BULLETIN

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AND APPEALS

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CALENDAR

DECEMBER 4, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 4, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

135-46-BZ
APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.
SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) and Amendment (§11-413) of previously approved variance which permitted an Automotive Service Station (UG 16B), which accessory uses, within a residential zoning district, which expired on January 29, 2012. The application seeks to convert the use to Auto Laundry (UG 16B) hand car wash; Waiver for the Rules. R4 zoning district.
PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8555, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #18BK

812-61-BZ
APPLICANT – Peter Hirshman, for 80 Park Avenue Condominium, owner.
SUBJECT – Application June 28, 2012 – Extension of Term (§11-411) of a previously approved variance permitting in a residential district, the use of an existing accessory multiple dwelling garage for transient parking, which expires on October 24, 2012. R10 & R8B zoning district.
PREMISES AFFECTED – 74-82 Park Avenue, southwest corner of East 39th Street and Park Avenue, Block 868, Lot 7502, Borough of Manhattan.
COMMUNITY BOARD #6M

165-91-BZ
APPLICANT – Law Offices of Stuart A. Klein, for United Talmudical Academy, owner.
SUBJECT – Application August 17, 2012 – Extension of Term of a previously approved Special Permit (§73-19) which permitted the construction and operation of a school (UG 3) which expires on September 15, 2012. M1-2 zoning district.
PREMISES AFFECTED – 45 Williamsburg Street West, aka 32-46 Hooper Street, Block 2203, Lot 20, Borough of Brooklyn.
COMMUNITY BOARD #1BK

APPEALS CALENDAR

97-12-A & 98-12-A
APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communications, LLC.
OWNER OF PREMISES - 620 Properties Associates, LLC.
SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5/CL zoning district.
PREMISES AFFECTED – 620 12th Avenue, between 47th and 48th Streets, Block 1095, Lot 11, Borough of Manhattan.
COMMUNITY BOARD #4M

108-09-A & 109-12-A
APPLICANT – Davidoff Malito & Hutcher LLP, for Lamar Advertising of Penn LLC.
OWNER OF PREMISES - Kehley Holding Corp.
SUBJECT – Application April 18, 2012 – Appeal from Department of Buildings' determinations that signs are not entitled to non-conforming use status as accessory business or non-commercial signs, pursuant to Z.R.§§42-58 and 52-61.
PREMISES AFFECTED – 46-12 Third Avenue, between 46th and 47th Streets, Block 185, Lot 25, Borough of Brooklyn.
COMMUNITY BOARD #7BK

205-12-A
APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communication LLC.
OWNER OF PREMISES – Borden Realty Corporation.
SUBJECT – Application June 29, 2012 –Appeal from the determination of the Department of Buildings that the subject sign is not entitled to non -confrorming use status as an advertising sign .R7-2 /C2-4 (HRW) Zoning District.
PREMISES AFFECTED – 355 Major Deegan Expressway, bounded by Exterior Street, Major Deegan Expressway to the east, Harlem River to the west, north of the Madison Avenue Bridge, Block 2349, Lot 46, Borough of Bronx.
COMMUNITY BOARD #1BX

CALENDAR

DECEMBER 4, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 4, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

75-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.
SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of a the use of retail (UG 6) on the first floor and expand the use into the cellar with accessory use in the sub-cellar, contrary to §42-14 (D)(2)(b). M1-5B zoning district.
PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #2M

200-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Oversea Chinese Mission, owner.
SUBJECT – Application June 26, 2012 – Variance (§72-21) to permit the enlargement of the existing UG4 house of worship contrary §109-121 (floor area), §109-122 (lot coverage) and §54-31 (enlargement of non-complying building). C6-2 zoning district.
PREMISES AFFECTED – 154 Hester Street, southwest corner of Hester Street and Elizabeth Street, Block 204, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #2M

244-12-BZ
APPLICANT – Watchel, Masyr & Missry LLP by Ellen Hay for EQR-600 Washington LLC, owner; Gotham Gym 1 LLC, lessee.
SUBJECT – Application August 8, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Gotham Gym*). M1-5 zoning district.
PREMISES AFFECTED – 600 Washington Street, west side of Washington Street between Morton and Leroy Streets, Block 602, Lot 10, Borough of Manhattan.
COMMUNITY BOARD #2M

258-12-BZ
APPLICANT – Holland & Knight, LLP, for Old Firehouse No. 4 LLC, owner.
SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the conversion of two buildings into a single-family residence which does not comply with lot coverage, minimum distance between buildings and minimum distance of legally required windows. R8B zoning district.
PREMISES AFFECTED – 113 East 90th Street, north side of East 90th Street, 150' west of the intersection of 90th Street, and Park Avenue, Block 1519, Lot 7, Borough of Manhattan.
COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, NOVEMBER 20, 2012
10:00 A.M.

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

SPECIAL ORDER CALENDAR

724-56-BZ
APPLICANT – Michael A. Cosentino for Anthony Nicovic, owner.
SUBJECT – Application June 19, 2012 – Extension of Term (§11-411) of an approved variance which permitted automotive repair (UG 16B), which expires on November 19, 2012. C2-2/R3X & R3-2 zoning district.
PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, Francis Lewis Boulevard from 42nd Road to Northern Boulevard. Block 5373. Lot 26, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening, and, pursuant to ZR § 11-411, an extension of term of a prior grant for an automotive repair business, which expired on November 19, 2012; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with a continued hearing on October 23, 2012, and then to decision on November 20, 2012; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application provided all conditions of the prior grant are followed; and

WHEREAS, the Auburndale Improvement Association provided testimony about the operation of the site, which included concern that there was a towing business operating at the site, that commercial vehicles park overnight, and that there is excessive signage around the perimeter of the site; and

WHEREAS, the subject 10,020 sq. ft. lot is located on the west side of Francis Lewis Boulevard between 42nd Road and Northern Boulevard; and

WHEREAS, the site is located within a C2-2 (R3-2) zoning district and is occupied by an automotive service business; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 19, 1957, when the Board granted a variance to permit the construction and maintenance of a gasoline service station with accessory uses and parking for cars awaiting service for a term of 15 years; and

WHEREAS, subsequently, the term has been extended and the grant amended by the Board at various times; the most recent extension was on June 22, 2004, for a term of ten years from the expiration of the prior grant, expiring on November 19, 2012; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

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

WHEREAS, in consideration of the civic association's concerns, the Board directed the applicant to (1) remove excess signage; and (2) address the concern about commercial parking onsite and the presence of a towing business; and

WHEREAS, in response, the applicant (1) provided photographs which reflect that the excess signage has been removed; (2) installed a sign stating that parking is prohibited and subject to towing; and (3) stated that parking on the site is reserved to vehicles awaiting service and that the towing business only delivers vehicles to the site, but does not otherwise operate there; and

WHEREAS, the owner submitted an affidavit stating that he will not permit parking onsite, except by cars awaiting service; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds that a limited extension of term of five years is appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on November 19, 1957, as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to permit an extension of term for an additional period of five years from the expiration of the prior grant, to expire on November 19, 2017, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 4, 2012"–(2) sheets, and *on further condition*:

THAT the term of this grant shall be for five years from the expiration of the prior grant, to expire on November 19, 2017;

THAT parking on the site will be limited to vehicles awaiting service and any other commercial or overnight parking is prohibited;

THAT a No Parking sign be installed and maintained on the fence;

THAT signage will be limited to that reflected on the BSA-approved plans;

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

THAT all conditions from prior resolutions not

specifically waived by the Board remain in effect;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."
(DOB Application No. 401766665)

Adopted by the Board of Standards and Appeals, November 20, 2012.

98-06-BZ
APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.
SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A zoning district.
PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of Beach 9th Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.
COMMUNITY BOARD #14Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, on a site within an R4A zoning district, a proposed four-story yeshiva, which does not comply with floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, with continued hearings on September 11, 2012 and October 23, 2012, and then to decision on November 20, 2012; and

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

WHEREAS, Community Board 14, Queens, recommends approval of the application; and

WHEREAS, City Councilmember James Sanders, Jr. submitted testimony in support of the application; and

WHEREAS, this application is being brought on behalf of Yeshiva Siach Yitzchoc, a not-for-profit educational entity (the "Yeshiva"); and

WHEREAS, the Board notes that companion applications, under BSA Cal. No. 284-06-A, seeking an amendment to a waiver of GCL Section 35 to permit a portion of the Yeshiva to be built within the bed of a mapped street, were brought concurrently with the original and amendment application and the amendment to the GCL waiver is addressed in a separate application granted on the same date; and

WHEREAS, the subject site is located on the southwest corner of Beach 9th Street and Dinsmore Avenue, and is currently occupied by a two-family home and garage, which will be demolished; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 10, 2007 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in an R4A zoning district, a four-story yeshiva building, contrary to floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage regulations set forth at ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551; and

WHEREAS, the applicant represents that due to financing constraints, the building has not been constructed and the Yeshiva now requests that the Board allow for the amendment of the grant to modify certain conditions of the Board-approved plans; and

WHEREAS, specifically, the applicant proposes to (1) increase the proposed floor area from 24,692 sq. ft. to 27,193 sq. ft.; (2) increase the wall height from 46'-0" to 50'-0"; (3) increase the front yard depth along Beach 9th Street from 9'-10" to 10'-9 ½"; (4) reduce the front yard depth along Dinsmore Avenue from 13'-3" to 8'-6 ½"; (5) maintain the approved side yards; (6) reduce the setback; and (7) increase the lot coverage from 64 percent to 68.32 percent; and

WHEREAS, the applicant also seeks an extension of time to complete construction, which expired on July 10, 2011; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, at hearing, the Board asked the applicant to describe in more detail the need for the redesign of the building and the associated supplemental relief, specifically the increase in height and floor area; and

WHEREAS, in response, the applicant stated that in the five years since the original grant, its student population has grown significantly and now the originally approved building, which was intended to accommodate pre-kindergarten through high school, will only accommodate kindergarten through eighth grade; and

WHEREAS, the applicant states that there are 300 students now and that the student body increases by approximately 25 students per year and that the building will

accommodate a maximum capacity of 400; and

WHEREAS, the applicant states that at the time of the original application, there were 180 students; and

WHEREAS, as far as programmatic needs, the applicant states that it now needs 18 classrooms (two classrooms for each of the nine grades) as opposed to the original plan for 16; and

WHEREAS, the applicant states that the increased size of the building's footprint at every floor is driven in part by the design of the Beis Medrash study hall at the first floor; and

WHEREAS, the applicant represents that the front yard dimensions have been modified to accommodate a larger Beis Medrash on the first floor, rather than on the second floor; and

WHEREAS, the applicant states that it requires four additional feet of building height because after the prior approval, it determined that the water table is at 19 feet, not 26 feet, which precludes yeshiva space from being constructed any more than four feet below ground; and

WHEREAS, accordingly, the applicant represents that a greater portion of the building must be above grade, resulting in a greater height; and

WHEREAS, in support of the claim about the sub-surface conditions, the applicant submitted a letter from an architect explaining that the soil conditions do not permit construction below a depth of four feet, consistent with the soil borings; and

WHEREAS, the Board directed the applicant to perform a building height study in the surrounding area to establish the context and to determine whether the proposed height of 50'-0" is compatible; and

WHEREAS, the applicant performed a height study, which identified eight buildings nearby (five at least partially within a 400-ft. radius of the site and the remaining three on adjacent blocks) with heights greater than 50'-0"; and

WHEREAS, the Board accepts the applicant's description of its change in programmatic needs and accepts that the modifications to the plans represent the minimum necessary to accommodate those needs; and

WHEREAS, the Board is also satisfied that the applicant's height study establishes a context for a building with a height of 50'-0"; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 10, 2007, so that as amended this portion of the resolution shall read: "to permit amendments to the yeshiva design; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received November 19, 2012'- Eight (8) sheets; and *on further condition*:

THAT the building parameters will be as follows: a maximum floor area of 27,193 sq. ft.; a maximum height of 50'-0"; a minimum front yard depth along Beach 9th Street of 10'-9 ½"; a minimum front yard depth along Dinsmore Avenue of 8'-6 ½"; and a maximum lot coverage of 68.32 percent;

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

THAT the time to complete construction will be extended for four years from the date of this grant;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 402313493)

Adopted by the Board of Standards and Appeals, November 20, 2012.

284-06-A

APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.

SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of Beach 9th Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted waiver of General City Law Section 35 to permit a portion of a yeshiva to be built within the bed of a mapped street; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, with continued hearings on September 11, 2012 and October 23, 2012, and then to decision on November 20, 2012; and

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

WHEREAS, this application is being brought on behalf of Yeshiva Siach Yitzchoc, a not-for-profit educational entity (the "Yeshiva"); and

WHEREAS, the Board notes that companion applications, under BSA Cal. No. 98-06-BZ, seeking a variance pursuant to ZR § 72-21, to permit a four-story yeshiva building, contrary to zoning district regulations, were brought concurrently with the original and amendment application, and the amendment to the variance is addressed in a separate application granted on the same date; and

WHEREAS, the subject site is located on the southwest corner of Beach 9th Street and Dinsmore Avenue, and is currently occupied by a two-family home and garage, which will be demolished; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 10, 2007 when, under the subject calendar number, the Board granted a waiver to General City Law Section 35 to permit a portion of a yeshiva to be built within the bed of a mapped street; and

WHEREAS, the applicant's revised building design, as discussed in greater detail in the companion application, still reflects construction in the bed of the mapped portion of Dinsmore Avenue, but the encroachment differs due to the amended design; specifically, previously, the proposed front yard on Dinsmore Avenue had a depth of 13'-3" and now the proposed depth is 8'-6 1/2"; and

WHEREAS, by letter dated January 6, 2012, the Department of Environmental Protection states that it has reviewed the application and has no objections to the proposed amendment as a width of 30 feet in Dinsmore Avenue will remain available for the installation, maintenance and/or construction of the existing and future sewers and water mains; and

WHEREAS, the applicant notes that its proposal provides for a sidewalk with a minimum width of 10'-0" as required by the Department of Transportation at the time of the prior approval; and

WHEREAS, the Board notes that the March 22, 2007 DOT letter did not indicate that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original waiver; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 10, 2007, so that as amended this portion of the resolution shall read: "to permit amendments to the site plan; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received November 19, 2012' one - (1) sheet; and *on further condition*:

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

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

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

(DOB Application No. 402313493)

Adopted by the Board of Standards and Appeals, November 20, 2012.

