ground floors, community facility uses on the mezzanine and second floor and hotel uses throughout, as well as an accessory parking garage1; and

WHEREAS, on November 23, 2005, New Building Permit No. 104297850-01-NB (hereinafter, the "Permit") was issued by the DOB permitting construction of the Building; and

WHEREAS, however, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site from C6-1 to C4-4A; and

WHEREAS, accordingly, the Building does not comply with the current zoning with respect to floor area, number of hotel rooms, lot coverage, density, building height and street wall location; and

WHEREAS, the applicant represents that the Building complies with the parameters of the former C6-1 zoning district; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

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

WHEREAS, in the two years subsequent to the Enactment Date, construction was not completed and a certificate of occupancy was not issued; and

WHEREAS, accordingly, an application was filed with the Board for an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 15, 2011, the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy under BSA Cal. No. 201-10-BZY; and

WHEREAS, accordingly, the applicant had until March 15, 2013 to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 19, 2013, also under BSA Cal. No. 201-10-BZY, the Board granted a subsequent two-year extension of time to complete construction and obtain certificate of occupancy; and

WHEREAS, accordingly, the applicant had until March 19, 2015 to complete construction of the Building and obtain a certificate of occupancy; and

WHEREAS, as a consequence, on March 19, 2015, the Permit lapsed; and

WHEREAS, the applicant now seeks a two-year extension to complete construction pursuant to the common law doctrine of vested rights; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Enactment Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, the Board notes its previous determination under BSA Cal No. 201-10-BZY that the Permit lawfully issued prior to the Enactment Date; and

WHEREAS, moreover, by letter dated May 26, 2015, DOB confirmed that the Permit was lawfully issued, authorizing construction of the Building prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued 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 AD 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 AD 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 noted above, the applicant obtained a permit to construct the Building and performed certain work prior to the Enactment Date; and

WHEREAS, the Board notes that work completed prior to the Enactment Date constituted substantial construction

1 Pursuant to a special permit issued by the Department of City Planning on March 4, 2015, pursuant to ZR § 13-561, the applicant has increased the size of the accessory parking garage to accommodate 99 cars.

and/or substantial expenditures as stated or implied in BSA Cal No. 201-10-BZY and the statutory renewal thereof; and

WHEREAS, the applicant submits, and the Board finds, that the work performed prior and subsequent to the previous approvals constitutes substantial construction and, similarly, that expenditures related thereto were similarly substantial; and

WHEREAS, the applicant notes that the Board's grant under BSA Cal No. 201-10-BZY included a finding that substantial expenditures were incurred at the Site; and

WHEREAS, specifically, the applicant notes that it has incurred additional construction costs and obligations of $51,367,621 since the previous extension was granted by this Board such that the total construction expenditure and obligation to date for the Building is $76,572,757; 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 in addition to the foregoing construction costs, it has spent approximately $19.4 million in soft costs and $27,756,918 in acquisition costs; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; 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, the applicant states that if it is not allowed to complete construction of the New Building it will incur a loss in excess of $123,972,500 in funds spent and obligations incurred (including soft costs and construction costs incurred by the previous owner of the Site, which were included in the purchase price of the Building) and notes that demolition of the existing Building and construction of a new building which complies with the current C4-4A zoning regulations would cost in excess of $60 million; and

WHEREAS, thus, the applicant states that it would suffer a serious loss if the site were required to comply with the C4-4A zoning regulations; and

WHEREAS, the Board agrees that complying with the C4-4A zoning regulations would result in a serious economic loss for the applicant; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding 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 has accrued to the owner of the premises.

Therefore it is Resolved, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 104297850-01-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, June 16, 2015.

37-15-A

APPLICANT – Jeffrey Geary, for Louis Devivo, owner.

SUBJECT – Application February 26, 2015 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-2 zoning district.