1005-66-BZ

APPLICANT – Moshe M. Friedman, P.E. for Chelsea Town LLC c/o Hoffman Management, owner.

SUBJECT – Application September 4, 2012 – Extension of Term of a previously granted variance pursuant to Section 60(1b) of the Multiple Dwelling Law which permitted 22 transient parking spaces which expired on May 2, 2012; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 320 West 30th Street, south side of West 30th Street, 202' west of 8th Avenue. Block 753, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.

982-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192nd Street, Block 5513, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

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

84-91-BZ
APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner.
SUBJECT – Application May 17, 2012 – Extension of Term of a previously granted variance (§72-21) which permitted professional offices (Use Group 6) in a residential building which expires on September 15, 2012. R4A zoning district.
PREMISES AFFECTED – 2344 Eastchester Road, east side south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.
COMMUNITY BOARD #11BX
ACTION OF THE BOARD – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

85-91-BZ
APPLICANT – Carl A. Sulfaro, Esq. for Lada Limited Liability Company, owner; Bayside Veterinary Center, lessee.
SUBJECT – Application August 20, 2012 – Extension of Term (§11-411) of a previously granted variance for a veterinarian's office, accessory dog kennels and a caretaker's apartment which expired on July 21, 2012; amendment to permit a change to the hours of operation and accessory signage. R3-1 zoning district.
PREMISES AFFECTED – 204-18 46th Avenue, south side of 46th Avenue 142.91' east of 204th Street. Block 7304, Lot 17, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

93-97-BZ
APPLICANT – Eric Palatnik, P.C., for Pi Associates, LLC, owner.
SUBJECT – Application March 13, 2012 – Amendment to a previously granted variance (§72-21) to permit the change in use of a portion of the second floor from accessory parking spaces to UG 6 office use. C4-3 zoning district.
PREMISES AFFECTED – 136-21 Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 11, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Laid over to February 5, 2013, at 10 A.M., for adjourned hearing.

173-99-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.
SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Matrix Fitness Club*) which expired on March 6, 2011; Amendment for an increase in floor area at the cellar level; waiver of the Rules. M-1 zoning district.
PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43rd Avenue, Block 782, Lot 1, Borough of Queens.
COMMUNITY BOARD #1Q
ACTION OF THE BOARD – Laid over to January 15, 2013, at 10 A.M., for continued hearing.

302-01-BZ
APPLICANT – Deirdre A. Carson, for Creston Avenue Realty, LLC, owner.
SUBJECT – Application April 30, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on April 23, 2012; Extension of Time to obtain a Certificate of Occupancy which expired on July 10, 2012. R8 zoning district.
PREMISES AFFECTED – 2519-2525 Creston Avenue, west side of Creston Avenue between East 190th and East 191st Streets, Block 3175, Lot 26, Borough of Bronx.
COMMUNITY BOARD #3BX
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.

189-03-BZ
APPLICANT – Eric Palatnik, P.C., for 830 East 233rd Street Corp., owner.
SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expires on October 21, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.
PREMISES AFFECTED – 836 East 233rd Street, southeast corner of East 233rd Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.
COMMUNITY BOARD #12BX
ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M., for adjourned hearing.

141-06-BZ
APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.
SUBJECT – Application August 7, 2012 – Extension of Time to complete construction of a previously approved

variance (§72-21) permitting the construction of a three-story synagogue (*Congregation Tefiloh Ledovid*) which expired on June 19, 2011; Waiver of the Rules. R5 zoning district.
PREMISES AFFECTED – 2084 60th Street, corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.
COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to January 15, 2013, at 10 A.M., for continued hearing.

APPEALS CALENDAR

163-11-A
APPLICANT – FDNY, for Badem Buildings, owner.
SUBJECT – Application October 17, 2011 – Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.
PREMISES AFFECTED – 469 West 57th Street, between 9th and 10th Avenue, Block 1067, Lot 4, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application from the Fire Commissioner, requesting to modify the certificate of occupancy of the subject premises to reflect a requirement for an automatic wet sprinkler system throughout all stairways and public hallways of the subject building; and

WHEREAS, the Fire Commissioner proposes to issue the following order to the property owner:

> You are hereby directed and required to comply with the following order within (30) days.
>
> Install an approved <u>automatic wet sprinkler system throughout the building</u> arranged and equipped as per the Building Code of the NYC Administrative Code Chapter 1 Administration, Section 28.010.1 and the Title 28 Chapter 9 Section BC 903.
>
> <u>Note:</u> Plans shall be filed and approved by the Department of Buildings before work commences.
>
> <u>Authority</u>: NYC Fire Code Chapter 9, Title 29, Section FC 901.4.3 of the Administrative Code, and Chapter 19 Section 487 and Section 488 of the NYC Charter; and

WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in the City Record, with continued hearings on June 5, 2012, August 21, 2012 and October 16, 2012, and then to decision on November 20, 2012; and

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

WHEREAS, the subject premises is located on the north side of West 57th Street, between Ninth and Tenth avenues, within an R8 zoning district; and

WHEREAS, the subject site is occupied by a five-story residential building with retail use on the ground floor; and

WHEREAS, the current Certificate of Occupancy Number 096814 (the "Current CO") reflects the use of the building as a Class A Multiple Dwelling with two Use Group 6 stores on the ground floor; and

WHEREAS, the Fire Department performed an inspection of the building in May 2010 and submitted a Sprinkler System Recommendation Report for the subject site which explained the need for the proposed automatic wet sprinkler system throughout the building; and

WHEREAS, the Fire Department asserts that the proposed modification to the Current CO is necessary in the interest of public safety because fire protection within the subject building is deemed inadequate; and

WHEREAS, specifically, the Fire Department states that an automatic wet sprinkler system is required throughout the stairways and public halls for the following reasons: (1) the building is mixed-use with commercial and residential uses; (2) the building is of non-fireproof construction; (3) the residential units have a single means of egress; (4) building egress is through a single fireproof enclosed stairwell without sprinkler protection; (5) exit doors are often propped open, which undermines fire and smoke integrity of the stairwell; (6) only one of the six lines of apartments has a full walk down fire escape; and (7) without access to fire escapes, any rescue from rear apartments would be required to be via the interior or roof rope; and

WHEREAS, pursuant to Fire Code § 901.4.3, the Fire Department requests to modify the certificate of occupancy to reflect that an automatic wet sprinkler system be installed in the stairway and public hallways of the building; and

WHEREAS, the owner testified at hearing and provided a letter, dated October 15, 2012, stating that the applicant has resolved with the Fire Department to provide a sprinkler system, as requested; and

WHEREAS, based on the above, the Board agrees with the Fire Department that, given the use and construction of the building, its requirement for automatic sprinklers throughout all stairways and public hallways in the building is appropriate; and

WHEREAS, the Board finds that the installation of an automatic wet sprinkler system, as requested by the Fire Department, supports the Fire Department's goals to protect life and property at the premises in the event of fire; and

WHEREAS, the Board notes that the ultimate configuration of the sprinkler system may differ from what the Fire Department initially requested, but it will be approved by

DOB and the Fire Department prior to installation; and

WHEREAS, however, the Board notes that the property owner has agreed with the Fire Department that it will install the sprinklers within six months of the date of this decision – by May 20, 2013 – and obtain a new certificate of occupancy six months thereafter – by November 20, 2013; and

WHEREAS, accordingly, the Board supports a modification to the certificate of occupancy to reflect that an automatic wet sprinkler system be maintained throughout all stairways and public halls in the subject building.

Therefore it is Resolved that the application of the Fire Commissioner, dated October 12, 2011, seeking the modification of Certificate of Occupancy No. 096814 is hereby granted and the property owner must install the sprinklers by May 20, 2013 and obtain a new Certificate of Occupancy by November 20, 2013.

Adopted by the Board of Standards and Appeals, November 20, 2012.

21-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Pavel Kogan, owner.

SUBJECT – Application January 30, 2012 – Proposed construction of an accessory swimming pool partially within the bed of a mapped street, contrary to General City Law Section 35. R1-2 (NA-1) Zoning District.

PREMISES AFFECTED – 55 Louise Lane, west of intersection of north side of Louise Lane and west side of Tiber Place, Block 687, Lot 281, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 28, 2011, acting on Department of Buildings Application No. 500499631, reads:

> Construction within the bed of a mapped street is contrary to Section 35 of the General City Law. Therefore, refer to the Board of Standards and Appeals for review; and

WHEREAS, this is an application under General City Law ("GCL") § 35, to permit the construction of a portion of the existing porch and a swimming pool to the north of the residence located in the bed of a mapped but unbuilt portion of Tiber Place; and

WHEREAS, a public hearing was held on this application on August 14, 2012 after due notice by publication in *The City Record*, with continued hearings on September 11, 2012 and October 16, 2012, and then to decision on November 20, 2012; and

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

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

WHEREAS, the subject site is located on the north side of Louise Lane, 362.52 feet west of the intersection of the north side of Louise lane and west side of Tiber place, in an R1-2 (NA-1) zoning district; and

WHEREAS, on November 29, 1989, under BSA Cal. Nos. 1384-88-A through 1388-88-A, the Board granted an application pursuant to General City Law § 36 permitting the construction of the subject building and three adjacent buildings which did not front on a legally mapped street; and

WHEREAS, a condition of the grant was that a deed restriction be placed on each property requiring that a Homeowner's Association be created; and

WHEREAS, by letter dated August 8, 2012, the Fire Department states that it has no objections to the subject proposal; and

WHEREAS, by letter dated March 15, 2012, the Department of Transportation ("DOT") states that the City does not have title to the mapped street, and that improvement of Tiber Place at this location is not presently included in DOT's Capital Improvement Program; and

WHEREAS, by letter dated February 17, 2012, the Department of Environmental Protection ("DEP") states that there are no existing sewers or water mains within the bed of mapped Tiber Place, and Drainage Plan No. PRD-1B & 2B, sheet 4 of 14, calls for a future ten-inch diameter sanitary sewer and a future 12-inch/15-inch diameter storm sewer in the bed of Tiber Place at the intersections with Louise Lane; and

WHEREAS, DEP further states that it requires the applicant to submit the following: (1) a survey/plan showing a 31'-0" wide "Sewer Corridor" in the bed of Tiber Place at the intersection with Louise Lane (along Lot 281 for the installation, maintenance and or reconstruction of the future ten-inch diameter sanitary sewer and the 12-inch/15-inch diameter storm sewer, or otherwise the applicant must amend the Drainage Plan; and (2) proof that the Homeowner's Association documents are recorded in the City Register of the NYC Department of Finance; and

WHEREAS, in response, the applicant submitted documentation reflecting that the Homeowner's Association was created and recorded in accordance with BSA Cal. Nos. 1384-88-A through 1388-88-A; and

WHEREAS, as to the requested sewer corridor, the applicant states that providing the 31'-0" wide sewer corridor in the center of Tiber Place would preclude the development of any swimming pool on the site; and

WHEREAS, however, the applicant states that it would agree to amending the drainage plan if necessary in the future in order to address the concerns of DEP; and

WHEREAS, specifically, the applicant represents that it is unlikely that the unbuilt portion of Tiber Place and the sewers referenced by DEP will be developed due to the presence of existing homes, including the subject site and

Louise Lane, but if the sewers are developed by DEP in the future the applicant agrees to amend the drainage plan accordingly; and

WHEREAS, at hearing, the Board directed the applicant to provide the location of the drywells on the site, which were referenced in BSA Cal. Nos. 1384-88-A through 1388-88-A; and

WHEREAS, in response, the applicant submitted a site plan reflecting that the drywells are located outside of the mapped Tiber Place and outside of the area for the proposed swimming pool; and

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

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated December 28, 2011 acting on Department of Buildings Application No. 500499631, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 19, 2012– (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT if/when DEP proposes to install sewer lines in the bed of Tiber Place, the applicant will amend the drainage plan to the satisfaction of DEP;

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

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

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

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

Adopted by the Board of Standards and Appeals November 20, 2012.

102-12-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Michael Mason, lessee.

SUBJECT – Application April 12, 2012 – Proposed reconstruction and enlargement of a single family home not fronting on a mapped street, contrary to General City Law Section 36, and the proposed upgrade of the private disposal system, contrary to the Department of Buildings' policy. R4 zoning district.

PREMISES AFFECTED – 489 Sea Breeze Walk, east side of Sea Breeze Walk, north of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 5, 2012, acting on Department of Buildings Application No. 420545351, reads in pertinent part:

For Board of Standards & Appeals Only

A1- The street giving access to the existing building to be altered is not duly placed on the map of the City of New York.

A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

B) Existing dwelling to be altered does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of New York; and

A2- The proposed upgrade of the private disposal system is contrary to the Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in the *City Record*, closed and decided on same date; and

WHEREAS, by letter dated October 2, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections provided that the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated April 5, 2012, acting on Department of Buildings Application No. 420545351, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 12, 2012" - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

DOB/other jurisdiction objection(s) only;

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

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

THAT the home shall be sprinklered in accordance with the BSA-approved plans;

and

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

Adopted by the Board of Standards and Appeals, November 20, 2012.

151-12-A

APPLICANT – Christopher M. Slowik, Esq./Law Office of Stuart Klein, for Paul K. Isaacs, owner.

SUBJECT – Application May 9, 2012 –

Appeal challenging the Department of Buildings' determination that a roof antenna is not a permitted accessory use pursuant to ZR § 12-10. R8 zoning district.

PREMISES AFFECTED – 231 East 11th Street, north side of E. 11th Street, 215' west of the intersection of Second Avenue and E. 11th Street, Block 467, Lot 46, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative: Commissioner Montanez 1

THE RESOLUTION –

WHEREAS, this is an appeal of a Department of Buildings ("DOB") final determination dated April 10, 2012, issued by the First Deputy Commissioner (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

> The request to lift the Stop Work Order associated with application no. 120213081 to legalize a ham radio antenna above the existing 5 story residential building is hereby denied.
>
> As per ZR 22-21, radio or television towers, non-accessory, are permitted by special permit of the BSA.
>
> The proposed ham radio antenna, approximately 40 feet high, is not customarily found in connection with residential buildings and is therefore not an accessory use to the building; and

WHEREAS, the appeal was brought on behalf of the owner of 231 East 11th Street (hereinafter the "Appellant"); and

WHEREAS, a public hearing was held on this application on August 21, 2012 after due notice by publication in *The City Record*, with a continued hearing on October 16, 2012, and then to decision on November 20, 2012; and

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

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

WHEREAS, the subject site is located on the north side of East 11th Street between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the site has approximately 25'-6" of frontage of East 11th Street, a depth of 100 feet, and a total lot area of 2,550 sq. ft.; and

WHEREAS, the site is occupied by a five-story residential building with a height of approximately 58'-0" (the "Building"); a radio tower with a height of approximately 40'-0" is located on the rooftop of the Building (the "Radio Tower"); and

PROCEDURAL HISTORY

WHEREAS, on November 2, 2009 DOB issued Notice of Violation No. 34805197M charging work without a permit for the Radio Tower contrary to Administrative Code Section 28-105.1; the violation was sustained by an Administrative Law Judge of the Environmental Control Board on October 26, 2010; and

WHEREAS, on or about November 30, 2009, the Appellant filed Job Application No. 120213081 for a permit to legalize the Radio Tower, and on September 30, 2010 DOB issued Permit No. 120213081-01-AL for the Radio Tower; and

WHEREAS, on or about December 16, 2010, DOB reexamined the application and determined that it was approved in error contrary to the Zoning Resolution and on January 13, 2011, DOB issued an Intent to Revoke Approval(s) and Permit(s), Order(s) to Stop Work Immediately letter with an objection that "Proposed antenna is not accessory to the function or principal use of the building"; on or about February 9, 2011, a stop work order was served upon the Appellant and the Radio Tower permit was revoked; and

WHEREAS, on July 12, 2011, DOB denied the Appellant's request to reinstate the permit and rescind the stop work order; the July 12, 2011 determination was renewed by DOB on April 10, 2012, and forms the basis of the Final Determination; and

RELEVANT ZONING RESOLUTION PROVISIONS

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

> ZR § 12-10 (Accessory Use, or accessory)
>
> An "accessory use":
>
> (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an

#accessory building or other structure#, or as an #accessory use# of land) . . .; and

(b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and

(c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use# . . .

An #accessory use# includes…

(16) #Accessory# radio or television towers…

* * *

ZR § 22-21 (By the Board of Standards and Appeals)

In the districts indicated, the following #uses# are permitted by special permit of the Board of Standards and Appeals, in accordance with standards set forth in Article VII, Chapter 3…

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

Radio or television towers, non-#accessory#...

* * *

ZR § 73-30 (Radio or Television Towers)

In all districts, the Board of Standards and Appeals may permit non-#accessory# radio or television towers, provided that it finds that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.

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

THE APPELLANT'S POSITION

WHEREAS, the Appellant makes the following primary arguments: (1) the Radio Tower meets the ZR § 12-10 definition of accessory use; and (2) the Zoning Resolution is preempted by federal law and regulation from precluding international communications, and to the extent DOB maintains the Radio Tower is impermissible due to its height, DOB's interpretation is subject to limited preemption because it has not "reasonably accommodated" the Appellant's needs; and

1. Accessory Use

WHEREAS, as to the definition of accessory use, the Appellant asserts that the proposed Radio Tower meets the criteria as it is: (a) located on the same zoning lot as the principal use (the residential building), (b) the Radio Tower use is incidental to and customarily found in connection with a residential building, and (c) the Radio Tower is in the same ownership as the principal use and is proposed for the benefit of the owner of the Building; and

WHEREAS, the Appellant notes that DOB acknowledges that the principal use of the site is as a residential building, and that the owner maintains a residence at the Building; and

WHEREAS, the Appellant states that the owner has been a licensed "ham" radio operator since 1957, and is in frequent contact with other amateur radio operators around the world; and

WHEREAS, the Appellant notes that the owner is an amateur radio operator (amateur radio license No. WTJGQ) and is not engaged in a commercial use of the Radio Tower; and

WHEREAS, the Appellant submitted a needs analysis prepared by an engineer which concludes that, based on the owner's desired use of the ham radio to engage in communication to Israel and the Middle East, "a significantly taller tower should be utilized to provide optimal coverage," however the proposed Radio Tower with a height of 40 feet "is an acceptable compromise adequate for moderate needs of the amateur radio operator when measured against commonly used engineering metrics;" and

WHEREAS, the Appellant cites to 7-11 Tours, Inc. v. Board of Zoning Appeals of Town of Smithtown, 454 N.Y.S.2d 477, 478 (2d Dept. 1982) for the following discussion of the definition of "accessory use":

> "[I]ncidental", when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant…The word "customarily" is even more difficult to apply. Courts have often held that the use of the word "customarily" places a duty on the board or court to determine whether it is usual to maintain the use in question in connection with the primary use. The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use; and

WHEREAS, the Appellant asserts that the owner's use of the Radio Tower is clearly that of a hobbyist engaged in an avocation from his own residence, and that the owner's hobby as an amateur ham radio operator is both "attendant to" and "commonly, habitually, and by long practice reasonably associated with" the primary use of the Building as a residence; and

WHEREAS, as to whether amateur radio antennas are customarily found in New York City, the Appellant notes that the FCC website lists the names of all amateur radio licensees in the country, and as of May 7, 2012 the site listed a total of 1,086 active amateur radio licensees in Manhattan, while at least 2,235 additional licensees are located in the other four boroughs of New York City; and

WHEREAS, the Appellant asserts that almost all of the licenses reflected on the FCC website are issued to natural persons who enjoy long distance amateur radio communications from their residences; thus, the outdoor radio antennas are commonly in use by radio amateurs in New York City to support international communications; and

WHEREAS, in support of its position that ham radio antennas are customarily found in connection with residences, the Appellant cites to the Oxford English Dictionary definition

of "customarily" as "in a way that follows customs or usual practices; usually"; and

WHEREAS, the Appellant contends that a use can be "customary" without being very common, such as swimming pools and tennis courts, which are undoubtedly "customarily" found as accessories to residences, regardless of the frequency with which they so appear; and

WHEREAS, the Appellant argues that it is clear that ham radio antennas are "usually" found as accessories to residences, in that when such antennas are found, they are found appurtenant to residences, and the fact that amateur radio towers may be a relatively rare use is irrelevant to the consideration of whether such use is accessory to a residence; and

WHEREAS, at the Board's request and to support its contention that ham radio antennas are "customarily found in connection with" a residence, the Appellant submitted a series of photographs depicting similar antennas maintained throughout New York City, which provides the borough, underlying zoning district, size, and use group of the residence to which the antenna is accessory, and where available and to the extent possible to obtain such information, it also provides the height of the antennas pictured; and

WHEREAS, specifically, the Appellant submitted photographs of nine other antennas found in Manhattan, the Bronx, Brooklyn, and Queens, which are associated with various types of buildings, from single-family homes to 19-story apartment buildings, and which are found in residential, commercial and manufacturing zoning districts; and

WHEREAS, the Appellant asserts that despite the diversity amongst the buildings depicted, they are all residences, and the ham radio antennas attached to each residence is an accessory use to the main use of the building as a residence; and

WHEREAS, the Appellant represents that the antennas pictured in the photograph array are comparable in size to the Radio Tower, and in some cases, larger than the Radio Tower; and

WHEREAS, the Appellant further represents that there are many more such antennas annexed to other residences throughout the City, however, given the time constraints of the Board's hearing process and the reluctance of some ham radio operators to expose themselves to possible enforcement action by DOB, the Appellant provided the aforementioned photographs as representative of the type of antenna systems found throughout the City; and

WHEREAS, the Appellant also submitted an array of 23 photographs of antennas from other jurisdictions, many of which are significantly taller than the subject Radio Tower with a height of 40 feet, which the Appellant argues reflects that the subject Radio Tower is modest in size and scope; and

WHEREAS, the Appellant also submitted a copy of a memorandum from then-DOB Commissioner Bernard J. Gillroy, dated November 22, 1955, on the subject of radio towers (the "1955 Memo"), which states that "[n]umerous radio towers have been erected throughout the city for amateur radio stations," and further states that such towers "may be accepted in residence districts as accessory to the dwelling;" and

WHEREAS, the Appellant contends that the 1955 Memo serves as evidence that amateur radio towers were numerous throughout New York City and DOB customarily found them as accessory to residences since at least 1955; and

2. Preemption

WHEREAS, the Appellant argues that the Zoning Resolution is preempted by federal law and regulation from precluding international communications, and to the extent DOB maintains the Radio Tower is impermissible due to its height, DOB's interpretation of the Zoning Resolution as it applies to the site is subject to limited preemption because DOB has not "reasonably accommodated" the owner's needs; and

WHEREAS, the Appellant states that federal laws and FCC regulations strongly favor the maintenance of ham radio equipment such as the Radio Tower, and pre-empt local ordinances which prohibit the maintenance of such equipment, either on their face or as applied; and

WHEREAS, specifically, the Appellant asserts that FCC Opinion and Order PRB-1, Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, 101 FCC 2d 952, 50 Fed. Reg. 38813 (Sept. 25, 1985) ("PRB-1"), requires local authorities to reasonably accommodate amateur radio; and

WHEREAS, the Appellant notes that PRB-1 was codified as a regulation of the FCC at 47 CFR § 97.15(b)(2006), which states:

> Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. See PRB-1, 101 FCC 2d 952 (1985) for details.); and

WHEREAS, the Appellant further notes that PRB-1 explains that antenna height is important to effective radio communications as follows:

> Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in…Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's

legitimate purpose; and

WHEREAS, the Appellant states that the needs analysis it submitted reflects that the proposed Radio Tower with a height of 40 feet is the minimum bulk necessary to accommodate the owner's desired communications; and

WHEREAS, accordingly, the Appellant argues that DOB's position that the Radio Tower is impermissible as an accessory use due to its height fails to reasonably accommodate the international amateur service communications that the owner desires to engage in, and therefore DOB's position is subject to the limited preemption of PRB-1 and 47 CFR § 97.15(b), and is preempted as applied; and

DOB'S POSITION

WHEREAS, DOB makes the following primary arguments in support of its revocation of the Permit for the Radio Tower: (1) the Radio Tower is not accessory to the principal residential use and therefore requires a special permit from the Board as a non-accessory radio tower; and (2) the Zoning Resolution provides a "reasonable accommodation" in accordance with federal law; and

WHEREAS, DOB asserts that pursuant to ZR § 22-21, in R8B zoning districts, "radio or television towers, non-accessory" are permitted only "by special permit of the Board of Standards and Appeals," and because no special permit has been issued for the Appellant's radio tower, it must satisfy the ZR § 12-10 definition of "accessory use"; and

WHEREAS, DOB contends that the Radio Tower does not satisfy the ZR § 12-10 definition of accessory use primarily because it does not satisfy the criteria that such a radio tower be "customarily found in connection with" the principal use of the site as a residence; and

WHEREAS, specifically, DOB argues that the proposed Radio Tower is significantly taller and more elaborate than the traditional accessory radio towers (or "aerials") that have been found atop residences for decades in New York City, which are typically used to receive remotely broadcast television and/or AM/FM signals for at-home private listening or viewing and are usually 12 feet or less in height and often affixed directly to chimneys or roof bulkheads; and

WHEREAS, DOB distinguishes traditional "aerials" with the proposed Radio Tower which extends 40 feet above the roof of the Building and must be secured to the roof at multiple points by one-half inch steel wires; and

WHEREAS, DOB further distinguishes the proposed Radio Tower because it functions differently than traditional aerials in that it both receives and transmits radio signals (as opposed to traditional aerials which merely receive radio signals) and is powerful enough to communicate with people living in South America and the Middle East; and

WHEREAS, accordingly, DOB considers the proposed Radio Tower to be categorically distinct from the aerials that are "customarily found in connection with" New York City residences, and argues that the plain text of the Zoning Resolution does not support its use as accessory to the principal use of the zoning lot as a residence; and

WHEREAS, DOB asserts that while the Appellant has cited a number of cases from other states that support the general notion that ham radio use may be permitted as accessory to a residence, the subject case is controlled by the Court of Appeals decision in Matter of New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413 (1998); and

WHEREAS, DOB notes that in Botanical Garden the Board agreed with DOB's determination that a 480-ft. radio tower on the campus of Fordham University adjacent to the New York Botanical Garden was a permitted accessory use for an educational institution that operated a radio station, finding that the radio tower was clearly incidental to and customarily found in connection with an educational institution; and

WHEREAS, DOB states that, in upholding the Board's determination, the Court of Appeals explained that there was "more than adequate evidence to support the conclusion that [the operation of a 50,000 watt radio station with a 480-ft. radio tower] is customarily found in connection with a college or university" and articulated the following standard for determining whether a use is accessory under the Zoning Resolution:

> [w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question. Botanical Garden, 91 N.Y.2d at 420; and