PREMISES AFFECTED – 2020 Demerest Road, Van Brunt Road and Demerest Road, Block 15485, Lot 0007, Borough of Queens.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 21, 2015, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

301-13-BZ

CEQR #14-BSA-067K

APPLICANT – Eric Palatnik, P.C., for Rabbi Mordechai Jofen, owner.

SUBJECT – Application November 12, 2013 – Variance (72-21) to add three floors to an existing one story and basement UG 4 synagogue for a religious-based college and post graduate (UG 3) with 10 dormitory rooms, contrary to sections 24-11, 24-521, 24-52,24-34(a),24-06. R5B zoning district.

PREMISES AFFECTED – 1502 Avenue N, southeast Corner of East 15th Street and Avenue N, Block 6753, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 22, 2013, acting on DOB Application No. 320832248 reads, in pertinent part:

> Proposed enlargement to existing use group 4 synagogue, so as to create a use group 4A house of worship (synagogue) and use group 3 college is contrary to ZR Section 24-11 (floor area)(lot coverage); 24-521 (height); 24-52 (sky exposure); 24-34 (front yard); 24-35(a) (side yard); 25-31

(parking); and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5B zoning district, a four-story and basement building to be occupied by a rabbinical seminary (college and post-graduate) (Use Group 3) and synagogue (Use Group 4), which does not comply with the underlying zoning regulations for floor area, lot coverage, height, sky exposure plane, front yards, side yards and parking, contrary to ZR §§ 24-11, 24-34, 24-35(a), 24-521, 24-52, and 25-31; and

WHEREAS, a public hearing was held on this application on February 3, 2015, after due notice by publication in *The City Record*, with a continued hearing on April 14, 2015, and then to decision on June 16, 2015; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, this application is being brought on behalf of Central Yeshiva Bais Yosef, a non-profit religious entity (the "Seminary"); and

WHEREAS, the subject site is located on the southeast corner of the intersection of Avenue N and East 15th Street, within an R5B zoning district; and

WHEREAS, the site has 40 feet of frontage along Avenue N, 100 feet of frontage along East 15th Street, and a total lot area of approximately 4,000 sq. ft.; and

WHEREAS, the applicant proposes to construct a four-story rabbinical seminary and accessory synagogue (the "Building") with a floor area of 16,711.19 sq. ft. (4.18 FAR) (the maximum permitted floor area is 8,000 sq. ft. (2.0 FAR)), a maximum lot coverage of 87-percent (the maximum permitted lot coverage is 60-percent), a height of 54'-0" (the maximum permitted height is 35'-0"), front yards of 0'-0" (two front yards are required, on Avenue N and on East 15th Street, each of which is required to be at least 10'-0"), side yards of 10'-0" and 0'0" (two side yards are required with a minimum depth of 8'-0"), one parking space (16 parking spaces are required), and a non-complying sky-exposure plane of 0:00 (a 1:1 sky exposure plane is required); and

WHEREAS, the applicant states that the Seminary will contain ten (10) dormitory rooms (to accommodate 42 students), five (5) classrooms (including an existing lecture room on the first floor), the existing basement-level social hall, and the existing synagogue space; and

WHEREAS, as to the finding under ZR § 72-21(a), that there are unique physical conditions which create practical difficulties or unnecessary hardship in complying with the underlying zoning regulations, the Board acknowledges that the Seminary, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to the ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, the applicant represents that the following are the Seminary's programmatic needs necessitating the requested variances: (1) the Seminary's existing facility cannot accommodate its current or projected enrollment (approximately 150 students are enrolled at the Seminary and the applicant states that it will have an enrollment of 180 within the next year); (2) the Seminary's existing facility cannot provide on-site dormitory space for students, many of whom are foreign nationals and many of whom have elected to attend the Seminary specifically for full immersion in Talmudic study, which requires that students live together and among their instructors; and

WHEREAS, the applicant submitted as-of-right plans as well as plans depicting a lesser variance (the "Lesser Variance");