WHEREAS, DOB notes that the Court also stressed that the accessory use analysis is fact-based and that "[t]he issue before the [Board] was: is a station of this particular size and power, with a 480-foot tower, customarily found on a college campus or is there something inherently different in this radio station and tower that would justify treating it differently" Botanical Garden, 91 N.Y.2d at 421; and

WHEREAS, DOB argues that, based on the standard set forth in Botanical Garden, the proposed Radio Tower is not permitted as accessory to the Building; and

WHEREAS, specifically, DOB asserts that the Radio Tower is incompatible with the principal use and the surrounding area, in that it adds an additional 40 feet of height to the Building and its supporting wires and structures, which are permanently affixed, occupy a substantial portion of the roof; thus, when measured by its size in relation to the Building, the Radio Tower is not clearly incidental; and

WHEREAS, DOB further asserts that the Radio Tower is out of context with the subject residential neighborhood, as it is located on an interior lot situated mid-block in a contextual, medium-density residential district on a narrow street of a quintessential East Village block on which no other buildings have aerials approaching the size and complexity of the proposed Radio Tower; and

WHEREAS, DOB argues that, even if the proposed Radio Tower were considered "clearly incidental" to the residential building, the Appellant has also not demonstrated

that the Radio Tower of this size and power is "customarily found in connection with" New York City residences; and

WHEREAS, as to the photographs and evidence submitted by the Appellant of other radio towers within New York City, DOB asserts that they do not constitute sufficient evidence to establish that a rooftop radio tower with a height of 40 feet is customarily found in connection with the principal use of a residential building located in an R8B zoning district; and

WHEREAS, specifically, DOB states that of the nine photographs provided by the Appellant, five photographs show rooftop radio towers which are not comparable to the subject Radio Tower because they are located on buildings which are 11 to 19 stories tall, and none of which appear to be close to the height of the residential building below the tower; and

WHEREAS, DOB further states that of the remaining four photographs that show radio towers that are located on or near buildings less than 11 stories, only one is located on the roof of a building and that radio tower appears to be approximately half the height of the two-story dwelling; the other three photographs do not appear to show radio towers located on the roofs of the buildings, and the only one of those three that appears to be more than 40 feet in height is a stand-alone radio tower with a height of 80 feet associated with a two-story residential building, and DOB represents that it would not consider such a radio tower to be an accessory use; and

WHEREAS, DOB contends that in order for the subject Radio Tower to satisfy the "customarily found in connection with" criteria, it is not sufficient to provide evidence of other radio towers with similar heights as the subject Radio Tower; rather, the Appellant would have to provide evidence that it is customary to have a radio tower with a height of 40 feet on the rooftop of a four-story building of similar height as the Building, within an R8B zoning district; and

WHEREAS, accordingly, DOB asserts that the evidence submitted by the Appellant is insufficient to establish that a rooftop radio tower with a height of 40 feet located on a four-story residential building in an R8B zoning district is customary, and therefore it does not meet the ZR § 12-10 definition of accessory use; and

WHEREAS, DOB argues that the evidence submitted by the Appellant reflects a similarity between the facts in the subject case and those of BSA Cal. No. 14-11-A (1221 East 22nd Street, Brooklyn), which involved a challenge to DOB's denial of a permit for an accessory cellar that was nearly as large as the single-family residence to which it was to be appurtenant; and

WHEREAS, DOB asserts that the Board affirmed DOB's denial in that case, in part, because the appellant failed to demonstrate that such oversized, non-habitable cellars were customarily found in connection with residences, and that in the subject case the Appellant's evidence similarly fails to demonstrate that a rooftop radio tower with a height of 40 feet is customarily found on a four-story residential building; and

WHEREAS, by letter dated November 8, 2012, the Department of City Planning ("DCP") states that it expresses no opinion regarding the merits of the subject case but requests that the Board take the height of the antenna into account in determining whether it is accessory, as it did in BSA Cal. No. 14-11-A, because the size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use; and

WHEREAS, as to the 1955 Memo submitted by the Appellant, DOB asserts that the 1955 Memo merely deals with the permitting safety requirements, and specifications for the construction of radio towers, and does not indicate that radio towers are necessarily accessory uses to residences; and

WHEREAS, DOB acknowledges that the Zoning Resolution is clear that some radio towers are accessory, however it is also clear that some radio towers are not accessory, and the 1955 Memo does not state which type of radio towers could be considered accessory or non-accessory; and

WHEREAS, in response to the Appellant's preemption argument, DOB contends that the Zoning Resolution does provide a "reasonable accommodation" in accordance with federal law; and

WHEREAS, DOB asserts that PRB-1 is a declaratory ruling issued by the FCC requiring that "local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications;" and

WHEREAS, DOB contends that its interpretation of the Zoning Resolution to prohibit the proposed radio tower as accessory to the subject residence as-of-right was proper and consistent with PRB-1, and that it has reviewed the proposal at the highest level and determined that it had no authority to allow the radio tower because a special permit is required pursuant to ZR §§ 22-21 and 73-30; and

WHEREAS, DOB further contends that ZR § 73-30, which authorizes the radio tower by special permit, contemplates the sort of fact-finding and analysis required by PRB-1; accordingly the Zoning Resolution as interpreted by DOB is consistent with the FCC's "reasonable accommodation" requirement; and

THE APPELLANT'S RESPONSE

WHEREAS, in response to the arguments set forth by DOB, the Appellant asserts that DOB's reliance on Botanical Garden and BSA Cal. No. 14-11-A are misplaced; and

WHEREAS, as to Botanical Garden, the Appellant first notes that that case involved a radio tower that was accessory to an educational institution rather than an amateur radio tower that is accessory to a residence, and that to the extent that case is comparable to the subject case, a clear reading shows that it actually supports the Appellant's position; and

WHEREAS, at the outset, the Appellant states that in Botanical Garden, DOB, the Board, the Supreme Court, the Appellate Division, and the Court of Appeals all found that the Fordham antenna was an accessory use, using arguments similar to those advanced by the Appellant; and

WHEREAS, the Appellant notes that, in upholding the

lower courts in Botanical Garden, the Court of Appeals rejected the appellant's contention that it is not customary for universities to maintain radio towers of such height, stating that "[t]his argument ignores the fact that the Zoning Resolution classification of accessory uses is based upon functional rather than structural specifics." Botanical Garden, 91 N.Y.2d at 421; and

WHEREAS, the Appellant contends that Botanical Garden therefore reflects that DOB's contention that the Radio Tower is not an accessory use because of its size conflates use regulation and bulk regulation in a way that is not contemplated by the Zoning Resolution; and

WHEREAS, the Appellant asserts that Botanical Garden also supports its position that the Radio Tower is an accessory use because it is "customarily found in connection with" the principal use, as the Court of Appeals observed:

> The specifics of the proper placement of the station's antenna, particularly the height at which it must be placed, are dependent on site-specific factors such as the surrounding geography, building density and signal strength. This necessarily means that the placement of antennas will vary widely from one radio station to another. Thus, the fact that this specific tower may be somewhat different does not render the Board's determination unsupported as a matter of law, since the use itself (i.e., radio operations of this particular size and scope) is one customarily found in connection with an educational institution. Moreover, Fordham did introduce evidence that a significant number of other radio stations affiliated with educational institutions in this country utilize broadcast towers similar in size to the one it proposes. Botanical Garden, 91 N.Y.2d at 422; and

WHEREAS, finally, the Appellant notes that in Botanical Garden the Court of Appeals recognized that, unlike other examples of accessory uses listed in ZR § 12-10, there is no height restriction associated with accessory radio towers and that it would be inappropriate for DOB to arbitrarily restrict the height of such radio towers, as the Court stated that:

> Accepting the Botanical Garden's argument would result in the judicial enactment of a new restriction on accessory uses not found in the Zoning Resolution. Zoning Resolution § 12-10 (accessory use) (q) specifically lists "[a]ccessory radio or television towers" as examples of permissible accessory uses (provided, of course that they comply with the requirements of Zoning Resolution § 12-10 [accessory use] [a], [b] and[c]). Notably, no height restriction is included in this example of a permissible accessory use. By contrast, other examples of accessory uses contain specific size restrictions. For instance, Zoning Resolution § 12-10 defines a "home occupation" as an accessory use which "[o]ccupies not more than 25 percent of the total floor area and in no even more than 500 square feet of floor area" (§ 12-10 [accessory use][b][2]). The fact that the definition of accessory radio towers contains no such size restrictions supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of need. Botanical Garden, 91 N.Y.2d at 422-23; and

WHEREAS, accordingly, the Appellant asserts that Botanical Garden reflects that there is no "bright line" height restriction in the Zoning Resolution beyond which an accessory antenna becomes non-accessory, and since there is no law, rule, or regulation which permits DOB to deem the Radio Tower non-accessory on the grounds of its purportedly excessive height, DOB thus makes an error of law in trying to forbid the Appellant's maintenance of the Radio Tower as non-accessory in the absence of a guiding statute; and

WHEREAS, the Appellant contends that DOB's reliance on BSA Cal. No. 14-11-A to support the position that size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use is similarly misguided; and

WHEREAS, specifically, the Appellant notes that in that case, in a discussion of the Botanical Garden case, the Board expressly rejected the use of size as a criterion in evaluating whether radio antennas are accessory uses, noting that "size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers…"; and

WHEREAS, the Appellant also distinguishes BSA Cal. No. 14-11-A from the subject case in that in the former there was an attempt to promulgate and follow universally applicable standards for determining accessory use in cellars, while in the subject case DOB's determination is limited to this single antenna and not based on any articulated standard; and

WHEREAS, finally, the Appellant argues that BSA Cal. No. 14-11-A is only implicated if it is conceded that the Radio Tower is somehow "too big" for the Building; however, the Appellant asserts that the Radio Tower is in no way "too big" for the site, as it is a standard-sized, if not smaller than standard-sized, amateur radio antenna chosen specifically for the types of communications that the amateur operator desires to engage in, the intended distance of communications, and the frequency band; and

WHEREAS, the Appellant also refutes DOB's contention that, because the Radio Tower both receives and transmits signals (as opposed to merely receiving signals) the subject Radio Tower is somehow not an accessory use; and

WHEREAS, the Appellant asserts that there is absolutely no support in any statute for this proposition, and the Zoning Resolution does not treat antennas differently depending on whether or not they transmit; and

CONCLUSION

WHEREAS, the Board has determined that the subject Radio Tower satisfies the ZR § 12-10 definition of an

accessory use to the subject four-story residential building, such that the maintenance of the Radio Tower at the site does not require a special permit from the Board under ZR § 73-30; and

WHEREAS, specifically, the Board finds that the Radio Tower meets the criteria of an accessory use to the residence because it is: (a) located on the same zoning lot as the principal use (the residential building), (b) the Radio Tower use is clearly incidental to and customarily found in connection with a residential building, and (c) the Radio Tower is in the same ownership as the principal use and is proposed for the benefit of the owner of the Building; and

WHEREAS, the Board agrees with the Appellant that the owner's hobby as an amateur ham radio operator is clearly incidental to the principal use of the site as a residence, and is not persuaded by DOB's argument that the Radio Tower is not clearly incidental to the Building merely because the height of the Radio Tower (40 feet) is comparable to that of the Building (58 feet); and

WHEREAS, the Board finds that the Appellant has submitted sufficient evidence reflecting that, when amateur radio antennas are found, they are customarily found appurtenant to residences, and agrees with the Appellant that the fact that amateur radio antennas are not a common accessory use is not dispositive as to whether or not such use is accessory to a residential building; and

WHEREAS, as to DOB's contention that the subject Radio Tower does not qualify as an accessory use because it functions differently than traditional aerials in that it both receives and transmits radio signals (as opposed to traditional aerials which merely receive radio signals), the Board agrees with the Appellant that the fact that the Radio Tower transmits radio signals is of no import as to whether or not it qualifies as an accessory use; and

WHEREAS, the Board notes that DOB has acknowledged that amateur ham radio antennas can qualify as accessory uses, and since all ham radio operators by definition both receive and transmit radio signals, it appears that DOB has accepted certain amateur radio towers which both receive and transmit radio signals as accessory uses; and

WHEREAS, as to DOB's contention that the subject Radio Tower does not qualify as an accessory use because it is significantly taller and more elaborate than traditional accessory radio towers, the Board finds that the Appellant has submitted sufficient evidence to establish that radio towers similar to the subject Radio Tower are customarily found in connection with residential buildings in New York City; and

WHEREAS, specifically, the Appellant submitted photographs of nine other ham radio towers maintained throughout the City, and the Board notes that several of the photographs depict radio towers similar in size to the subject Radio Tower; and

WHEREAS, the Board further notes that the Appellant was able to ascertain the height of five of the radio towers for which it submitted photographs, which include: (1) a radio tower with a height of approximately 40 feet located on the rooftop of an 11-story residential building with ground floor commercial use within an M1-5M zoning district in Manhattan; (2) a radio tower with a height of approximately 50 feet located on the rooftop of a 13-story residential building with ground floor commercial use within an R10-A zoning district in Manhattan; (3) a radio tower with a height of approximately 28 feet located on the rooftop of a nine-story residential building within an R8B zoning district in Manhattan; (4) a radio tower with a height of approximately 80 feet located in the backyard of a two-story residential building within an R4-1 zoning district in Brooklyn; and (5) a radio tower with a height of 15 feet located on the rooftop of a two-story residential building within an R2A zoning district in Queens; and

WHEREAS, the Board considers the photographs submitted by the Appellant to be a representative sample of the amateur ham radio antennas maintained by the approximately 3,321 licensed ham radio operators located throughout the City, and finds that the photographs submitted to the Board, in particular those of the rooftop radio towers in Manhattan with heights of 40 feet and 50 feet, respectively, serve as evidence that radio towers similar in height to the subject Radio Tower with a height of 40 feet are customarily found in connection with residential buildings in the City; and

WHEREAS, the Board is not convinced by DOB's argument that these radio towers cannot be relied upon as evidence that radio towers similar in size to the subject Radio Tower are customarily found in connection with residential buildings merely because they are located on taller buildings than the subject Building; and

WHEREAS, the Board does not find the height of the building upon which a radio tower is to be located to be the controlling factor as to whether or not that radio tower is deemed to be an accessory use; and

WHEREAS, as to DOB's contention that the subject case is controlled and consistent with Botanical Garden, the Board acknowledges that the case reflects that it is appropriate to take the overall character of the particular area into consideration when determining whether an accessory use is clearly incidental to and customarily found in connection with the principal use, however, the Board agrees with the Appellant that the facts of the case actually weigh in favor of the Appellant's position; and

WHEREAS, in particular, the Board notes that DOB is requesting that the Board rely on Botanical Garden to support the position that the subject Radio Tower is not an accessory use, despite the fact that the ultimate holding in Botanical Garden was that the radio tower in question qualified as an accessory use based on similar arguments advanced by the Appellant in the subject case; and

WHEREAS, the Board agrees with the Appellant that the Court's determination that "the Zoning Resolution classification of accessory uses is based upon functional rather than structural specifics" Botanical Garden, 91 N.Y.2d at 421, and "[t]he fact that the definition of accessory radio towers contains no such size restrictions supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of need" Botanical Garden, 91

N.Y.2d at 422-23, weighs in favor of the Radio Tower as an accessory use, as the Appellant submitted a needs analysis which reflects that the antenna height of 40 feet is based upon an individualized assessment of the owner's needs to communicate with Israel and the Middle East and is the minimum necessary height required for the ham radio tower to function properly in communicating with these areas of the world; and

WHEREAS, the Board also does not find support in Botanical Garden for DOB's contention that the Radio Tower is non-accessory merely because there are no similarly-sized radio towers located on similarly-sized buildings in the immediately surrounding block, as in that case Fordham was the only university in the surrounding area and the Court supported the Board's consideration of the custom and usage of other universities which were not located near the site in reaching its determination that such radio antennas were customarily found as accessory uses to universities; and

WHEREAS, accordingly, the Board notes that while Botanical Garden set forth a standard that the overall character of the area should be taken into consideration in the accessory use analysis, the facts of that case itself reflect that such a standard does not require that there be an identical radio tower accessory to an identical building in the immediately surrounding area, as DOB appears to be requiring in the instant case; and

WHEREAS, the Board agrees with the Appellant that the fact that no other buildings on the immediate block have similar radio towers is not dispositive of whether the subject Radio Tower is an accessory use, and finds that the Appellant has submitted evidence that rooftop radio towers with heights of 40 feet are "customarily found in connection with" residential buildings in New York City; and

WHEREAS, as to BSA Cal. No. 14-11-A, the Board agrees with the Appellant that that case is also distinguishable from the subject case, as it was based on significantly different facts and in its decision the Board specifically noted that "size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers…"; and

WHEREAS, the Board further agrees with the Appellant that, unlike the subject case, BSA Cal. No. 14-11-A involved DOB's attempt to promulgate and follow a universally applicable standard for determining whether a cellar was an accessory use, which has since been memorialized in Buildings Bulletin 2012-008; and

WHEREAS, specifically, the Board notes that in BSA Cal. No. 14-11-A, DOB sought to apply a single objective standard to all cellars in every zoning district, while in the subject case DOB is proposing to make a case-by-case analysis of each amateur ham radio tower that is constructed in the City and make a discretionary determination as to whether it is accessory based upon factors such as the height of the radio tower, the height of the associated building, the prevalence of similar radio towers on similar buildings in the immediately surrounding area, the character of the surrounding area, and other subjective criteria; and

WHEREAS, the Board agrees with the Appellant that DOB has provided no provision of the Zoning Resolution or any other law, rule, or regulation which sets forth a standard for finding the subject Radio Tower non-accessory solely based upon its height; and

WHEREAS, the Board considers the lack of an objective standard for determining whether an amateur ham radio tower of a given height is accessory to be problematic and prone to arbitrary results, and while the Board does not make a determination as to whether amateur ham radio towers of any height may qualify as accessory, it recognizes that establishing a bright line standard for the permissible height of accessory radio towers may require an amendment to the Zoning Resolution or the promulgation of a Buildings Bulletin, as was the case in BSA Cal. No. 14-11-A; and

WHEREAS, the Board agrees with DCP that the size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use; however, it finds that in the case of amateur radio towers, unlike cellars and certain other uses, there is no articulated standard to guide DOB in determining at what height a particular radio tower becomes non-accessory; and

WHEREAS, as to the Appellant's argument that in not accepting the Radio Tower as an accessory use DOB has failed to "reasonably accommodate" the owner's needs contrary to federal laws and regulations, the Board recognizes that federal laws and FCC regulations favor the maintenance of ham radio equipment such as the Radio Tower and pre-empt local ordinances which prohibit the maintenance of such equipment; and

WHEREAS, however, because the Board has determined that the subject Radio Tower satisfies the ZR § 12-10 definition of accessory use, the Board deems it unnecessary to make a determination on the preemption issue in order to reach a decision on the merits of the subject appeal; therefore, the Board finds it appropriate to limit the scope of its determination accordingly; and

WHEREAS, the Board concludes that, based upon the above, the Radio Tower satisfies the ZR §12-10 criteria for an accessory use to the subject residential building.

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated April 10, 2012, is hereby granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

247-12-A
APPLICANT – Deidre Duffy, P.E. for Breezy Point Cooperative, Inc., owner; Timothy and Barbara Johnson, lessee.
SUBJECT – Application August 10, 2012 – Proposed construction of a single family home located in the bed of a mapped street, contrary to General City Law Section 35, and private disposal system is located in the bed of a mapped street, contrary to Department of Buildings' policy. R4 zoning district.
PREMISES AFFECTED – 659 Highland Place, east side of Highland Place, 222.5' north of 12th Avenue. Block 16350, Lot 300. Borough of Queens.
COMMUNITY BOARD #14Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No. 420575381, reads in pertinent part:

A1- The site and the building to be reconstructed lie partially within the bed of a mapped street, contrary to Article, Section 35 of the General City Law; and

A2- The proposed upgraded private disposal system in the bed of a mapped street contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in the *City Record*, hearing closed, and then to decision on the same date; and

WHEREAS, by letter dated September 27, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections provided that the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and

WHEREAS, by letter dated August 30, 2102, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated September 26, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No.420575381, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 10, 2012"-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

THAT the home shall be sprinklered in accordance with the BSA-approved plans;
and

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

Adopted by the Board of Standards and Appeals, November 20, 2012.

248-12-A
APPLICANT – Deidre Duffy, P.E., for Breezy Point Cooperative, Inc., owner; Gerard McGlynn, lessee.
SUBJECT – Application August 10, 2012 – Proposed building is not fronting a mapped street, contrary to General City Law Section 36, is located in the bed of a mapped street, contrary to General City Law Section 35, and private disposal system is located in the bed of a mapped street, contrary to Department of Buildings' policy. R4 zoning district.
PREMISES AFFECTED – 45 Tioga Walk, east side of Tioga Walk, 68' south of West End Avenue. Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No. 420573962, reads in pertinent part:

A1- The site and the building to be reconstructed lie partially within the bed of a mapped street, contrary to Article, Section 35 of the General

City Law; and

A2- The proposed upgraded private disposal system in the bed of a service lane is contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in the *City Record*, hearing closed and then to decision on the same date; and

WHEREAS, by letters dated September 27, 2012 and October 10, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections provided that the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and

WHEREAS, by letter dated August 30, 2102, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated October 3, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No.4205753962, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 10, 2012"-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

THAT the home shall be sprinklered in accordance with the BSA-approved plans;

and

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

Adopted by the Board of Standards and Appeals, November 20, 2012.

45-03-A thru 62-03-A & 64-03-A

APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.

SUBJECT – Application October 3, 2011 – Proposed construction of a single-family dwelling which is not fronting on a legally mapped street and is located within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – Hall Avenue, north side of Hall Avenue, 542.56' west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lot 60, 80, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 15, 2013, at 10 A.M., for adjourned hearing.

119-11-A

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to January 29, 2013, at 10 A.M., for deferred decision.

140-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Foster Road Development LLC, owner.

SUBJECT – Application April 30, 2012 – Proposed construction of a two-family dwelling located in the bed of a mapped street, contrary to General City Law Section 35. R3A zoning district.

PREMISES AFFECTED – 69 Parkwood Avenue, east side of Parkwood Avenue, 200'south of intersection of Parkwood and Uncas Avenues. Block 6896, Lot 120(tent), Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

142-12-A
APPLICANT – Sheldon Lobel, P.C., for 108-59 Ditmas Boulevard, owner.
SUBJECT – Application May 3, 2012 – Amendment of a previously approved (BSA Cal No. 187-99-A) waiver of the General City Law Section 35 which permitted the construction of a two family dwelling in the bed of a mapped street (24th Avenue). The amendment seeks to construct a community facility building. R3-2 zoning district.
PREMISES AFFECTED – 24-02 89th Street, between Astoria Boulevard and 23rd Avenue, Block 1100, Lot 101, Borough of Queens.
COMMUNITY BOARD #3Q
ACTION OF THE BOARD – Laid over to December 4, 2012, at 10 A.M., for continued hearing.

144-12-A
APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.
SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f).
PREMISES AFFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Laid over to January 15, 2013, at 10 A.M., for continued hearing.

145-12-A
APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.
SUBJECT – Application May 3, 2012 – Appeal challenging the determination of the Department of Buildings requiring the owner to obtain approval from the Landmarks Preservation Commission, prior to reinstatement and amendments of the permits. R8B zoning district.
PREMISES A.FFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #4M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to January 15, 2013, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, NOVEMBER 20, 2012
1:30 P.M.

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

ZONING CALENDAR

156-11-BZ
CEQR #12-BSA-028X
APPLICANT – Sheldon Lobel, P.C., for The Rector Church Warden and Vestry Men of St. Simeon's Church owners.
SUBJECT – Application October 5, 2011 – Variance (§72-21) to permit the construction of a 12-story mixed residential (UG 2 supportive housing) and community facility (*St. Simeon's Episcopal Church*) (UG4 house of worship) building, contrary to setback (§23-633(b)), floor area (§§23-145, 24-161, 77-2), lot coverage (§23-145) and density (§§23-22, 24-20) requirements. R8 zoning district.
PREMISES AFFECTED – 1020 Carroll Place, triangular corner lot bounded by East 165th Street, Carroll Place and Sheridan Avenue, Block 2455, Lot 48, Borough of Bronx.
COMMUNITY BOARD #4BX
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 5, 2011, acting on Department of Buildings Application No. 220137233, reads, in pertinent part:

1. Proposed floor area ratio (FAR) exceeds the maximum permitted pursuant to ZR 23-145, 24-161, and 77-22
2. Proposed lot coverage exceeds the maximum permitted pursuant to ZR 23-145
3. Proposed Quality Housing building does not provide required setbacks of 10 and 15 feet above maximum base height in an R8 district along wide and narrow streets respectively, pursuant to ZR 23-633(b)
4. Proposed number of dwelling units exceeds maximum permitted pursuant to ZR 23-22 and 24-20; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, a proposed 12-story community facility (UG 4) and affordable housing (UG 2) building, which does not comply with floor area ratio ("FAR"), lot coverage, setback, and density regulations

and is contrary to ZR §§ 23-22, 23-145, 23-633, 24-161, and 24-20; and

WHEREAS, the application is brought on behalf of St. Simeon's Episcopal Church and the Canterbury Heights Development Corporation (CHDC) a not-for-profit organization affiliated with St. Simeon's, the owner of the site and the occupant of the proposed house of worship; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 16, 2012, and then to decision on November 20, 2012; and

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

WHEREAS, Community Board 4, Bronx, recommends approval of the application and cites the need for affordable housing in the area; and

WHEREAS, the applicant submitted letters of support from New York State Assemblywoman Vanessa Gibson and the Mount Hermon Baptist Church; and

WHEREAS, the subject site is located on a triangular corner lot, which is its own small city block, bounded by East 165th Street, Carroll Place, and Sheridan Avenue and has a total area of 5,154 sq. ft.; and

WHEREAS, the majority of the zoning lot (95.8 percent) is located within 100 feet of East 165th Street; and

WHEREAS, the site was formerly occupied by St. Simeon's Episcopal Church, in a building that was deemed unsafe in 1998 and, despite attempts to rehabilitate it, was eventually demolished in 2003 due to withdrawal of insurance coverage; the site is currently vacant; and

WHEREAS, the applicant proposes to occupy the 12-story building (with a total height of 117 feet) with community facility use at the cellar and ground floor level, for St. Simeon's, including the church sanctuary and an accessory pastor's apartment; and the 11 upper floors will be occupied by residential use, including 50 affordable dwelling units ranging from studios to three-bedroom units; and

WHEREAS, the applicant states that ten of the residential units (20 percent) will provide supportive housing for the formerly homeless; supportive social services will be provided by Comunilife, an institution that provides supportive services including those for mental health counseling and benefits management for the formerly homeless; and

WHEREAS, the conditions which trigger the need for the variance are (1) floor area of 49,072 sq. ft. (9.52 FAR) (36,851 sq. ft. (7.15 FAR) is the maximum permitted); (2) the portion of the first floor occupied by community facility use complies with lot coverage regulations, but the residential floors above have a lot coverage of 85 percent (80 percent is the maximum permitted lot coverage); (3) the absence of setbacks above the maximum permitted base height of 85 feet (setbacks of 10 feet from the wide street and 15 feet from the narrow streets are required above the base height); and (4) the provision of 50 dwelling units (density regulations limit the number of units to 44); and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the triangular shape; and (2) the slope and poor soil conditions; and