WHEREAS, the as-of-right scenario allowed for an enlargement of approximately 287 square feet, which is insufficient to address either of the applicant's programmatic needs (i.e. classroom and dormitory space); and

WHEREAS, the Lesser Variance entails the integration of classroom space into a basement level social space and the construction of a two-story extension of the existing building, thereby providing two dormitory rooms and additional classroom/social space; the applicant notes that this Lesser Variance, like the proposed Building, is non-compliant with regard to floor area, FAR, lot coverage, front and side yards, height, sky exposure plane and parking; and

WHEREAS, the applicant represents that the Lesser Variance does not accommodate the Seminary's programmatic needs because it would require that the Seminary utilize the basement space for incompatible programs at the same time (i.e., for group study and for socializing), it would not provide adequate classroom space, and it would not provide adequate dormitory space; and

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

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

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

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

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

WHEREAS, the applicant states that the proposed use is

permitted in the subject zoning district; and

WHEREAS, the applicant represents that the proposed Building will be designed to enhance the neighborhood in which it is located and will befit the Seminary's status as a community landmark; and

WHEREAS, the applicant states that the proposed Building will rest lower height than the six-story multiple dwellings across the street from the site; and

WHEREAS, the applicant further states that within a 400 foot radius of the site there are over twenty buildings that are five stories or taller, and that there are three multiple dwellings within 500 feet of the site that are taller than the proposed Building, one of which has a higher FAR than that which is proposed for the subject site; and

WHEREAS, the applicant further states that there are two community facilities located on Avenue N, in Brooklyn, within 1,000 feet of the site, the first of which is a synagogue with residential use containing approximately 13,360 sq. ft. of floor area, with an FAR of 3.16 and a height of approximately 42 feet and the second of which is a religious school containing approximately 22,000 sq. ft. of floor area, with an FAR of 4.89 and a height of approximately 80 feet; and

WHEREAS, the above-noted assertions are supported in a land use study submitted by the applicant; and

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

WHEREAS, as to the finding under ZR § 72-21(d), the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Seminary could occur on the existing lot; and

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

WHEREAS, as to the finding under ZR § 72-21(e) requiring that the variance be the minimum necessary to afford relief, as noted above, the applicant represents that neither the as-of-right scenario nor the Lesser Variance scenario will accommodate the Seminary's programmatic needs; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Seminary the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; 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 Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-067K dated October 25, 2013; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit a , a four-story and basement building to be occupied by a rabbinical seminary (college and post-graduate) (Use Group 3) and synagogue (Use Group 4), which does not comply with the underlying zoning regulations for floor area, lot coverage, height, sky exposure plane, front yards, side yards and parking, contrary to ZR §§ 24-11, 24-34, 24-35(a), 24-521, 24-52, and 25-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 22, 2015" – Eighteen (18) sheets; and *on further condition*:

THAT the building parameters will be: a maximum floor area of 16,711.19 sq. ft. (4.18 FAR); a maximum lot coverage of 87-percent; a maximum building height of 54'- 0"; no front yard; a single side yard of 10'-0"; eight bicycle parking spaces and a single motor vehicle parking space, all as illustrated on the BSA-approved plans;

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

THAT the use shall be limited to a rabbinical seminary (college and post-graduate) (Use Group 4) with accessory synagogue (Use Group 3);

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

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

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

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

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

Adopted by the Board of Standards and Appeals, June 16, 2015.