WHEREAS, as to the shape, the applicant states that the site is irregularly-shaped with three frontages; and

WHEREAS, specifically, the applicant states that the odd shape of the site constrains the floor plate because the ratio of street frontage is so high and the angles of the intersections of the streets do not support efficient standard building design; and

WHEREAS, the applicant asserts that there are premium façade costs associated with having all of the exterior surface area of the building be a street frontage such as the need for a greater degree of fenestration; and

WHEREAS, the applicant asserts that due to inefficiencies of constructing on an irregularly-shaped site, the lot area of 5,154 sq. ft. could accommodate approximately three fewer dwelling units than if the lot were regularly-shaped; and

WHEREAS, the applicant represents that the as of right alternative would only allow for 37 dwelling units which is well below the minimum 50 units required to qualify for Low-Income Affordable Marketplace Program (LAMP) financing, as will be discussed in more detail below; and

WHEREAS, additionally, the applicant represents that if the lot coverage and setback regulations were followed strictly, the as of right floorplate would narrow significantly above a height of 85 feet and allow for only one unit on floors nine through twelve; and

WHEREAS, due to the shape and the requirement for setbacks at each of the three frontages, the upper floors of any building would be significantly constrained as at a height of 85 feet, a setback of 10'-0" is required at East 16th Street and setbacks of 15'-0" are required at Carroll Place and Sheridan Avenue; and

WHEREAS, the applicant asserts that a standard shaped lot with only one or two street frontages would not be similarly constrained by the setback requirements; and

WHEREAS, the applicant proposes a larger floor plate, in conflict with lot coverage requirements so that a larger amount of floor area can be accommodated on the lower floors, where a setback would not be required; and

WHEREAS, as to the uniqueness of the shape, the 400-ft. radius diagram reflects that the site is one of two triangular sites in the area and is the smaller of the two; and

WHEREAS, the diagram reflects that the subject site is the only site so affected by the curve of Carroll Place which, along with the intersections of Sheridan Avenue and East 165th Street, creates the unique triangular block, with one curved side that is occupied solely by the subject site; the subject site is the only such triangular block and the smallest

block in the study area; and

WHEREAS, as to the slope and soil, the applicant asserts that the site has a change in grade varying in elevation from 72 feet to 82 feet and with bedrock encountered at varying depths of 12 feet to 28 feet below grade; and

WHEREAS, the applicant asserts that the presence of bedrock makes construction of the foundation more costly as the removal of bedrock is more expensive than typical soil excavation; and

WHEREAS, the applicant states that the geotechnical report indicates a variety of sub-grade conditions including areas of pre-existing fill and old concrete foundations; and

WHEREAS, the applicant represents that there are additional costs associated with the labor and materials for an uneven foundation and the removal of unsuitable fill materials below proposed footings; and

WHEREAS, the applicant asserts that it will employ a slab on grade foundation with spread footing, a strategy that requires the minimization of the differential settlement; and

WHEREAS, the applicant asserts that additional floor area is required in help balance out the premium costs associated with construction on the triangular lot with compromised soil conditions; and

WHEREAS, the applicant states that in addition to the site's unique physical conditions, CHDC has specific programmatic needs, which require (1) a permanent house of worship for St. Simeon's, (2) community services, and (3) affordable housing; and

WHEREAS, CHDC's mission as set forth in its mission statement is to "support and strengthen individuals, families, neighborhoods and communities with the means that would enable them to live their lives in the best way possible" through affordable and better housing, child care and educational services, and social and psychological services; and

WHEREAS, the applicant states that it will receive financing for the proposal from the New York City Housing Development Corporation, LAMP, as well as New York City Department of Housing Preservation and Development's Low Income Program (LIP); and

WHEREAS, the applicant states that the proposal will also be partially funded by grants from the Office of the Bronx Borough President and Councilmember Helen Foster; and

WHEREAS, the applicant represents that the building program is determined in part by the requirements of the government funding sources concerning building design and unit count; and

WHEREAS, the applicant states that in order to be eligible for financing from LAMP, the minimum number of residential units is 50, of which 50 percent must be two-bedroom units or larger and each unit must comply with HPD's design guidelines, including suggested minimum floor area per unit type; and

WHEREAS, accordingly, the proposal reflects a total of 50 affordable housing units, including one, two, and three-bedroom apartments and studios for low-income families and single adults; and

WHEREAS, of the 50 units, seven will be studio apartments, 18 will be one-bedroom apartments, 21 will be two-bedroom apartments and four will be three-bedroom apartments; and

WHEREAS, as noted, an as-of-right building at the site that complies with floor area, lot coverage and height and setback regulations would allow for only 37 dwelling units, 13 units below the minimum required to qualify for LAMP financing; and

WHEREAS, accordingly, the applicant requires the waivers of residential floor area, setback, lot coverage, and density regulations; and

WHEREAS, the applicant states that LIP financing requires that at least 20 percent of the units be set aside for formerly homeless households and that a social services plan be approved to serve such residents; and

WHEREAS, the applicant states that, in accordance with LIP financing, ten of the 50 units will be designated for formerly homeless and Comunilife and CHDC will provide social services for building residents and the broader East Concourse community; and

WHEREAS, the applicant states that St. Simeon's need to rebuild its house of worship on the historic site of its church is fulfilled through its partnership with CHDC and the plan to construct a building which can accommodate both the new church space and the affordable housing; and

WHEREAS, the space available for church use includes a 1,081 sq. ft. multipurpose room in the cellar, which will accommodate meetings and social gatherings that may not be appropriate in the sanctuary; and

WHEREAS, the proposal also reflects that the first floor will contain a pastor's apartment, giving the church's pastor full-time access to church facilities and supporting his role in helping the church and building residents; and

WHEREAS, the cellar will be occupied by mechanical rooms and the tenants' laundry room, church offices, and a church multipurpose room; and

WHEREAS, the Board accepts the applicant's assertion that there are mutual benefits of St. Simeon's and CHDC occupying the same building due to an overlap of uses, programming, and leadership; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of St. Simeon's and CHDC's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since CHDC and St. Simeon's are both not-for-profit organizations and the proposed development will be in furtherance of their not-for-profit missions; and

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

detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed 12-story community facility and residential building is consistent with the character of the surrounding area as the use and total height of the proposed building are permitted as-of-right; and

WHEREAS, the applicant asserts that the proposed bulk results in an envelope that is consistent with existing development within the neighborhood; and

WHEREAS, the applicant notes that the site occupies its own block and the proposed building with its non-complying lot coverage and setback conditions is, thus, not immediately adjacent to any other sites; and

WHEREAS, specifically, the applicant states that there are several tall buildings within 400 feet of the site, including a 23-story multiple dwelling building located at 1020 Grand Concourse and a ten-story multiple dwelling building located at 1000 Grand Concourse across Carroll Place; and

WHEREAS, additionally, the applicant states that ten of the 21 multiple dwelling buildings located within a 400-ft. radius have floor area well above the 49,072 sq. ft. for the proposed building; and

WHEREAS, the applicant also asserts that the percentage by which the proposed 9.52 FAR exceeds the maximum permitted FAR is consistent with the bulk of other buildings in the study area that exceed their maximum allowable FAR; and

WHEREAS, the applicant states that of the 26 buildings located within 400 feet of the site, 16 exceed the maximum permitted FAR and nine exceed the maximum allowable FAR in their respective districts by more than 20 percent; and

WHEREAS, the applicant submitted photographs and a 400-ft. radius diagram to support these assertions; and

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

WHEREAS, at hearing, the Board asked the applicant to provide additional evidence that the proposed floor area is compatible with the surrounding area; and

WHEREAS, in response, the applicant stated that there is a 23-story building complex (Executive Towers) at 1020 Grand Concourse on the corner of East 165th Street with an FAR their architect consultant assesses to be 9.10 (although Oasis notes it be 6.92); and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site and the programmatic needs of CHDC and St. Simeon's; and

WHEREAS, the applicant states that there is no viable lesser variance that would allow for 50 units that conform to certain size and design requirements required by funding sources, particularly since the as of right scenario would only allow for 37 units; and

WHEREAS, accordingly, the Board finds that the proposal reflects the minimum necessary to accommodate the applicant's programmatic needs; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.2 of 6NYCRR; 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. 12BSA028X, dated July 24, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R8 zoning district, a proposed 12-story community facility (UG 4) and affordable housing (UG 2) building, which does not comply with floor area ratio, lot coverage, setback, and density regulations and is contrary to ZR §§ 23-22, 23-145, 23-633, 24-161, and 24-20, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 19, 2012" - Sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 12 stories, a residential floor area of 44,988 sq. ft., a community facility floor area of 4,084 sq. ft., and a total floor area of 49,072 sq. ft. (9.52 FAR), a total height of 117 ft., and lot coverage of 85 percent above the first floor, all as illustrated on the BSA-approved plans;

THAT there will be no change in use or ownership of the building without the prior review and approval of the

Board;

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 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, November 20, 2012.

185-11-BZ
CEQR #12-BSA-047K
APPLICANT – Eric Palatnik, P.C., for 2000 Stillwell Avenue, LLC, owner.
SUBJECT – Application December 8, 2011 – Variance (§72-21) to permit parking accessory to an adjacent, as-of-right retail development (*Walgreens*), contrary to use regulations (§22-00). R5 zoning district.
PREMISES AFFECTED – 2538 85th Street, north intersection of 86th Street and Stilwell Avenue. Block 6860, Lot 21. Borough of Brooklyn.
COMMUNITY BOARD #11BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 1, 2011, acting on Department of Buildings Application No. 320136777, reads in pertinent part:

> The proposed accessory commercial parking which rests within an R5 zoning district, which is accessory to the proposed use group 6 retail development on adjacent lots 38, 32, and 28, which themselves rest within a C8-2 zoning district is contrary to ZR 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C8-2 zoning district and partially within an R5 zoning district, an accessory parking lot to a Use Group 6 drugstore on the R5 portion of the site, which is contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in the *City Record*, and then to decision on November 20, 2012; and

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

WHEREAS, Community Board 11, Brooklyn, recommended approval of the application; and

WHEREAS, the site (Lot 21) is part of a larger triangular site formed by the intersection of 86th Street and Stillwell Avenue; and

WHEREAS, the site comprises four tax lots (the "Larger Site"); Lots 28, 32, and 38 occupy the southwest portion of the site and are within a C8-2 zoning district and the subject Lot 21, which occupies the northeastern portion of the site, and is within an R5 zoning district; and

WHEREAS, the applicant represents that the lots were not in common ownership prior to 1961, but that portions of the larger site have been in common ownership since then and are in common ownership today; and

WHEREAS, the applicant represents that the proposal for the site is all as of right except for the parking within the R5 zoning district and, thus, only Lot 21 (the "Parking Lot Site") is the focus of the application; and

WHEREAS, the Parking Lot Site has a lot area of 5,845 sq. ft., with 145 feet of frontage on Stillwell Avenue and five feet of frontage on 85th Street; it has a depth of 100 feet from 85th Street and 11 feet from its southern lot line; and

WHEREAS, the Larger Site is currently vacant, pending the construction of a one-story Walgreen's drugstore with 7,982 sq. ft. of floor area and 12 accessory off-street parking spaces on the portion of the site within the C8-2 zoning district; and

WHEREAS, the applicant notes that neither the parking spaces on the C8-2 portion of the site nor on the R5 portion of the site are required by zoning regulations because the parking requirement is not in effect for fewer than 25 spaces; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the Parking Lot Site in conformance with applicable regulations: (1) the site has an irregular triangular shape, (2) the site is adjacent to the elevated train, and (3) the site's only frontage is on heavily-trafficked Stillwell Avenue; and

WHEREAS, as to the shape of the site, the applicant states that the triangular shape of the Larger Site and the triangular shape of the Parking Lot Site, individually, are both attributed to the diagonal intersection of Stillwell Avenue; and

WHEREAS, the applicant states that the shape of the Parking Lot Site creates the condition of varying lot widths ranging from five feet at 85th Street to 111 feet at its base and that Stillwell Avenue runs at an approximate 60 degree angle along the eastern frontage of the site; and

WHEREAS, the applicant asserts that due to the irregular shape of the site, a building that complied with all zoning regulations would only be able to accommodate approximately one-half of the available floor area; and

WHEREAS, as to the uniqueness of the shape, the applicant states that although Stillwell Avenue's orientation has left many sites on its western side with an irregular shape, other similarly situated sites are either located within a different zoning district (such as an overlay which allows

commercial use), contain existing non-conformances or non-compliances, or have frontage on a side street, which promotes viability as all are occupied by uses including a pre-school, a mixed-use residential building with ground floor retail, and a non-conforming two-story office building; and

WHEREAS, as to the proximity to the elevated train, the applicant notes that the MTA's D train line is directly adjacent to the site and follows 86th Street from the northwest and turns onto Stillwell Avenue and creates loud noise; and

WHEREAS, as to the location on a heavily-trafficked street, the applicant asserts that the intersection of Stillwell Avenue and 86th Street is occupied entirely by commercial use; and

WHEREAS, the applicant asserts that the elevated train and the frontage on Stillwell Avenue are incompatible conditions for viable new residential development; and

WHEREAS the applicant states that DOB records do not show that there has been any building constructed on the Parking Lot Site, historically; and

WHEREAS, the applicant represents that most recently, the Parking Lot Site was used in association with the adjacent service station that formerly occupied the site; and

WHEREAS, the applicant represents that the Parking Lot Site is the only site in the vicinity that is vacant, irregularly-shaped, within close proximity to the elevated train, and with its sole frontage on Stillwell Avenue; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as-of-right conforming three-family residential building with .57 FAR, (2) a three-family residential building with a non-complying side yard and 1.06 FAR, (3) a three-family residential building with a non-complying side yard and .7 FAR, and (4) the proposed accessory parking lot; and

WHEREAS, the applicant concluded that only the proposal would result in a reasonable return due to the physical conditions of the site; and

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

WHEREAS, the applicant represents that the proposed use of the site 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 Stillwell Avenue is occupied by many commercial uses, even on sites which are within the R5 zoning district as well as in the C2-3 (R5B) and C8-2 zoning districts; and

WHEREAS, the applicant states that the adjacent residential use does not have lot line windows so the impact of the parking lot is reduced; and

WHEREAS, to provide a buffer between the Parking Lot Site and the adjacent residential use, the applicant proposes to include a landscaped area with a width of five feet and a board on board fence with a height of six feet along the shared property line to provide screening; and

WHEREAS, further, although no interior landscaping is required since the parking lot is less than 36 parking spaces, the applicant proposes to include 11 trees at the shared lot line as well as six trees at the perimeter, and a drainage plan, both conditions as required by ZR § 37-921; and

WHEREAS, the Board notes that the proposal is to allow a portion of the accessory parking lot – ten parking spaces - to be located within the R5 zoning district; and

WHEREAS, the applicant notes that the proposed parking lot will be adjacent to the as-of-right parking lot on the C8-2 portion of the site to be occupied by the drugstore; and

WHEREAS, at hearing, the Board questioned whether the two curb cuts on 86th Street would interfere with pedestrian traffic; and

WHEREAS, in response, the applicant explained the need for two curb cuts to accommodate efficient site circulation with one curb cut limited to entry and the other to egress; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, accordingly, the Board finds that the proposal to allow ten accessory parking spaces on a site adjacent to a conforming drugstore is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA047K, dated December 14, 2011; and

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

Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a negative declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C8-2 zoning district and partially within an R5 zoning district, an accessory parking lot to a Use Group 6 drugstore on the R5 portion of the site, which is contrary to ZR § 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 19, 2012"- (***) sheets and *on further condition*:

THAT the use of the parking lot on Lot 21 is limited to accessory parking to the adjacent Use Group 6 use on Lots 28, 32, and 38;

THAT an opaque fence of six feet in height shall be installed and maintained on the portions of the site adjacent to residential uses;

THAT landscaping shall be planted and maintained as per the BSA-approved plans;

THAT all exterior lighting within the parking area shall be directed away from adjacent residential use;

THAT the above conditions will be noted on the Certificate of Occupancy;

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

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

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

Adopted by the Board of Standards and Appeals, November 20, 2012.

7-12-BZ
CEQR #12-BSA-063M
APPLICANT – Eric Palatnik, P.C., for 419 West 55th Street Corp., owner; Katsam Holding, LLC, lessee.
SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Revolutions 55*). C6-2/R8 zoning district.
PREMISES AFFECTED – 419 West 55th Street, between 9th and 10th Avenues, Block 1065, Lot 21, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 23, 2011, acting on Department of Buildings Application No. 120886817, reads in pertinent part:

> The proposed physical culture establishment in a C6-2/R8 zoning district is contrary to Zoning Resolution Section 32-15 and therefore must be referred to the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-2 (R8) zoning district within the Special Clinton District, the operation of a physical culture establishment (PCE) on a portion of the cellar level of a seven-story mixed-use building contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on April 24, 2012, after due notice by publication in *The City Record*, with continued hearings on June 5, 2012, July 10, 2012, August 21,2012, and October 16, 2012, and then to decision on November 20, 2012; and

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

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

WHEREAS, the Board of Directors of the co-op at 419 West 55th Street and, separately, the shareholder of the apartment directly above the space proposed to be occupied by the PCE provided testimony expressing concerns about (1) noise and vibration from the PCE use; (2) safety and security related to the building's common space and visitors to the PCE; (3) oversight of the architectural (primarily acoustical) plans to insure compliance; and

WHEREAS, specifically, the co-op and the shareholders recommend that (1) there be strict measures to limit the volume of sound equipment and that acoustical measures be installed and maintained to limit sound; (2) safety measures be

installed to monitor the entrance and egress to the PCE; and (3) the building's architect be granted access to review the progress and insure proper installation of acoustical measures during construction; and

WHEREAS, the co-op and shareholders also recommend that there be conditions in the approval limiting the hours of operation and occupancy, and noting security and sound measures; and

WHEREAS, the subject site is located on the north side of West 55th Street in a C6-2 (R8) zoning district within the Special Clinton District; and

WHEREAS, the proposed PCE will occupy 2,590 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as a spinning studio by the name Revolutions55; and

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

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

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

WHEREAS, in response to the co-op's and the shareholders' concerns, the applicant proposes the following measures related to (1) noise and vibration from the PCE use; and (2) safety and security related to the building's common space and visitors to the PCE; and

WHEREAS, as to noise and vibration, the applicant proposes to include (1) double-door sound locks at all exits; (2) a sound limiter installed in a locked equipment closet within the PCE manager's office; (3) ductwork, exhaust grilles, and fans installed with acoustic isolation measures; (4) ceilings, walls, and floors of the PCE constructed with acoustical measures as reflected on the acoustical details plans; and (5) vibration-isolated speakers hung from the ceiling; and

WHEREAS, as to safety and security, the applicant proposes that (1) the access to commercial storage closets and laundry closet is restricted to staff use only; (2) there will be a "No entry" door with a swipe card system at the pull side and panic bar at the push side of the door so that the necessary means of egress is provided but that visitors to the PCE cannot exit without setting off an alarm; and (3) there will be seven new security cameras installed to monitor activity within the PCE space and at certain key spots around the perimeter of the cellar; and

WHEREAS, in response to the neighbors' concerns, the applicant also agrees to limit the occupancy of the PCE to 51 bicycles and to limit the hours of operation to Monday to Friday 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, 7:30 a.m. to 7:00 p.m.; and

WHEREAS, the Board notes that the applicant has modified its plans in response to the concerns raised by the co-op and the shareholders, but that there are certain matters upon which there has not been a complete resolution; and

WHEREAS, the Board notes that the safety and acoustical measures to be installed appear to address the primary concerns and are consistent with the measures the Board has seen proposed for similar facilities; and

WHEREAS, the Board notes, however, that there are certain other concerns that are beyond the scope of the PCE application and, thus, must be addressed by a separate agreement between the PCE and the building/shareholders such as whether the oversight of the security cameras and alarms is satisfactory and what form the review of the construction will take; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA063M, dated November 1, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration action prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C6-2 (R8) zoning district within the Special Clinton

District, the operation of a physical culture establishment on a portion of the cellar level of a seven-story mixed-use building contrary to ZR § 32-15; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 19, 2012" - Eight (8) sheets and *on further condition*:

THAT the term of this grant will expire on November 20, 2022;

THAT the number of bicycles will be limited to 51;

THAT the hours of operation will be limited to Monday to Friday 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, 7:30 a.m. to 7:00 p.m.

THAT the sound limiter will be placed in a location not accessible to the public;

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, November 20, 2012.

45-12-BZ
CEQR #12-BSA-082K

APPLICANT – Moshe M. Friedman, P.E., for Bais Sina, owner.

SUBJECT – Application February 27, 2012 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a UG 4 synagogue (*Bais Sina*), contrary to floor area ratio and lot coverage (§24-11), front yard (§24-34), side yards (§24-35), rear yard (§24-36), court and minimum distance between walls or windows and lot lines (§24-60) regulations. R5 zoning district.

PREMISES AFFECTED – 1914 50th Street, 100' east from the corner formed by 19th Avenue and south of 50th Street, Block 5462, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 14, 2012, acting on Department of Buildings Application No. 320384035 reads, in pertinent part:

Proposed House of Worship (UG 4) in an R5 District is contrary to:
ZR 24-11 Floor Area & Lot Coverage
ZR 24-34 Front Yard
ZR 24-36 Rear Yard
ZR 24-35 Side Yard
ZR 24-60 Court Regulations and Minimum Distance between Walls or Windows and Lot Line; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R5 zoning district, the legalization of a change in use and the construction of an enlargement to two attached two-story residential buildings to be occupied by a synagogue (Use Group 4), which does not comply with the underlying zoning district regulations for floor area, lot coverage, front yard, rear yard, side yards, and court regulations and minimum distance between walls or windows and lot line, contrary to ZR §§ 24-11, 24-34, 24-36, 24-35, and 24-60; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in *The City Record*, and then to decision on November 20, 2012; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application with the condition that there not be a door at the rear of the building adjacent to the private alleyway for the properties on 51st Street; and

WHEREAS, this application is being brought on behalf of the Bais Sina (the "Synagogue"), a non-profit religious entity; and

WHEREAS, the subject site is located on the south side of 50th Street, 100 feet east of 19th Avenue, within an R5 zoning district; and

WHEREAS, the subject site has a width of 43'-11¼", a depth of 100'-2 1/8", and a lot area of 4,402 sq. ft.; and

WHEREAS, the subject site is currently occupied by two attached two-story buildings built for residential use, but now partially occupied by the Synagogue; the site was formerly Zoning Lots 12 and 13, which have been merged

and together are now Lot 12; and

WHEREAS, the applicant proposes to legalize the conversion of the residential building at 1914 50th Street to community facility use, to incorporate the attached residential building at 1916 50th Street, for the proposed one-story enlargement at the rear of the building, and to add a partial third floor; and

WHEREAS, the applicant states that the existing buildings have the following parameters: a total floor area of 8,232 sq. ft. (1.87 FAR) (which exceeds the maximum permitted 1.8 FAR for residential use); a total lot coverage of 63 percent; a front yard with a depth of 9'-0"; no side yards; a rear yard with a depth of 21'-2", and insufficient court and wall to window/lot line dimensions; and

WHEREAS, the applicant proposes to enlarge the building to the following parameters: a floor area of 9,536 sq. ft. (2.17 FAR) (a maximum community facility floor area of 8,804 sq. ft. and 2.0 FAR is permitted); a lot coverage of 62 percent (a maximum lot coverage of 60 percent is permitted); a front yard with a depth of 9'-0" (a front yard with a minimum depth of 10'-0" is required); no side yards (side yards with a minimum width of 8'-0" are required); a rear yard with a depth of 21'-2" and 38'-0" at the new third floor level (a rear yard with a minimum depth of 30'-0" is required); and insufficient court and wall to window/lot line dimensions; and

WHEREAS, the applicant notes that the conversion of the existing residential buildings to community facility use will create new non-compliances with regard to floor area, lot coverage, and side yards; the proposal will maintain existing non-complying front and rear yard conditions; and

WHEREAS, the proposal provides for the following uses: (1) worship space, an office, and restrooms at the basement and first floor; (2) a rabbi's apartment and sexton's apartment on the second floor; and (3) a portion of the rabbi's apartment on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation; (2) to provide a separate worship space for male and female congregants; and (3) to provide accessory space and a rabbi's and sexton's apartments so that both can be readily accessible to the congregation; and

WHEREAS, the applicant states that the congregation has occupied the pre-existing residential building for several years and that they require additional space to accommodate the congregation onsite; and

WHEREAS, the applicant further states that the current facility does not provide a separate gallery for female worshippers; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to create a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, and rabbi's and sexton's apartments; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

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

WHEREAS, specifically, the applicant states that the proposed floor area accommodates the minimum space required to provide the congregation with sufficient worship space; and

WHEREAS, at hearing, the Board asked the applicant to explain whether the floor area of the two accessory apartments was contributing to the floor area waiver request; and

WHEREAS, in response, the applicant provided an analysis which reflects that the inclusion of the two apartments actually results in a decrease in the residential floor area of the site by 1,271 sq. ft. and that the floor area increase is required for the synagogue space; and

WHEREAS, the applicant states that the lot coverage waiver is required so that the former space between the two residential buildings can be filled in to allow for a continuous worship space at the basement and first floor; and

WHEREAS, the applicant states that the requested yard waivers will allow the proposed synagogue to provide efficient floor plates large enough to accommodate its worshippers, while not creating any new non-compliance, just continuing the existing non-complying side yards while providing a complying front yard condition of a depth of 9'-0" and a complying rear yard condition of 38'-0" above the second floor; and

WHEREAS, the applicant notes that if both required side yards of 8'-0" each were provided, the third floor would be required to be set back 8'-0" on either side and that the remaining building width could not accommodate the programmatic needs; and

WHEREAS, the applicant notes that the existing absence of side yards at the basement through second floor levels is a complying condition for residential use and is only rendered non-complying due to the change in use from residential to community facility use; and

WHEREAS, the applicant will retain the existing non-complying side yard condition; and

WHEREAS, as to minimum court size and distance from window to wall, the applicant notes that those conditions are related to the pre-existing court separating the two attached buildings, which is a historic built condition; and

WHEREAS, further, the court and distance from window to wall conditions on the third floor affect a single occupant as the space on both sides of the court is within the same apartment; and

WHEREAS, the applicant submitted as-of-right plans which reflected that a complying building enlargement would result in a significantly narrower building with a worship space too constrained to accommodate the size of the congregation and accessory uses; and

WHEREAS, the Board acknowledges that the

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

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

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

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

WHEREAS, the applicant represents that the proposed enlargement 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 that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant represents that the vast majority of congregants live within three-quarters of a mile of the site and will walk to the Synagogue as required by Jewish Law on the Sabbath; accordingly, there will not be any demand for parking; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram which reflects that there are several three- and four-story buildings on the subject block and across the street from the subject site and that there is a mix of residential and community facility uses; and

WHEREAS, the applicant states that the adjacent residential buildings to the east similarly do not have the required front yard and that the proposed new third floor will provide the required front yard setback; and

WHEREAS, the applicant notes that the adjacent building to the west is a religious school built to the shared lot line; and

WHEREAS, as to the Community Board's request that there not be a door at the rear of the building adjacent to the alleyway, the applicant notes that its proposal does not include such a door; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

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

WHEREAS, the applicant proposes to provide a front setback and a rear setback at the new third floor, which respects zoning district regulations; and

WHEREAS, the Board notes that the non-complying front yard, rear, and side yard conditions are pre-existing; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.12BSA082K, dated February 12, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site in an R5 zoning district, the legalization of a change in use and the construction of an enlargement to two attached two-story residential buildings to be occupied by a synagogue (Use Group 4), which does not comply with the underlying zoning district regulations for floor area, lot coverage, front yard, rear yard, side yards, and court regulations and minimum distance between walls or windows and lot line, contrary to ZR §§ 24-11, 24-34, 24-36, 24-35, and 24-60; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted,

filed with this application marked "Received November 20, 2012" – (10) sheets, and *on further condition*:

THAT the building parameters will include: a maximum floor area of 9,968 sq. ft. (2.17 FAR); a maximum wall height of 26'-10", and total height of 37'-10", as illustrated on the BSA-approved plans;

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

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

THAT no commercial catering will take place onsite;

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

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

THAT the approved plans 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, November 20, 2012.