248-14-BZ
APPLICANT – Slater & Beckerman, P.C., for KIOP Forest Avenue L.P., owner; Fitness International LIC aka LA Fitness, lessee.
SUBJECT – Application October 24, 2014 – Special Permit (§73-36) to allow the operation of a new physical culture establishment (*LA Fitness*) in the existing building. C4-1 zoning district.
PREMISES AFFECTED – 1565 Forest Avenue, Forest Avenue, Between Barrett and Decker Avenues, Block 1053, Lot (s) 130, 133, 138, 189, 166, Borough of Staten Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 24, 2014, acting on DOB Application No. 320627032, reads, in pertinent part:

> Proposed use as a physical culture establishment is not permitted in a C4-1 district per ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-1 zoning district, a physical culture establishment ("PCE") operating in a one story building, known as "Building B" (the "Building"), within the Forest Avenue Shopping Center (the "Site"), contrary to ZR §§ 32-10; and

WHEREAS, a public hearing was held on this application on April 21, 2015, after due notice by publication in the *City Record*, and then to decision on June 16, 2015; and

WHEREAS, Vice-Chair Hinkson and Commissioner Montanez performed inspections of the subject site and neighborhood; and

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

WHEREAS, the Building is located within the Forest Avenue Shopping Center, between Smith Place and Hagaman Place, south of Decker Avenue, within a C4-1 zoning district, on Staten Island; and

WHEREAS, the Building contains approximately 157,361 sq. ft. of floor area; and

WHEREAS, the PCE occupies 33,800 sq. ft. of floor area within the Building; and

WHEREAS, the PCE operates as LA Fitness; and

WHEREAS, the applicant represents that the hours of operation for the PCE are 24 hours per day, seven days per week; 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 Fire Department states that it has no objection to the proposal; and

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

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

WHEREAS, at hearing, the Board inquired as to the number of parking spaces required for the PCE; and

WHEREAS, in response, the applicant provided an analysis of the required parking and concluded, to the Board's satisfaction, that 154 parking spaces are required; and

WHEREAS, the Site is the subject of a City Planning ULURP Action; and

WHEREAS, the Site has existing institutional controls, specifically an 'E 'designation, relating to the potential for hazardous materials as identified in the February 4, 2013 Negative Declaration CEQR No. 12DCP125R; and

WHEREAS, the text of the 'E 'designation states as follows: the first 'E' designation is on Block 1053, Lots p/o 138 and 200, which requires, prior to redevelopment, that the property owner of the above lots must develop and submit a Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) to the Mayor's Office of Environmental Remediation (OER) for review and approval before issuance of construction-related New York City Department of Buildings (DOB) permits (pursuant to Section 11-15 of the Zoning Resolution –Environmental Requirements). The RAP should delineate that contaminated soil should be properly disposed of in accordance with the applicable NYSDEC regulations. Additional testing of the soils may be required by the disposal and/or recycling facility; and

WHEREAS, the applicant has submitted a RAP and CHASP to OER and it has been assigned an OER Project No. 13EHAZ363R and has been accepted by the Mayor's Office of Environmental Coordination; and

WHEREAS, all potential contaminated materials on the project site will have to be remediated to OER's satisfaction in order to have NYCDOB issue construction permits; 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

Therefore it is Resolved, that the Board of Standards and Appeals adopts the Negative Declaration issued by the New York City Department of City Planning on February 4, 2013 for CEQR No. 12DCP125R and makes each and every one of

the required findings under ZR §§ 73-36 and 73-03, to permit, on a 33,800 sq. ft. portion of an existing commercial building within a C4-1 zoning district, a PCE in a one story building, known as "Building B," within the Forest Avenue Shopping Center, contrary to ZR §§ 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received, June 12, 2015"-(3) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on June 16, 2025;

THAT the hours of operation shall be 24 hours per day, seven days per week;

THAT any massages at the PCE shall be performed by New York State licensed massage therapists;

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

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

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by June 16, 2019;

THAT this approval is limited to the relief granted by the Board in response to specifically cited 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 DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 16, 2015.

30-12-BZ

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Remand Back to Board of Standards and Appeals; seeks a judgment vacating the resolution issued on January 15, 2013 and filed on January 17, 2013. R6-/C2-2 zoning district.

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to September 22, 2015, at 10 A.M., for adjourned hearing.

31-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Bnos Square of Williamsburg, owner.

SUBJECT – Application February 11, 2014 – Special Permit (§73-19) to allow a conversion of an existing Synagogue (*Bnos Square of Williamsburg*) building (Use Group 4 to (Use Group 3). M1-2 zoning district.

PREMISES AFFECTED – 165 Spencer Street, 32'6" Northerly from the corner of the northerly side of Willoughby Avenue and easterly side of Spencer Street, Block 1751, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to July 28, 2015, at 10 A.M., for adjourned hearing.

41-14-BZ

APPLICANT –The Law Office of Jay Goldstein, for United Talmudical Academy, owner.

SUBJECT – Application March 7, 2014 – Special Permit (§73-19) to legalize an existing school/yeshiva (UG 3). M1-2 zoning district.

PREMISES AFFECTED – 21-37 Waverly Avenue aka 56-58 Washington Avenue, between Flushing Avenue and Park Avenue front both Washington and Waverly Avenues, Block 1874, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to September 22, 2015, at 10 A.M., for continued hearing.

148-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 11 Avenue A Realty LLC, owner.

SUBJECT – Application June 24, 2014 – Variance (§72-21) to permit multi-family residential use at the premises. R8A/C2-5 zoning districts.

PREMISES AFFECTED – 11 Avenue A, west side of Avenue A between East 1st Street and East 2nd Street, Block 429, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to July 14, 2015, at 10 A.M., for adjourned hearing.

173-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 244 Madison Realty Corp., owner; Coban's Muay Thai Camp NYC, lessee.

SUBJECT – Application July 22, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Evolution Muay Thai Camp*) in the cellar of an existing 16-story mixed-used residential and commercial building, located within an C5-2 zoning district.

PREMISES AFFECTED – 20 East 38th Street aka 244 Madison Avenue, southwest corner of Madison Avenue and East 38th Street, Block 867, Lot 57, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to August 18, 2015, at 10 A.M., for adjourned hearing.

238-14-BZ
APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for DDG 100 Franklin, LLC., owner.
SUBJECT – Application October 1, 2014 – Variance (§72-21) to permit the construction of two mixed residential and commercial buildings on a single zoning lot contrary to §§35-21 & 23-145 (Lot Coverage), 35-24c (Height and setback), 35-52 and 33-23 (minimum width of open area along a side lot line and permitted obstruction regulations), 35-24b (Street wall location). C6-2A Zoning District, Historic District.
PREMISES AFFECTED – 98-100 Franklin Street, Bounded by Avenue of the Americas, Franklin and White Streets, West Broadway, Block 00178, Lot 0029, Borough of Manhattan.
COMMUNITY BOARD #1M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 23, 2015, at 10 A.M., for decision, hearing closed.

REGULAR MEETING
TUESDAY AFTERNOON, JUNE 16, 2015
1:00 P.M.

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

ZONING CALENDAR

243-14-BZ
APPLICANT – Eric Palatnik, PC, for Victorystar, LTD, owner.
SUBJECT – Application October 9, 2014 – Special Permit (§73-243) to permit the legalization and continued use of an existing eating and drinking establishment (UG 6) with an accessory drive-through. C1-2/R3X zoning district.
PREMISES AFFECTED – 1660 Richmond Avenue, Richmond Avenue between Victory Boulevard and Merrill Avenue. Block 02236, Lot 133. Borough of Staten Island.
COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to August 18, 2015, at 10 A.M., for continued hearing.

244-14-BZ
APPLICANT – Eric Palatnik, PC, for Chong Duk Chung, owner.
SUBJECT – Application October 9, 2014 – Special Permit (§73-36) to operate a physical culture establishment (*K-Town Sauna*) within an existing building. C6-4 zoning district.
PREMISES AFFECTED – 22 West 32nd Street, 32nd Street between Fifth and Sixth Avenues, Block 00833, Lot 57, Borough of Manhattan.
COMMUNITY BOARD #5M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 28, 2015, at 10 A.M., for decision, hearing closed.