76-12-BZ
CEQR #12-BSA-107K

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.

SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area, open space and lot coverage (§23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15K

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 21, 2012, acting on Department of Buildings Application No. 320439600, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio (FAR) exceeds the maximum permitted.
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required.
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the maximum permitted.
4. Plans are contrary to ZR 23-461(a) in that the existing minimum side yards are less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on June 19, 2012 after due notice by publication in *The City Record*, with continued hearings on July 24, 2012, September 11, 2012, and October 16, 2012, and then to decision on November 20, 2012; and

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

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

WHEREAS, the subject site is located on the west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 3,100 sq. ft., and is occupied by a single-family home with a floor area of 1,385 sq. ft. (0.45 FAR); and

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

WHEREAS, the applicant proposes to increase the floor area to 2,805.57 sq. ft. (0.90 FAR); the maximum permitted floor area is 1,553.75 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes an open space of 54 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes a lot coverage of 46 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will maintain the previously-existing non-complying side yard with a width of .7 feet along the northern lot line and a width of 4.4 feet along the southern lot line (two side yards with minimum widths of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the applicant initially proposed a site plan that included two parking pads in the front yard and two curb cuts; and

WHEREAS, at hearing, the Board questioned the presence of the existing curb cuts and two parking spaces in the front yard, particularly in light of DOB violations

regarding illegal curb cuts; and

WHEREAS, the applicant represents that the curb cuts are pre-existing; and

WHEREAS, at the Board's direction, the applicant removed one parking pad and one of the curb cuts from the site plan; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 10, 2012"-(6) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,805.57 sq. ft. (0.90 FAR); a minimum open space of 54 percent; a maximum lot coverage of 46 percent; a side yard with a minimum width of .7 feet along the northern lot line; and a side yard with a minimum width of 4.4 feet along the southern lot line, as illustrated on the BSA-approved plans;

THAT curb cuts and parking spaces in the front yard are subject to DOB review and approval;

THAT DOB will confirm compliance with landscaping requirements associated with the proposed enlargement;

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

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

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

Adopted by the Board of Standards and Appeals, November 20, 2012.

141-12-BZ

APPLICANT – Eric Palatnik, for Won Hoon Cho, Inc., owner.

SUBJECT – Application May 3, 2012 – Re-Instatement (§§11-411 & 11-412) of a previously approved variance which permitted retail (UG 6) in a residential district which expired on October 14, 1989; amendment to permit the installation of awnings/signage, and changes to the interior layout; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 65-02/10 164th Street, southwest corner of 65th Street, Block 6762, Lot 53, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 3, 2012, acting on Department of Buildings Application No. 420525863, reads in pertinent part:

> Proposed re-instatement of previous BSA Calendar Number 976-54-BZ and minor amendment to previous approval is contrary to BSA Calendar Number 976-54-BZ and therefore must be referred to the NYC BSA; and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement of a prior Board approval to permit the operation of retail use (Use Group 6) pursuant to ZR § 11-411, and an amendment to permit modifications to the previously-approved plans pursuant to ZR § 11-412; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in the *City Record*, with continued hearings on September 11, 2012 and October 16, 2012, and then to decision on November 20, 2012; and

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

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of 164th Street and 65th Avenue, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 10, 1955 when, under BSA Cal. No. 976-54-BZ, the Board granted a variance to permit the construction of a building to be occupied by commercial use, for a term of 20 years; and

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

WHEREAS, most recently, on November 25, 1986, the Board granted an extension of term to expire on November 25, 1989; and

WHEREAS, the applicant now proposes to reinstate the grant; and

WHEREAS, the applicant has requested an extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, at hearing, the Board asked the applicant to provide submissions as to the continuity of the use and to address whether the character of the area has changed since the last extension of term; and

WHEREAS, in response, the applicant stated that the site is occupied by three separate commercial businesses, which have all been in continuous operation; one of the stores, formerly occupied by Mr. Burger restaurant was vacant from August 2011 through March 2012 (a period of eight months), but is now occupied by Ecua Thrift Shop; and

WHEREAS, the applicant states that the current owner purchased the site in August 1984 and, after receiving a violation from DOB that it was operating with an expired certificate of occupancy in 1986, obtained an extension of term that expired in 1989; and

WHEREAS, the applicant represents that the owner misunderstood that further extensions of term would be required and continued to operate the premises, while filing several applications at DOB (in 1993, 2002, 2009, and 2010); and

WHEREAS, the applicant asserts that, although the term lapsed in 1989, the use continued throughout that period as evidenced, in part, by the records of the applicant's repeated actions at DOB between 1993 and 2010; and

WHEREAS, the applicant states that there has not been any change in the character of the area; specifically, the subject use is adjacent to residential use, which it serves, and to a neighborhood park; and

WHEREAS, the applicant proposes the following hours of operation: (1) Bus Stop Deli – 6:00 a.m. to midnight, daily; (2) Ecua Thrift Shop – 10:00 a.m. to 5:30 p.m., closed Monday; and (3) Armor Locksmith – 9:00 a.m. to 5:30 p.m., closed Saturday; and

WHEREAS, the applicant states that garbage pickup is on Sunday, Tuesday, Wednesday, and Thursday; and

WHEREAS, the applicant also seeks to amend the grant to approve site conditions that do not conform with previously approved plans; specifically, to reflect the addition of three new awnings with signs and changes to the interior layout; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, during the course of the hearing process, the Board questioned whether the signage complied with prior approvals and with C1 zoning district regulations; and

WHEREAS, in response, the applicant submitted a sign analysis and revised drawings reflecting signs that comply with C1 zoning district regulations; and

WHEREAS, the applicant also submitted photographs reflecting the removal of all non- complying signs from the site and a signage plan reflecting that the site complies with C1 district signage regulations; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412.

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 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval for commercial use (UG 6), and an amendment to permit the noted modifications to the site; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received November 19, 2012"-(5) sheets; and *on further condition*:

THAT this approval will be for a term of ten years, to expire on November 20, 2022;

THAT all signage on the site shall comply with C1 district regulations;

THAT the site will be kept free of graffiti, dirt and debris;

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

THAT a new certificate of occupancy be obtained by November 20, 2013;

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

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

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

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

Adopted by the Board of Standards and Appeals, November 20, 2012.

42-10-BZ
APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.
SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.
PREMISES AFFECTED – 2170 Mill Avenue, 116' west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.
COMMUNITY BOARD #18BK
ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for adjourned hearing.

113-11-BZ
APPLICANT – Slater & Beckerman, LLP, for St. Patrick's Home for the Aged and Infirm, owners.
SUBJECT – Application August 10, 2011 – Variance (§72-21) to permit a proposed enlargement of a Use Group 3 nursing home (*St. Patricks Home for the Aged and Infirm*) contrary to rear yard equivalent requirements (§24-382). R7-1 zoning district.
PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, Borough of Bronx.
COMMUNITY BOARD #8BX
ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for adjourned hearing.

160-11-BZ
APPLICANT – Slater & Beckerman, LLP for Jewish National Fund, owner.
SUBJECT – Application October 14, 2011 – Variance (§72-21) to allow for the enlargement of a community facility (*Jewish National Fund*), contrary to rear yard (§24-33), rear yard setback (§24-552), lot coverage (§24-11), and height and setback (§§23-633, 24-591) regulations. R8B/LH-1A zoning district.
PREMISES AFFECTED – 42 East 69th Street, south side of East 69th Street, between Park Avenue and Madison Avenue. Block 1383, Lot 43. Borough of Manhattan.
COMMUNITY BOARD #8M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

61-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Martha Schwartz, owner; Altamarea Group, lessee.
SUBJECT – Application March 15, 2012 – Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). M1-5B zoning district.
PREMISES AFFECTED – 216 Lafayette Street, between Spring Street and Broome Street, 25' of frontage along Lafayette Street, Block 482, Lot 28, Borough of Manhattan.
COMMUNITY BOARD #2M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to January 29, 2013, at 1:30 P.M., for decision, hearing closed.

74-12-BZ
APPLICANT – Harold Weinberg, P.E., for Diana Trost, owner.
SUBJECT – Application March 30, 2012 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.
PREMISES AFFECTED – 252 Exeter Street, west side 350' north of Esplanade and Oriental Boulevard, Block 8742, Lot 2, Borough of Brooklyn.
COMMUNITY BOARD #15BK
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to December 4, 2012, at 1:30 P.M., for decision, hearing closed.

82-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.
SUBJECT – Application – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 2011 East 22nd Street, between Avenue S and Avenue T, Block 7301, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to January 8, 2013, at 1:30 P.M., for continued hearing.

152-12-BZ
APPLICANT–Rothkrug Rothkrug & Spector, LLP, for M.S.P. Realty Development, Inc., owner.
SUBJECT – Application May 9, 2012 – Variance (§72-21) to permit construction of a four-story mixed use commercial and residential building, contrary to side yard (§23-462) requirements. C2-4/R6A zoning district.
PREMISES AFFECTED – 146-61 105th Avenue, north side of 105th Avenue, 34.65' southwest of intersection of 105th Avenue and Sutphin Boulevard, Block 10055, Lot 19, Borough of Queens.
COMMUNITY BOARD #12Q
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to December 4, 2012, at 1:30 P.M., for decision, hearing closed.

159-12-BZ
APPLICANT – Eric Palatnik, P.C., for Joseph L. Musso, owner.
SUBJECT – Application May 22, 2012 – Variance (§72-21) to allow for the enlargement of a Use Group 4 medical office building, contrary to rear yard requirements (§24-36). R3-2 zoning district.

Variance (§72-21) to allow for the enlargement of a Use Group 4 medical office building contrary to rear yard requirements, ZR §24-36. R3-2 zoning district.
PREMISES AFFECTED – 94-07 156th Avenue, between Cross Bay Boulevard and Killarney Street, Block 11588, Lot 67, 69, Borough of Queens.
COMMUNITY BOARD #10Q
ACTION OF THE BOARD – Laid over to January 29, 2013, at 1:30 P.M., for continued hearing.

189-12-BZ
APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.
SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00). C1-3/R7-1, R6 zoning districts.
PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, Borough of Brooklyn.
COMMUNITY BOARD #2BK
ACTION OF THE BOARD – Laid over to November 27, 2012, at 1:30 P.M., for adjourned hearing.

210-12-BZ
APPLICANT – Herrick, Feinstein LLP, for 44 West 28th Street Penn Plaza Properties, LLC, owner; CrossFit NYC, lessee.
SUBJECT – Application July 23, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*CrossFit*) to be located on second story of an existing 16-story building. C6-4X and M1-6 zoning district.
PREMISES AFFECTED – 44 West 28th Street, between Broadway and Avenue of the Americas, Block 829, Lot 68, Borough of Manhattan.
COMMUNITY BOARD #5M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to December 4, 2012, at 1:30 P.M., for decision, hearing closed.

233-12-BZ
APPLICANT – Richard G. Leland, Esq./Fried Frank Harris Shriver & Jacob, for Porsche Realty, LLC, owner; Van Wagner Communications, lessee.
SUBJECT – Application July 19, 2012 – Variance (§72-21) to legalize an advertising sign in a residential district, contrary to use regulations (§22-00). R3X zoning district.
PREMISES AFFECTED – 246-12 South Conduit Avenue, bounded by 139th Avenue, 246th Street and South Conduit Avenue, Block 13622, Lot 7, Borough of Queens.
COMMUNITY BOARD #13Q
ACTION OF THE BOARD – Laid over to January 29, 2013, at 1:30 P.M., for continued hearing.

235-12-BZ
APPLICANT – Slater & Beckerman, LLP, for NBR LLC, owner.
SUBJECT – Application July 30, 2012 – Special Permit (§73-242) to allow a one-story building to be used as four eating and drinking establishments (Use Group 6), contrary to use regulations (§32-00). C3 zoning district.
PREMISES AFFECTED – 2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north. Block 8839, Lots 33, 38, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to January 8, 2013, at 1:30 P.M., for continued hearing.

237-12-BZ
APPLICANT – Wachtel Masyr & Missry LLP, for Red Circle New York Corp., owner; Crunch LLP, lessee.
SUBJECT – Application August 1, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Crunch LLC*). C6-4A zoning district. C6-2A zoning district.

PREMISES AFFECTED – 220 West 19th Street between 7th and 8th Avenues, Block 768, Lot 50, Borough of Manhattan.
COMMUNITY BOARD #4M

249-12-BZ
APPLICANT – Lewis E. Garfinkel, for Solomon Friedman, owner.
SUBJECT – Application August 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a); side yards (§23-461(a)) and rear yard (§23-47) regulations. R-2 zoning district.
PREMISES AFFECTED – 1320 East 27th Street, west side of East 27th Street, 140' south of Avenue M, Borough of Brooklyn.
COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 4, 2012, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.