314-14-BZ
APPLICANT – Sheldon Lobel, P.C., for Maurice Realty Inc., owner.
SUBJECT – Application November 20, 2014 – Special Permit (§73-125) to allow construction of an UG4 health care facility that exceed the maximum permitted floor area of 1,500 sf. R4A zoning district.
PREMISES AFFECTED – 1604 Williamsbridge Road, northwest corner of the intersection formed by Willamsbridge Road and Pierce Avenue, Block 04111, Lot 43, Borough of Bronx.
COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to August

18, 2015, at 10 A.M., for continued hearing.

2-15-BZ
APPLICANT – Jay Goldstein, Esq., for Panasia Estate Inc., owner; Chelsea Fhitting Room LLC, lessee.
SUBJECT – Application January 7, 2015 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Fhitting Room*) in the portions of the cellar and first floor of the premises. C6-4A zoning district.
PREMISES AFFECTED – 31 West 19th Street, 5th Avenue and 6th Avenue on the north side of 19th Street, Block 00821, Lot 21, Borough of Manhattan.
COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to August 18, 2015, at 10 A.M., for continued hearing.

Ryan Singer, Executive Director

***CORRECTION**

This resolution adopted on December 16, 2014, under Calendar No. 303-14-BZ and printed in Volume 99, Bulletin No. 51, is hereby corrected to read as follows:

303-14-BZ
APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.
SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.
PREMISES AFFECTED – 1032 Olympia Boulevard, between Mapleton Avenue and Hempstead Avenue, Block 03808, Lot 0016. Borough of Staten Island.
COMMUNITY BOARD #2SI
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.……..……...4
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-45, 23-461, 23-47, and 54-313; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

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

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the west side of Olympia Boulevard between Hempstead Avenue and Mapleton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Olympia Boulevard and 1,980 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 583 sq. ft. of floor area (0.29 FAR); the existing site has the following yard non-compliances: no front yard (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); a rear yard depth of 20'-4" (a minimum rear yard depth of 30'-0" is required, per ZR § 23-47); and side yards with widths of 3'-7" (northern side yard) and 1'-10" (southern side yard) (the requirement is two side yards with minimum widths of 5'-0", per ZR § 23-461 and 23-48; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, in addition, the applicant represents and the Board accepts that the site was owned separately and individually from all other adjoining tracts of land on December 15, 1961; as such, provided that the site remains in separate and individual ownership on the date of application for a building permit, the site shall be governed by ZR §§ 23-33 and 23-48; and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.55 FAR); the new building will provide a front yard depth of 14'-3", a rear yard depth of 24'-7", a northern side yard width of 3'-5", and southern side yard width of 3'-0"; and

WHEREAS, in addition, the applicant represents that the proposed building will be less than 8'-0" from the building directly south of the site; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; in addition, as noted above, per ZR §§ 23-461 and 23-48, side yards must have a minimum width of 5'-0"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a rear yard depth of 24'-7", a minimum distance of less than 8'-0" from the building directly south of the site, and side yard widths of 3'-5" and 3'-0"; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing

on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side and rear yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side and rear yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, an increase in front yard depth from a non-complying 0'-0" to a non-complying 14'-3", and an increase in open space ratio from 71 percent to 73 percent; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, 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 § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-45, 23-461, 23-47, and 54-313; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 9, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. of floor area (0.55 FAR), a minimum rear yard depth of 24'-7", a minimum front yard depth of 14"-3" and side yards with minimum widths of 3'-0" and 3'-5", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the building directly south of the site;

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

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2018;

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

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

Adopted by the Board of Standards and Appeals, December 16, 2014.

*The resolution has been amended. **Corrected in Bulletin Nos. 25-26, Vol. 100, dated June 24, 2015.**